



DR. MARTIN LUTHER KING, JR. NEIGHBORHOOD CENTER BUILDING LEASE AGREEMENT

THIS LEASE is made and executed at Yuma, Arizona, this _____ day of _____, 2016, between the CITY OF YUMA, a municipal corporation, hereinafter referred to as Lessor, and YUMA PRIVATE INDUSTRY COUNCIL (colloquially known as "YPIC") hereinafter referred to as Lessee. The attached Subrecipient Agreement (Attachment A) is a separate document and is attached for information only.

WITNESSETH:

IT IS AGREED by and between the parties hereto as follows:

1. DESCRIPTION OF PREMISES. The Lessor hereby leases to Lessee(s), on the terms and conditions hereinafter set forth, (Premises) located at:

300 SOUTH 13TH AVENUE & 1471 WEST 3RD STREET
YUMA, ARIZONA 85364
(Approximately 10,000 Cumulative Square Feet in one building
and includes two parking lots)

2. TERM.

- a. This Lease is for one (1) five-year term commencing on July 1, 2016 and may be extended for one (1) additional five-year term at the sole option of the Lessor. Any request to extend this Lease by the Lessee must be submitted in writing by Lessee not less than 60 days prior to the end of the current Lease period and must be approved by the Lessor.

- b. At the termination of this Lease, Lessee shall surrender the Premises to Lessor in as good condition and repair as reasonable and proper use thereof will permit.

3. TERMINATION. This Lease will automatically terminate at the end of the five-year term unless renewed for an additional five-year term. Any early termination request shall be in writing and presented to the non-requesting party not less than 30 days prior to the termination.

4. HOLDING OVER. Lessee agrees not to holdover after the termination of the lease term or any extension thereof. Should Lessee holdover, Lessee shall pay as and for month to month expenses amount double the amount stated in Section 5 below.

5. RENT. Lessee agrees to pay the Lessor as rental for the MLK Neighborhood Center in the amount of One dollar (\$1.00) annually, first due and payable upon the occupancy of the facility.

Payments shall be mailed to:
Customer Services Division
One City Plaza
Yuma, Arizona 85364-1436

or made in person at that location. Lessee may pay rental for the entire lease term upon execution of this Lease. In addition, Lessee agrees to do and perform the other covenants and agreements contained in this Lease.

6. LATE CHARGES. Lessee agrees to pay Ten dollars (\$10.00) as a late charge should Lessee fail to pay any installment of rent or any other sum due under this Lease within 30 days after the due date or five (5) days after written notice, whichever occurs first. In the event Lessor elects to waive the late charge with respect to any single installment, the waiver shall not be deemed to constitute a waiver with respect to any subsequent installment due.
7. INTEREST ON RENT IN ARREARS. Any installment of rent accruing under the provisions this Lease which is not paid when due shall bear interest at the rate of ten (10) percent per annum from the date the rent is due under the terms of this Lease, until such time as Lessee pays the amount due.
8. USE.
- a. The Premises are leased to the Lessee for the purpose of serving the needs of the citizens, per "Attachment A: Subrecipient Agreement", particularly the youth (teens), in the Carver Park Neighborhood and surrounding communities.
 - b. Lessor shall not erect, or permit to be erected, on land adjoining the Premises any structure or improvements which interfere with access to the Premises or obstruct the visibility of the Premises or Lessee's signage.
9. CONDITION OF PREMISES AND CONTENTS. Premises and contents are rented "as is". Upon termination of Lease, the Premises and contents shall be restored to as clean condition and good repair as when leased, normal wear and tear excepted. The contents on the Premises include, but not limited to, tables, chairs, and desks as defined in Attachment B: Inventory Checklist. Lessee shall remove all personal property and fixtures, except those items permanently affixed (including but not limited to lighting fixtures, fans, plumbing fixtures) before vacating the Premises. Lessee shall make no changes, alterations, or improvements to the Premises without the express prior written consent of the Lessor, nor shall Lessee cause, or permit to be caused, any damage to the Premises.
10. RELOCATION BENEFITS. Lessee shall not be entitled to relocation benefits if Lessee first occupies the Premises after Lessor has acquired the property for a public purpose. Lessee has been provided relocation assistance information and an associated cost estimate.

11. TAXES. In addition to any rent payable under this lease, any excise, sales, property, privilege or any other applicable tax imposed or levied by any government or governmental agency upon Lessor or Lessee and attributed to the rent payable by Lessee shall be paid by Lessee over and above the rent otherwise payable hereunder.
12. CONDUCT OF BUSINESS. Lessee shall not use or permit said Premises, or any part thereof, to be used for any purpose or purposes other than the purposes for which the said Premises are hereby leased, as stated in the Subrecipient Agreement; and no use shall be made or permitted to be made of said Premises, nor acts done, which will increase Lessor's existing rate of insurance upon the building in which said Premises may be located, or cause a cancellation of any insurance policy covering said building, or any part thereof, nor shall Lessee sell or permit to be kept, or sold, in and about said Premises any article which may be prohibited by the standard form of fire insurance policy.
13. COMPLIANCE WITH AUTHORITIES. Lessee shall, at its sole cost and expense, comply with all applicable requirements of all municipal, county, state and federal laws and ordinances now in force or which may hereafter be in force, pertaining to the said Premises, and shall faithfully observe in use of said Premises all municipal ordinances and state and federal Statutes which may be in force or may hereafter be in force.
14. UTILITIES. Utilities (including, but not limited to, electricity, water, wastewater, gas, and sanitation) and janitorial and facilities maintenance are not included in the rent and are the sole responsibility of Lessee. Lessee shall be responsible for all other service charges associated with operation of the leased Premises which includes but is not limited to,: telephone, internet access charges, alarm system monitoring, pest control, HVAC maintenance, fire sprinkler inspection, backflow inspections, fire extinguisher inspections and maintenance, landscape maintenance and other items as designated by the City of Yuma.
15. MAINTENANCE.
 - a. Lessee shall keep the Premises in good condition and repair, reasonable wear and use excepted, during the term, and in no event shall Lessor have any obligation concerning the maintenance, repair or replacement of the Premises or any part thereof.
 - b. Lessor may, upon notice to Lessee, enter the Premises at reasonable times for the purpose of inspection, or if approved by Lessee, making alterations or additions.
 - c. Lessee shall have the right to make non-structural alterations to the Premises, subject to Lessor's prior written approval thereof, which shall not be unreasonably withheld.
 - d. Lessee shall insure and bear the risk of vandalism, theft, window glass breakage, exterior vandalism, and casualty and fire loss to his own merchandise and wares or other personal property.
 - e. In the event of injury or damage to the demised Premises, unless caused by the Lessor, Lessor's servants or agents, fire, or the elements, Lessee shall immediately repair and replace at his/her own expense, and if not properly done by Lessee,

Lessor may make said repair and Lessee(s) shall be liable to repay and reimburse Lessor, as additional rent hereunder, all expenses in connection herewith.

16. **INSURANCE OF THE PREMISES.** Lessee shall procure and keep in force during the term hereof, public liability and property damage insurance in a company authorized to do business in the State of Arizona, in the sum of not less than two million dollars (\$2,000,000.00) combined single limit policy including personal injury and property damages, with the City of Yuma named and endorsed as an additional insured. Lessee's policy of insurance shall be considered primary and any insurance carried by the Lessor, and its employees, is excess coverage, and not contributory to any insurance provided by the Lessee and the policies shall be endorsed as such. All insurance policies are subject to approval by the Lessor. Lessee's failure to furnish evidence of insurance shall be considered a breach. Certificates of insurance with endorsements shall be provided to the Lessor prior to the Lessee taking possession of the Premises. Lessee agrees to waive subrogation against Lessor and the policy shall be endorsed to provide a waiver of subrogation against Lessor by the insurer. Each policy will provide against cancellation without 30 days prior written notice to Lessor. Lessor may, in the event that such insurance is cancelled, terminated, or reduced, take out necessary insurance and pay the premium thereon, and Lessee shall repay to Lessor the amount paid, as additional rent, upon demand by Lessor. Lessee shall provide Lessor with Certificates of Insurance and endorsements (ACCORD25 05/10, ISO form CG 20 26 10 01, or equivalent) as evidence of the required insurance. Lessee must carry Worker's Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of employees engaged in the performance of the work or services, and Employer's Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit. The Lessee must require any tenants to provide Worker's Compensation and Employer's Liability with at least as much coverage as that provided by Lessee.

The amount of insurance required in this Section does not operate to limit the liability in Section 27 below.

17. **VACATION OR ABANDONMENT.** Lessee shall not vacate or abandon the Premises at any time during the term of this Lease or any extension thereof; and if Lessee shall abandon, vacate or surrender said Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee, and left on the Premises, shall be deemed to be abandoned, at the option of Lessor. Vacation or abandonment of Premises does not relieve Lessee of the duty to pay rent for the remainder of the term of this Lease or to provide and maintain the required insurance for the remainder of the term of this Lease.
18. **ENTRY AND INSPECTION.** Lessee shall permit the Lessor and his agents to enter into and upon said Premises at all times for the purpose of inspecting the same, or for the purpose of maintaining the building in which the said Premises are located, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection of scaffolding, props, or other mechanical devices, without any rebate of rent to Lessee or damages for occupation or quiet enjoyment of the Premises herein occasioned; and shall permit Lessor, or its agents, within thirty (30) days prior to the expiration of the Lease, at reasonable hours, to enter upon said Premises and exhibit the same to prospective tenants.

If Lessee fails to perform any of the agreements herein, Lessor may declare this Lease to be terminated and take possession of the Premises, using such force as may be necessary, including the breaking of locked doors, and Lessee expressly waives any right of action or claim for damages resulting there from.

In addition, for a period of ninety (90) days prior to the termination of this Lease, Lessor may at reasonable hours and upon notice to Lessee show the Premises to prospective tenants and during the sixty (60) days prior to the termination of this Lease may display the usual and ordinary "For Rent" or "For Sale" signs which shall be of such dimensions and so displayed as to not interfere with the operation of Lessee's business.

19. **ASSIGNMENT AND SUBLETTING.** Lessee may not assign this Lease or any interest therein; however, the Lessee may sublet offices and collect rent with written permission and approval from the Lessor. Lessee shall require its subtenants to provide public liability and property damage insurance in a company authorized to do business in the State of Arizona, in an amount not less than that required of Lessee. All subtenant policies shall name and endorse Lessor as an additional insured. Policies must be endorsed to provide any insurance provided by Lessor or its employees is excess and non-contributory to any insurance provided by Lessee. Offices that are subleased must be occupied by non-profit organizations that provide CDBG eligible services to low and moderate income individuals. Income generated from the renting of office space and multi-purpose room must be documented and reported to the Lessor quarterly. Additionally, income generated, is considered CDBG program income and regulated as such, and must be reinvested into the operation of the MLK Neighborhood Center per Attachment A: Subrecipient Agreement. This Lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the prior written consent of Lessor.
20. **BREACH.** In the event of any breach of this Lease by Lessee, then Lessor, in addition to any other rights or remedies Lessor may have, has the immediate right of re-entry and may remove all persons and property from the Premises. Such property may be removed and stored in any other place in the building in which the demised Premises are situated, or in any other place, for the account of, and at the expense and the risk of Lessee. Lessee hereby waives all claims for damages which may be caused by the re-entry of Lessor and Lessor's taking possession of the demised Premises or removing or storing the property as herein provided, and will save Lessor harmless from any loss, costs or damages occasioned Lessor thereby, and no such re-entry will be considered or construed to be a forcible entry. Should Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, re-let said Premises or any part thereof for such term and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable with the right to make alterations and repairs to said Premises. If Lessor at any time terminates this Lease for any breach, in addition to any other remedy it may have, it may recover from Lessee(s) all damages it may incur by reason of such breach, including the cost of recovering the Premises, and including the worth at time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term.

21. **RESTRICTIONS.** This Lease is subject to any and all provisions of leases and encumbrances of record or extensions thereof under which Lessor holds title or possession of said real property.
22. **NON-WAIVER FOR BREACH.** The waiver by Lessor of any breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or other term, covenant or condition herein contained. The acceptance of rent hereunder shall not be a waiver of any breach by Lessee of any term, covenant or condition of this Lease.
23. **ADDITIONAL RULES AND REGULATIONS.** Lessor has the further right and power to prescribe rules and regulations for the use, entry, operation and management of the Premises, to insure the safety, care and cleanliness of the Premises and preservation and good order thereon.
24. **CUMULATIVE REMEDIES.** It is understood and agreed that the remedies herein given to Lessor are cumulative, and the exercise of any one remedy by Lessor is not to the exclusion of any other remedy.
25. **HEIRS, ASSIGNS, SUCCESSORS.** The covenants and conditions herein contained will, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the Lessee, and Lessee and assignee, shall be jointly and severally liable hereunder.
26. **EFFECTIVENESS.** This Lease shall become effective and binding upon Lessor and Lessee when the following occurs:
- a. Each party has signed and delivered to the other party a copy of this Lease;
 - b. All blanks have been completed or filled in.
27. **INDEMNITY.** The Lessee agrees to indemnify, protect, defend and hold the Lessor harmless for, from and against any and all claims, costs, liabilities, judgments, losses or expenses (including, without limitation, attorneys' fees and costs) arising out of, resulting from or connected with any matters, actions, acts, failure to act, errors, omissions or conditions attributable, as determined by any court with jurisdiction over the parties, to the fault or negligent or intentional act of the Lessee (including but not limited to the fault of the Lessee employees, agents, contractors, subcontractors, representatives, licensees or invitees) occurring on the Premises or related to the lease or subletting of the Premises during the term of the Lease.

This indemnity provision shall also apply to any liability or remediation costs under CERCLA, state statute or municipal ordinance arising as a result of contamination of the property or the surrounding environment, or violation of any Federal or state environmental laws due to any discharge of waste, regardless of whether the event requiring such remediation was intentional or accidental.

The indemnity provision shall survive the expiration or early termination of this lease.

28. **FORCE MAJEURE.** Should the Premises or any part thereof become unsafe, unsuitable for use or otherwise uninhabitable due to an act of God, nature or act of war or other event beyond the control of the Lessee, the Lessor may, at its sole option, choose not to repair or replace the Premises, and no liability shall accrue to Lessor. Should Lessor determine that the Premises are beyond reasonable repair, Lessee shall be relieved of any further duty to pay rent beyond the date the event occurs. Lessee shall, if feasible, remove all personal property from the Premises.
29. **ENVIRONMENTAL.** Lessee agrees that it shall not cause or permit any hazardous materials including petroleum products to be generated, used, treated, stored, released or disposed of in, on or under the Premises.
30. **COMPLIANCE WITH LAW.** Lessee must comply with all federal, state, and local laws and ordinances applicable to its performance under this Lease. Lessee will comply with the Americans with Disabilities Act (ADA) and will indemnify the City for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. Lessee will not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Lease, and will comply with the terms and intent of title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964). In addition, Lessee agrees not to participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. In addition, Lessee must include similar requirements of all subcontractors in any agreements entered into for performance of the Lessee's obligations under this Lease.
32. **TIME.** Time is of the essence in this Lease except where specified.
33. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties and no oral or written statement, promises, or inducements made by either party or agent of either party that is not contained in this written Lease, or specifically referred to in a written agreement shall be valid or binding; and this Lease may not be enlarged, modified, or altered except in writing signed by the parties and endorsed herein.
34. **DISPUTE RESOLUTION.** Claims, disputes or other matters in question between the parties related to this Lease or breach thereof may be decided by arbitration in accordance with the Arizona Uniform Rules of Procedure for Arbitration if the parties mutually agree. Request for arbitration must be filed in writing with the other party to this Lease.
35. **CONFLICT OF INTEREST.** This Lease shall be subject to the Conflict of Interest provisions of Arizona Revised Statutes, § 38-511, as amended.
36. **CHOICE OF LAW.** This Lease shall be interpreted in accordance with the laws of the State of Arizona. Any judicial proceeding or other legal action relating to this Lease shall be filed in Superior Court of Yuma County, Arizona.
37. **NO PARTNERSHIP.** Nothing in this Lease constitutes a partnership or joint venture between the parties, and neither party is the principal or agent of the other.

38. SEVERABILITY. If any provisions of this Lease is held invalid the remainder of the Lease shall not be affected thereby and all other parts of this Lease shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto executed this Lease by their properly authorized representatives as follows:

DATED this _____ day of _____, 2016.

CITY OF YUMA

Yuma Private Industry Council

Gregory K. Wilkinson
City Administrator

John O. Morales
Executive Director

ATTEST:

Lynda L. Bushong
City Clerk

Date

APPROVED AS TO FORM:

Steven W. Moore
City Attorney

**ATTACHMENT A:
SUBRECIPIENT AGREEMENT**

**CITY OF YUMA
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
A Federally Funded Project**

SUBRECIPIENT AGREEMENT

THIS AGREEMENT, entered into between the CITY OF YUMA, a municipal corporation, ("CITY") and **Yuma Private Industry Council (YPIC)**, an Arizona nonprofit corporation, ("SUBRECIPIENT").

RECITALS

The CITY is a recipient of Community Development Block Grant (CDBG) funds for the program year of **July 1, 2016 through June 30, 2017** from the United States Department of Housing and Urban Development ("HUD").

The SUBRECIPIENT is a nonprofit corporation qualified for CDBG funds and capable of providing services that will meet one or more of the National Objectives, 1) benefit to low or moderate income persons, 2) aid in the prevention or elimination of slums or blight, 3) meeting community development needs having a particular urgency.

The CITY wishes to engage the SUBRECIPIENT to assist in providing grant eligible services.

THEREFORE, in consideration of the above recitals, the parties agree as follows:

AGREEMENT

1.0 AGREEMENT DOCUMENTS

This AGREEMENT consists of this document and all attachments, exhibits, addenda, or other documents referenced. It may also include future amendments.

2.0 WORK SCOPE

In accordance with the provisions of 24 CFR Part 570 and the terms of this AGREEMENT, the SUBRECIPIENT agrees to complete the Project described in **Exhibit A: Statement of Work ("Project")**.

3.0 USE OF FACILITY

- 3.1 Subrecipient is granted the use of the Dr. Martin Luther King Jr. Neighborhood Center ("MLK Center") to provide public services to low and moderate income people that reside in the city of Yuma.
- 3.2 Subrecipient may sublet space in the MLK Center to non-profit organizations that meet one or more of the National Objectives of Low and Moderate Income limited clientele and that will provide public services to low and moderate income people that reside in the city of Yuma.

- 3.3 Program Income: The SUBRECIPIENT shall report to the CITY quarterly all program income (as defined at 24 CFR 570.500(a)) generated by rental of office space and the multipurpose room. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the SUBRECIPIENT may use such income during the AGREEMENT period for activities permitted under this AGREEMENT. All unexpended program income shall be returned to the CITY at the end of the AGREEMENT period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the CITY.
- 3.4 Reversion of Assets: Upon termination of this AGREEMENT, the SUBRECIPIENT must transfer all CDBG funds on hand and all accounts receivable attributable to the use of the MLK Center as required under HUD regulations.

4.0 SUBRECIPIENT'S OBLIGATIONS

The SUBRECIPIENT and the PROJECT must meet all applicable requirements of the HUD CDBG program and this AGREEMENT.

5.0 CITY'S OBLIGATIONS

- 5.1 The CITY will provide technical assistance to aid the SUBRECIPIENT in complying with federal provisions governing the use of grant funds.
- 5.2 The CITY is responsible for intergovernmental reviews defined in Executive Order 12372.
- 5.3 The CITY will complete environmental reviews required by the federal grant program guidelines.

6.0 AGREEMENT DURATION

The term of this AGREEMENT **begins on July 1, 2016** and **ends on June 30, 2021**. The term may be extended by written mutual consent of the Neighborhood Services Manager, or designee and the SUBRECIPIENT. Extensions are governed by the terms of this AGREEMENT.

7.0 UNIFORM ADMINISTRATIVE REQUIREMENTS

Under 24 CFR 570.502(b) and 570.506, the SUBRECIPIENT must maintain and submit to the CITY upon request for a period of five years, the following records and reports (further described in **Exhibit B: Administrative Requirements**):

- 7.1 Records showing that the SUBRECIPIENT is a qualified SUBRECIPIENT for CDBG funds under HUD regulations;
- 7.2 Records showing that participating citizens served meet the income and other criteria required by federal law, and that no unlawful discrimination occurs in the

solicitation or selection process of lower income persons;

- 7.3 Financial records required by federal regulations or directives, e.g. applicable A-102 and A-110 (2)(h) regarding annual audits;
- 7.4 Quarterly performance reports, submitted by the tenth working day of each calendar quarter to the Neighborhood Services Division of the CITY, describing the activities undertaken, funds expended, and results achieved during the preceding quarter.

8.0 CONDITIONS

- 8.1 Conditions for Religious Organizations: In accordance with the First Amendment of the U.S. Constitution, CDBG funds may not be used for activities described in 24 CFR 570.200 (j).
- 8.2 Certifications: SUBRECIPIENT must comply with all Certifications as described and executed in **Exhibit C: Certifications and Other Uniform Administrative Requirements.**
- 8.3 Acknowledgements: SUBRECIPIENT must acknowledge the role of HUD and the CITY CDBG program in providing services through this AGREEMENT. All activities, facilities and items utilized pursuant to this AGREEMENT shall be prominently labeled as to the funding source. In addition, the SUBRECIPIENT will include a reference to the support provided herein in all publications made possible with funds made available under this AGREEMENT.

A. No reports, maps or other documents produced in whole or in part under this AGREEMENT shall be the subject of any application for copyright by or on behalf of the SUBRECIPIENT or by any employee of the SUBRECIPIENT. The SUBRECIPIENT shall advise the CITY or its designee at the time of delivery of any copyrighted or subject to copyright work furnished under this AGREEMENT, or any adversely held copyrighted or subject to copyright material incorporated in any such work and of any invasion of the right of privacy therein contained.

B. The CITY may duplicate, use, and disclose in any manner and for any purpose whatsoever, within the limits established by federal and state laws and regulations, all information relating to this AGREEMENT.

9.0 TERMINATION

- 9.1 Termination: This AGREEMENT may be terminated by the following:

A. Under 24 CFR 85.44, both parties may terminate the AGREEMENT for convenience. The parties must agree upon the termination conditions and effective date of termination. The party terminating must notify the other party in writing with the reasons for termination.

B. Under 24 CFR 85.43, the CITY may suspend or terminate the

AGREEMENT if the SUBRECIPIENT violates any provision of this AGREEMENT.

C. This AGREEMENT terminates when the LEASE agreement is terminated.

- 9.2 Compliance With Law: The SUBRECIPIENT must comply with all federal, state, and local laws and ordinances applicable to its performance under this AGREEMENT (further described in **Exhibit C: Certifications and Other Uniform Administrative Requirements**).

Exceptions: SUBRECIPIENT does not assume environmental responsibilities as described in CFR 570.604, or responsibilities for initiating the intergovernmental review process of Executive Order 12372 as described at CFR 570.612.

- 9.3 Attorney Fees and Costs: If either party brings an action or proceeding for failure to observe any of the terms or provisions of this AGREEMENT, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
- 9.4 Arbitration: If the parties mutually agree, claims, disputes or other matters in question may be submitted for arbitration and decided according to the Arizona Uniform Rules of Procedure for Arbitration. Request for arbitration must be filed in writing with the other party to this AGREEMENT.
- 9.5 Remedies: If either party breaches or defaults on this AGREEMENT, the other party is entitled to exercise all available legal and equitable rights and remedies.

10.0 INSURANCE/BOND REQUIREMENTS

- 10.1 Insurance: Prior to the occupying the facility, the SUBRECIPIENT must provide the CITY with certificates of insurance or bonds as stated in **Exhibit D: Bonds/Insurance**.
- 10.2 Indemnification: The SUBRECIPIENT must defend and indemnify the CITY, its agents and employees, against all claims, damages, losses, and expenses resulting from the SUBRECIPIENT's negligent or intentional acts, mistakes, or omissions in performance of this AGREEMENT.

11.0 GENERAL PROVISIONS

Communication and details concerning this AGREEMENT shall be directed to the following:

CITY: The City of Yuma	SUBRECIPIENT: Yuma Private Industry Council
Nikki Hoogendoorn, Neighborhood Services Specialist	Patricia Ray, Operations Director
Nikki.Hoogendoorn@YumaAz.gov	PRay@ypic.com

Neighborhood Services One City Plaza, Yuma, AZ 85364	3834 W. 16th Street Yuma, AZ 85364
(phone) (928) 373-5187 (fax) (928) 373-5188	(phone) (928) 329-0990 (fax) (928) 783-0886

- 11.1 Successor and Assigns: This AGREEMENT is not assignable unless both parties mutually consent otherwise in writing. The requirements of this AGREEMENT are binding upon the heirs, executors, administrators, successors, and assigns of both parties.
- 11.2 Governing Law: The laws of the State of Arizona govern this AGREEMENT as to validity, interpretation, and performance.
- 11.3 Waiver: If either party fails to require the other party to perform any provision of this AGREEMENT, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this AGREEMENT if the other party fails to exercise a right or remedy. All waivers of performance must be in writing, signed by the party waiving.
- 11.4 Severability: If any terms, parts, or provisions of the AGREEMENT documents are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.
- 11.5 Integration: The AGREEMENT documents contain the entire AGREEMENT between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this AGREEMENT are valid or binding. All modifications to this AGREEMENT must be in writing, signed and endorsed by the parties.
- 11.6 No Partnership: Nothing in this AGREEMENT constitutes a partnership or joint venture between the parties, and neither party is the principal nor agent of the other.
- 11.7 Independent Contractor: SUBRECIPIENT is an independent contractor and its employees are not CITY employees for any purpose, including the payment of any employer's taxes such as FICA, unemployment, and workers' compensation.
- 11.8 Venue: The parties must institute and maintain any legal actions or other judicial proceedings arising from this AGREEMENT in the Superior Court in Yuma County, Arizona.
- 11.9 Authority: The CITY and SUBRECIPIENT warrant that each party has full power and authority to enter into and perform this AGREEMENT in accordance with its terms, and that the individual executing this AGREEMENT is authorized to do so.
- 11.10 Further Documents and Acts: The CITY and the SUBRECIPIENT will execute and deliver all necessary documents and perform all acts reasonably requested by the other party or by an escrow agent if required to consummate the sale transaction, construction work, or other activities described in this AGREEMENT.

- 11.11 Employment Eligibility. SUBRECIPIENT warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the AGREEMENT and is subject to penalties up to and including termination of this AGREEMENT. CITY retains the legal right to inspect the papers of any SUBRECIPIENT or subcontractor employee who works on this AGREEMENT to ensure that SUBRECIPIENT or its subcontractors are complying with this warranty.
- 11.12 Lawful Presence. SUBRECIPIENT shall be required under this Agreement to comply with the provisions of Arizona Revised Statutes §§ 1-501 Eligibility for Federal Public Benefits, and 1-502 Eligibility for State or Local Public Benefits relating to demonstration of lawful presence in the United States.
- 11.13 Limited English Proficiency (LEP). SUBRECIPIENT must have a Limited English Proficiency (LEP) Language Assistance Plan (LAP). If SUBRECIPIENT does not have one, they may follow the CITY's LEP Plan.

IN WITNESS WHEREOF, the parties hereto executed this AGREEMENT by their properly authorized representatives as follows:

DATED this _____ day of _____, 2016.

CITY OF YUMA

Yuma Private Industry Council

Gregory K. Wilkinson
City Administrator

John O. Morales
Executive Director

ATTEST:

Lynda L. Bushong
City Clerk

Date

APPROVED AS TO FORM:

Steven W. Moore
City Attorney

SUBRECIPIENT AGREEMENT

Exhibits

A. Statement of Work

1. Program Description
2. Level of Accomplishment – Goals and Performance Measures
3. Budget
4. Special Conditions/Reporting Requirements

B. Administrative Requirements

C. Certifications and Other Uniform Administrative Requirements

D. Bonds/Insurance

Exhibit A
Statement of Work

1. PROGRAM/PROJECT/ACTIVITY DESCRIPTION

Yuma Private Industry Council (YPIC) provides quality workforce development and career resources that enhance economic growth in Yuma. YPIC will lease the Dr. Martin Luther King, Jr. Neighborhood Center facility to provide job training and educational opportunities for low and moderate income people in the city of Yuma. With prior approval from the City, YPIC is permitted to sublet office space to non-profit organizations that provide CDBG-eligible services to low and moderate income people. YPIC may rent out the multipurpose room for private events at market rates. YPIC may allow non-profits providing services for LMI during the event at below market rates and must report on the type and number of people provided services.

National Objective – Low/Mod Limited Clientele 570.208 (a) (2) (A)
Eligible Activity – Public Services (General) 24 CFR 570.201(e)

2. LEVEL OF ACCOMPLISHMENT – GOALS AND PERFORMANCE MEASURES

The level of accomplishment may include such measures as units rehabbed, persons or households assisted, or counseling sessions provided and should also include time frames for performance.

SUBRECIPIENT agrees to provide the following levels of program service:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
MLK Neighborhood Center Operation	100	1,200

Units of service will be the number of people provided services at the facility.

3. BUDGET

All program income received from the MLK facility must be used to operate the facility being used to provide eligible public services to LMI residents. The SUBRECIPIENT agrees to submit a Project Budget to the CITY, within 30 days of the effective date of the SUBRECIPIENT AGREEMENT, a Project Budget

4. SPECIAL CONDITIONS/REPORTING REQUIREMENTS

The SUBRECIPIENT agrees to obtain a completed application for assistance from every applicant for whom assistance is sought and/or provided. Applications must be available in English and Spanish. The SUBRECIPIENT shall submit a Quarterly SUBRECIPIENT Performance Report in an approved report format. In addition, at the completion of this AGREEMENT, the SUBRECIPIENT shall provide a year-end analysis and report of the services provided. The number, ethnicity, gender, income eligibility status, disability status, single head of household of all applicants and/or beneficiaries of the funded Project activities shall be disclosed and stated. SUBRECIPIENT must require tenants to submit Performance Reports and this information must be included in the reports submitted to the CITY.

Exhibit B
Administrative Requirements

A. FINANCIAL MANAGEMENT

1. Accounting Standards: The SUBRECIPIENT agrees to comply with Attachment F of OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize internal controls, and maintain necessary source documentation for all costs incurred.
2. Cost Principles: The SUBRECIPIENT shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable; (and if the SUBRECIPIENT is governmental or quasi-governmental agency, the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative AGREEMENTs to State and Local Governments,") for all costs incurred.

B. DOCUMENTATION AND RECORD KEEPING

1. Records to be Maintained: The SUBRECIPIENT shall maintain all records required by the federal regulations specified in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this AGREEMENT. Types of records required to be maintained by SUBRECIPIENT shall include but are not be limited to:
 - a. Records providing a full description of each activity undertaken;
 - b. Records demonstrating that each activity undertaken meet one of the National Objectives of the CDBG program;
 - c. Records required to determine the eligibility of activities;
 - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - f. Financial records required by 24 CFR Part 570.502, 24 CFR 84.21 – 28, and OMB Circular A-110; and
 - g. Other records necessary to document compliance with Subpart K of 24 CFR 570.
2. Retention: The SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this AGREEMENT for a period of five (5) years after the termination of all activities funded under this AGREEMENT, or after the resolution of all Federal audit findings, which ever occurs later. Records for non-expendable property acquired with funds under this AGREEMENT shall be retained for five (5) years after final disposition of such property. Records for any

displaced person must be kept for five (5) years after he/she has received final payment.

3. Client Data: The SUBRECIPIENT and tenants shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to CITY monitors or their designees for review upon request.
4. Disclosure: The SUBRECIPIENT and tenants understand that client information collected under this AGREEMENT is private and the use or disclosure of such information, when not directly connected with the administration of the CITY'S or SUBRECIPIENT'S responsibilities with respect to services provided under this AGREEMENT, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
5. Property Records: The SUBRECIPIENT shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
6. National Objectives: The SUBRECIPIENT agrees to maintain documentation that demonstrates that the activities carried out through the use of the MLK Center provided under this AGREEMENT meet one or more of the CDBG program's national objectives - 1) benefit low/moderate income persons, 2) aid in the prevention or elimination of slums or blight, 3) meet community development needs having particular urgency - as defined in 24 CFR part 570.208.
7. Close-Outs: SUBRECIPIENT obligation to the CITY shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to; making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the CITY,) and determining the custodianship of records. Notwithstanding the foregoing, the terms of this AGREEMENT shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.
8. Audits & Inspections: All SUBRECIPIENT records with respect to any matters covered by this AGREEMENT shall be made available to the CITY, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the CITY or grantor agency (Department of Housing and Urban Development) deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the SUBRECIPIENT within 30 days after receipt by the SUBRECIPIENT. Failure of the SUBRECIPIENT to comply with the above audit requirements will constitute a violation of this AGREEMENT and may result in the withholding of future payments. The SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with current CITY policy concerning SUBRECIPIENT audits and OMB Circular A-133.

C. REPORTING AND PAYMENT PROCEDURES

1. Budgets: The SUBRECIPIENT will submit a detailed AGREEMENT budget of a form and content prescribed by the CITY for approval by the CITY. The CITY and the SUBRECIPIENT may agree to revise the budget from time to time in accordance with existing CITY policies.
2. Program Income: The SUBRECIPIENT shall report (annually) all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this AGREEMENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the SUBRECIPIENT may use such income during the AGREEMENT period for activities permitted under this AGREEMENT and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to the CITY at the end of the AGREEMENT period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the CITY.
3. Progress Reports: The SUBRECIPIENT shall submit regular Progress Reports to the CITY in the form, content, and frequency as required by the CITY.

D. PROCUREMENT

1. Compliance: The SUBRECIPIENT shall comply with current CITY policy concerning the purchase of equipment and shall maintain an inventory record of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the CITY upon termination of this AGREEMENT.
2. OMB Standards: Unless specified otherwise within this AGREEMENT, the SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.
3. Travel: The SUBRECIPIENT shall obtain written approval from the CITY for any travel outside the metropolitan area with funds provided under this AGREEMENT.
4. Use and Reversion of Assets: The use and disposition of real property and equipment under this AGREEMENT shall be in compliance with the requirements of 24CFR Part 8f and 24CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:
 - a. The SUBRECIPIENT shall transfer to the CITY any CDBG funds on hand and any accounts receivable attributable to the use of funds under this AGREEMENT at the time of expiration, cancellation, or termination.
 - b. Real property under the SUBRECIPIENT'S control that was acquired or improved, in whole or in part, with funds under this AGREEMENT in excess

of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 57.208 until five (5) years after expiration of this AGREEMENT (or such longer period of time as the CITY deems appropriate). If the SUBRECIPIENT fails to use CDBG-assisted real property in a timely manner that meets a CDBG National Objective for the prescribed period of time, the SUBRECIPIENT shall pay the CITY an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the CITY. The SUBRECIPIENT may retain real property acquired or improved under this AGREEMENT after the expiration of the five-year period (or such longer period of time as the CITY deems appropriate).

- c. In all cases in which equipment acquired, in whole or in part, with funds under this AGREEMENT is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this AGREEMENT were used to acquire the equipment). Equipment not needed by the SUBRECIPIENT for activities under this AGREEMENT shall be (a) transferred to the CITY for the CDBG program or (b) retained after compensating the CITY (an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment).

Exhibit C
Certifications and Other Uniform Administrative Requirements

A. UNIFORM ADMINISTRATIVE REQUIREMENTS

By virtue of signing the AGREEMENT the SUBRECIPIENT agrees to comply with all applicable uniform administrative requirements as discussed in this AGREEMENT, CDBG Program Handbooks, and OMB Circulars A-110, A-122, A-133, and the Single Audit Act of 1984, as applicable.

B. EQUAL OPPORTUNITY

The SUBRECIPIENT agrees to comply with:

1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88- 352), and the regulations issued pursuant thereto (24 CFR Part 1).
2. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90- 284), as amended.
3. Section 109 of the Housing and Community Development Act of 1974.
4. Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.
5. Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60 as amended by Executive Orders 11375, 11478, 12107 and 12086)
6. Section 3 of the Housing and Urban Development Act of 1968, as amended.
7. Federal Fair Housing Act of 1988, P.L. 100-430.
8. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1973, 42. U.S.C. 6101-07, and the prohibitions against discrimination against persons with handicaps under Section 504 of the Rehabilitation Act of 1973, (P.L. 93112), as amended, and the regulations at 24 CFR Part 8.
9. The American Disabilities Act and Section 504 of the Rehabilitation Act, as amended.
10. The requirements of the Architectural Barriers Act of 1966 at 42 U.S.C. 4151-415.
11. The non-discrimination in employment and contracting opportunities laws, regulations, and Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

C. INTEREST OF OFFICIALS AND CONFLICT OF INTEREST

The SUBRECIPIENT agrees to abide by the provisions of Arizona Revised Statutes 38-511 et seq. and of 24CFR 84.42 and 570.611, which include (but are not limited to) the following:

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this AGREEMENT or to any benefit to arise from the same. No member, officer, or employee of the SUBRECIPIENT or its designees or agents, no member of the governing body of the locality in which the program is situated during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the

program assisted under this AGREEMENT. The SUBRECIPIENT will comply with applicable conflict of interest provisions, incorporate such in all contracts and establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family business, or other ties.

D. HATCH ACT

The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this AGREEMENT, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

E. SECTION 3 CLAUSE

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this AGREEMENT, shall be a condition of the Federal financial assistance provided under this AGREEMENT and binding upon the CITY, the SUBRECIPIENT and any of the SUBRECIPIENT's Subrecipients and subcontractors. Failure to fulfill these requirements shall subject the CITY, the SUBRECIPIENT and any of the SUBRECIPIENT's Subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the AGREEMENT through which Federal assistance is provided. The SUBRECIPIENT certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this AGREEMENT:

"The work to be performed under this AGREEMENT is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

F. CONDUCT

1. Assignability: The SUBRECIPIENT shall not assign or transfer any interest in this AGREEMENT without the prior written consent of the CITY thereto; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the CITY under this AGREEMENT may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

2. Subcontracts:

a. Approvals: The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this AGREEMENT without the written consent of the CITY prior to the execution of such agreement.

b. Monitoring: The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content: The SUBRECIPIENT shall cause all of the provisions of this AGREEMENT in its entirety to be included in and made a part of any subcontract executed in the performance of this AGREEMENT.

d. Selection Process: The SUBRECIPIENT shall undertake to insure that all subcontracts in the performance of this AGREEMENT shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the CITY along with documentation concerning the selection process.

G. LABOR STANDARDS PROVISIONS

The SUBRECIPIENT agrees to administer and enforce the labor standards requirements of the Davis Bacon Act, as amended at 40 U.S.C. 276a-276a-5, and the Contract Work Hours and Safety Standards Act at 40 U.S.C. 327-333.

H. COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

Notwithstanding any provision of this award, the parties hereto agree and acknowledge that this award does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a release of funds from HUD under 24 CFR Part 58, as applicable. The parties further agree that the provision of any funds to the project is conditioned on the CITY's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

The SUBRECIPIENT agrees to comply with any conditions resulting from the CITY's compliance with the provisions of the National Environmental Policy Act of 1969 and the other provisions of law specified at 24 CFR 58 insofar as the provisions of such Act apply to activities set forth in Section A. Statement of Work.

The SUBRECIPIENT agrees to comply with the provisions of Executive Order 11990, relating to evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution and the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93234).

This AGREEMENT is also subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.; P.L. 89-665, the Archaeological and Historic Preservation Act of 1974 (P.L. 93-291), Executive Order 11593, and the procedures prescribed by the Advisory Council

on Historic Preservation in 36 CFR Part 800, and the regulations of the Environmental Protection Agency (EPA) with respect thereto, at 40 CFR Part 15, as amended from time to time.

J. PROPERTY DISPOSITION

Real or personal property purchased in whole or in part with CDBG funds shall not be disposed through sale, use, or location without the written permission of the CITY. The proceeds from the disposition of real property shall be considered Program Income.

K. LOBBYING

The SUBRECIPIENT will ensure that, to the best of its knowledge and belief of the undersigned:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the SUBRECIPIENT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grants, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal or amendment of any Federal contract.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Federal contract, grant, loan, or cooperative AGREEMENT, the SUBRECIPIENT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The SUBRECIPIENT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all shall certify and disclose accordingly.

"This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure."

L. COPYRIGHT

If this AGREEMENT results in any copyrightable material or inventions, the CITY and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

M. RELIGIOUS ACTIVITIES

The SUBRECIPIENT agrees that funds provided under this AGREEMENT will not be utilized for inherently religious activities prohibited by 24 CR 570.200(j), such as worship, religious instruction, or proselytization.

O. RECORDS TO BE MAINTAINED

Each SUBRECIPIENT shall establish and maintain sufficient records to enable the CITY and HUD to determine whether the SUBRECIPIENT has met the requirements of this AGREEMENT. At a minimum, the following records are needed, and should be maintained for three years after the date of close-out of this AGREEMENT by CITY. It is the responsibility of the CITY to notify the SUBRECIPIENT as to the date of the AGREEMENT close-out.

All files shall be clearly labeled with the following information: CDBG AGREEMENT number, Name of CITY, Activity number and shall contain the following information and documents:

1. AGREEMENT with the CITY and any amendments.
2. General correspondence regarding the AGREEMENT.
3. Financial management records and audits.
4. Documentation of compliance with Section 504.
5. The Civil Rights Certification and documentation on the ethnicity, gender, disability status, single-head of household of all applicants for and recipients of benefits and/or services.
6. Procurement and contracting documents for each professional service procured or for each major item of equipment or materials purchased, with smaller items aggregated.
7. Bids and construction contracts.
8. Labor Standards records and documents for each prime contractor.
9. Policies and procedures for technical assistance and a record of each applicant/entity assisted.

Exhibit D
Bonds and Insurance

A. BONDS

The SUBRECIPIENT shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the CITY.

B. INSURANCE

1. Without limiting any of their obligations or liabilities and at their own expense, the SUBRECIPIENT must purchase and maintain the stipulated minimum insurance with companies duly licensed to do business in the state of Arizona. All policies and forms must be satisfactory to the CITY. Use of alternative insurers requires CITY's prior approval.
2. The insurance policies, except Worker's Compensation, required by this AGREEMENT, must name the CITY, its agents and employees, as Additional Insured, and must specify that insurance afforded the SUBRECIPIENT is primary insurance. Any insurance coverage carried by the CITY or its employees is excess coverage, and not contributory coverage to that provided by the SUBRECIPIENT. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CCG 20101185, or any of its replacements.
3. The SUBRECIPIENT must maintain all insurance in full force and effect until the Project is satisfactorily completed and formally accepted. Failure to maintain the required insurance may, at the sole discretion of the CITY, constitute a material breach. Prior to the receipt of any funds, the SUBRECIPIENT must provide the CITY with certificates of insurance with endorsements, or bonds.
4. The policies may provide coverage that contains deductible or self-insured retentions. Such deductible or self-insured retentions are not applicable with respect to the coverage provided to the CITY under such policies. The SUBRECIPIENT is solely responsible for deductible or self-insured retention, and the CITY may require the SUBRECIPIENT to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
5. The SUBRECIPIENT must carry Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence with a \$2,000,000.00 General Aggregate Limit. The policy must include coverage for bodily injury, products/completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this AGREEMENT. The CITY prefers an occurrence type policy, however, in the event the General Liability insurance policy is written on a claims made basis, coverage must extend for two years past completion and acceptance of the Project as evidenced by annual Certificates of Insurance.

6. The SUBRECIPIENT must carry Worker's Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of employees engaged in the performance of the work or services. The SUBRECIPIENT must require any subcontractors of the SUBRECIPIENT to provide Worker's Compensation with at least as much coverage as that provided by SUBRECIPIENT.