

**Subrecipient Agreement  
Between City of Yuma  
And  
Western Arizona Council of Governments  
Community Development Block Grant (CDBG)**

Agreement Number	2017-521
Project Name	Fair Housing Program
Funded Amount	\$15,000

This Agreement (Agreement), entered into between the City of Yuma, a municipal corporation, (City) and Western Arizona Council of Governments, an Arizona nonprofit corporation, (Subrecipient). Subrecipient and the City are sometimes referred to individually as the "Party" and collectively as the "Parties".

**RECITALS**

WHEREAS, the City is a recipient of Community Development Block Grant (CDBG) funds for the program year of **July 1, 2017 through June 30, 2018** from the United States Department of Housing and Urban Development ("HUD"); and,

WHEREAS, 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; and,

WHEREAS, the City wishes to engage the Subrecipient to assist in providing grant eligible services.

NOW 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 into this Agreement. All attachments, exhibits, addenda, or other documents referenced in this Agreement are incorporated into and made part of this Agreement.

**2.0 Work Scope**

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

**3.0 Compensation**

- 3.1 Agreement Amount: The City will provide financial assistance in an amount not to exceed **\$15,000** for the performance and completion of all work under this Agreement. Payment is contingent on Subrecipient's compliance with the terms of this Agreement and the availability of funds.

3.2 Method of Payment: The City will reimburse the Subrecipient for authorized expenditures in the amounts and increments approved by the City for various phases of work upon submission of a proper request for payment accompanied by supporting documentation. The Subrecipient may not request disbursement of funds until funds are needed for payment of eligible costs. Subrecipient shall not request more than the actual amount of funds needed for the Project.

The final request for payment must be submitted five (5) business days after expiration of the Agreement. Funds must be expended within the time periods established by the grant requirements.

3.3 Program Income: The Subrecipient shall report quarterly (October 15, January 15, April 15, and July 15) to the City 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 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 shall transfer all CDBG funds on hand and all accounts receivable attributable to the use of grant funds as required under 24 CFR § 570.503(b)(7).

3.5 Disposal of Real Property: All real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000.00 must either be:

- A. Used to meet one of the national objectives in 24 CFR 570.208 until five years after expiration of this Agreement; or
- B. Disposed of in a manner that results in the City being reimbursed in the amount equal to the current fair market value of the property minus any portion of the value attributable to non-CDBG expenditures within five (5) years after expiration of this Agreement.

#### **4.0 Subrecipient's Obligations**

4.1 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 disburse funds within thirty (30) calendar days of receipt and verification of each invoice, under the terms of this Agreement.

- 5.2 The City will provide reasonable assistance to aid the Subrecipient in complying with all provisions governing the use of grant funds. However, this assistance in no way relieves the Subrecipient of full responsibility and accountability for its actions and performance in compliance with the terms of this Agreement.
- 5.3 The City is responsible for intergovernmental reviews defined in Executive Order 12372.
- 5.4 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, 2017** and **ends on June 30, 2018**. 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, 24 CFR 570.506, and 2 CFR Part 200, Subpart D the Subrecipient shall maintain and submit to the City upon request for a period of five (5) 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 the Office of Management and Budget (OMB) 2 CFR Part 200, Subpart D 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 Certifications: Subrecipient shall comply with all Certifications as described and executed in **Exhibit C: Certifications and Other Uniform Administrative Requirements**.
- 8.2 Acknowledgements: Subrecipient shall 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 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 2 CFR 200.339 both Parties may terminate the Agreement in whole or in part. The Parties must agree upon the termination conditions and effective date of termination and in the case of partial termination, the portion to be terminated. The Party terminating must notify the other Party in writing with the reasons for termination.
- B. Under 2 CFR 200.338 the City may take actions described in this section, impose additional conditions, as described in 2 CFR 207 or seek termination of the Agreement.

9.2 Compliance With Law: Failure to comply with the requirements of this Agreement and all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Agreement (described in Exhibit C: Certifications and Other Uniform Administrative Requirements) may result in suspension or termination of this Agreement; except Subrecipient does not assume environmental responsibilities as described in 24 CFR § 570.604, or responsibilities for initiating the intergovernmental review process of Executive Order 12372 as described at 24 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, appellate, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.

9.4 Alternative Dispute Resolution (ADR): If the parties mutually agree, claims, disputes or other matters in question may be submitted for ADR and decided according to the rules of the ADR Forum. 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 receipt of any funds, the Subrecipient must provide the City with certificates of insurance and insurance documents or bonds as stated in **Exhibit D: Bonds/Insurance**.

- 10.2 **Indemnification:** To the fullest extent permitted by law, Subrecipient shall defend, indemnify and hold harmless the City, and the City's agents, representatives, officers, directors, officials, volunteers, and employees from and against all claims (including patent and copyright infringement claims), liabilities, demands, damages, losses and expenses (including attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively "Claims") to the extent that such Claims result from and/or arise out of the Subrecipient's intentional, reckless, or negligent acts, errors, directives, mistakes, or omissions, in performance of this Agreement. This includes any intentional, reckless, or negligent acts, errors, directives, mistakes, or omissions of Subrecipient's employees, agents, advertisers, contractors, subcontractors, or any other person for which the Subrecipient may be legally liable, in the performance of this Agreement.

The amount and types of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Agreement.

## **11.0 General Provisions**

- 11.1 **Notices and Requests.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

City of Yuma, Neighborhood Services	Western Arizona Council of Governments
	Gina Whittington
	Human Services Director
One City Plaza Yuma, AZ 85364	1235 S. Redondo Center Drive Yuma, AZ 85365
<a href="mailto:Nikki.Hoogendoorn@YumaAz.gov">Nikki.Hoogendoorn@YumaAz.gov</a>	<a href="mailto:ginaw@wacog.com">ginaw@wacog.com</a>
(928) 373-5187	(928) 217-7123

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the Party, (B) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 11.2 **Successor and Assigns:** This Agreement is not assignable.
- 11.3 **Governing Law:** The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance.

- 11.4 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.
- 11.5 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.
- 11.6 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 both Parties.
- 11.7 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.
- 11.8 Independent Contractor: Subrecipient acknowledges and agrees that it is an independent contractor and its employees are not City agents or employees for any purpose, including the payment of any employer's taxes such as FICA, unemployment, and workers' compensation.
- 11.9 Venue: The Parties shall initiate and maintain any action at law or in equity or other judicial proceedings arising from this Agreement in the Superior Court of Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action commenced in accordance with the terms of this Agreement.
- 11.10 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.
- 11.11 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.
- 11.12 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.

- 11.13 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.
- 11.14 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.
- 11.15 Cancellation. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
- 11.16 Compliance With Non-Discrimination Laws. The Parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 99-4 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.
- 11.17 Boycott of Israel. Pursuant to A.R.S. § 35-393.01, Subrecipient certifies that Subrecipient is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.
- 11.18 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.
- 11.19 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

**IN WITNESS WHEREOF**, the Parties hereto executed this Agreement by their properly authorized representatives as follows:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

City OF YUMA

Western Arizona Council of Governments

\_\_\_\_\_  
Gregory K. Wilkinson  
City Administrator

\_\_\_\_\_  
Brian Babiars  
Executive Director

ATTEST:

\_\_\_\_\_  
Lynda L. Bushong  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard W. Files  
City Attorney



## **Subrecipient Agreement Exhibits**

### **A. Statement of Work**

1. Program Description
2. Schedule of Activities
3. Level of Accomplishment – Goals and Performance Measures
4. Budget
5. Special Conditions/Reporting Requirements
6. Payment Procedures

### **B. Administrative Requirements**

### **C. Certifications and Other Uniform Administrative Requirements**

### **D. Bonds/Insurance**

**Exhibit A**  
**Statement of Work**

**1. PROGRAM/PROJECT/ACTIVITY DESCRIPTION**

The Subrecipient, Western Arizona Council of Governments is dedicated to serving income challenged households and vulnerable populations. The Subrecipient will assist in implementing the City's Fair Housing Plan of Action, identified in the 2016-2020 Analysis of Impediments to Fair Housing Choice. Activities will include Fair Housing counseling, marketing, outreach, and education. Subrecipient will inform the community, particularly low and moderate income residents, of their fair housing rights and will provide counseling if housing discrimination issues are perceived or encountered. Subrecipient will act as a liaison between state and federal Fair Housing enforcement agencies and the clients. Subrecipient will make information and training on compliance with Fair Housing laws available to public officials, housing providers and the general public.

National Objective: Not applicable

Eligible Activity: Program Administrative Costs – Fair Housing 24 CFR 570.206(c)

Matrix Code: 21D, Fair Housing Activities

**2. SCHEDULE OF ACTIVITIES**

The Subrecipient agrees to submit to the City, within thirty (30) days of the effective date of the Subrecipient Agreement, a Schedule of Activities to include projected milestones and deadlines for accomplishment of the activities. The schedule provides an essential role in the grant management system.

**3. LEVEL OF ACCOMPLISHMENT – GOALS AND PERFORMANCE MEASURES**

Units of service will be the number of people provided Fair Housing case assistance, education, information, presentations and outreach. Subrecipient agrees to provide the following levels of program service:

Activity	Units per Quarter	Total Units/Year
Fair Housing Activities	1,250 people	5,000 people

**4. BUDGET**

The City shall fund Subrecipient up to **\$ 15,000** to pay program staff salaries and related expenses, print educational materials, program supplies and expenses related to educating the public on Fair Housing. The entire amount shall be used for program implementation and activities and none for general administrative expenses. Drawdowns for the payment of allowable costs shall be made against the line item budgets specified in the budget below and in accordance with performance. Any amendments to the budget must be approved in writing by both the City and the Subrecipient.

Line Item	CDBG
Program staff salaries and related expenses	\$ 11,000

Program supplies	\$ 3,000
Program marketing and advertising	\$ 1,000
Total	\$ 15,000

## 5. SPECIAL CONDITIONS/REPORTING REQUIREMENTS

The Subrecipient shall submit Quarterly Performance Reports in an approved report format by October 15, January 15, April 15, and July 15. In addition, at the completion of this Agreement, the Subrecipient shall provide a year-end analysis and report of the services provided. For Fair Housing Outreach, the report should provide the name and nature of events, number of attendees, and number of materials distributed. For one-on-one Fair Housing counseling, the number, ethnicity, gender, income eligibility status, disability status, all beneficiaries shall be disclosed and stated.

Subrecipients are encouraged to perform background checks for any employees, volunteers, or other representatives who will have unsupervised contact with youth, elderly, or developmentally disabled clients while carrying out public service activities funded under this agreement. The City does not require agencies to provide copies of criminal background checks.

Funding under this Agreement may be used to pay the cost of background checks.

## 6. PAYMENT PROCEDURES

It is expressly agreed and understood by the Parties that the total amount to be paid to the Subrecipient under this Agreement by the City shall not exceed **\$15,000**. All payments shall be on a reimbursement basis and City shall pay Subrecipient within thirty (30) days of a payment request with complete, acceptable source documentation. Said documentation shall include, but is not limited to the Quarterly Subrecipient Performance Reports and the Annual Performance Report.

## **Exhibit B**

### **Administrative Requirements**

#### **A. FINANCIAL MANAGEMENT**

1. Accounting Standards: The Subrecipient shall comply with 2 CFR Part 200, Subpart D and shall 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 2 CFR Part 200, Subpart E, 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 § 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 § 570.502, and 2 CFR Part 233 - 200.337; and
  - g. Other records necessary to document compliance with 24 CFR 570 Subpart K.
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, whichever 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 shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, proof of income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to HUD and City monitors or their designees for review upon request.

4. Disclosure: The Subrecipient understands 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 Part 570.503(b)(8).
6. National Objectives: The Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds 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 (HUD) 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. If applicable, the Subrecipient hereby agrees to have an annual agency audit conducted in accordance 2 CFR Part 200, Subpart F. If the City desires a financial audit by a certified public accountant of the Subrecipient's financial records to verify use of City funds according to the terms and conditions of this Agreement, Subrecipient shall cooperate fully in the performance of such audit. Subrecipient will not be responsible for the cost of such an audit if requested by the City and are entitled to a copy of any resulting reports that are received by the City.

## **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: Subrecipient shall report all program income annually 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. Indirect Costs: If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate City share of administrative costs and shall submit such plan to the City for approval.
4. Payment Procedures: The City will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Subrecipient.
5. Performance Reports: The Subrecipient shall submit quarterly Performance Reports to the City in the form and content as required by the City.

#### **D. PROCUREMENT**

1. Compliance: The Subrecipient shall comply with the current City procurement codes concerning the purchase of equipment. Subrecipient shall also 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, and services in accordance with 2 CFR Part 200, Subpart D.
3. Travel: Before the travel occurs, 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 8

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 \$25,000.00 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).
5. Relocation, Acquisition and Displacement: The Subrecipient agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The Subrecipient agrees to comply with applicable City Ordinances, Resolutions, and Policies concerning displacement of individuals from their residences.

**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 2 CFR Part 200.

**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. 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.
8. The American Disabilities Act and Section 504 of the Rehabilitation Act, as amended.
9. The requirements of the Architectural Barriers Act of 1966 at 42 U.S.C. 4151-415.
10. 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.
11. Federal Fair Housing Act of 1988, P.L. 100-430. HUD requires recipients of federal funding to affirmatively further fair housing, which includes requirements for Affirmative Fair Housing Marketing (AFHM). The purpose of AFHM requirements is to promote a condition in which individuals of similar income levels in the same housing market area have available to them a like range of choices in housing, regardless of the individual's race, color, religion, sex, handicap, familial status or national origin. The requirements also ensure positive outreach efforts to those who are least likely to know about and apply for the housing in question. If applicable, Subrecipient must implement AFHM policies in accordance with City's Affirmative Fair Housing Marketing guide.

**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 2CFR Parts 200.112 and 200.318, and 24 CFR 570.611, which include (but are not limited to) the following:

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 Part 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 Subrecipient and any of the Subrecipient's Subrecipients and subcontractors. Failure to fulfill these requirements shall subject 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 and signed 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. Subrecipient shall provide the City written notice of any such assignment or transfer within ten (10) days after such assignment or transfer.

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 and signed 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 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 Exhibit 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.

**I. LEAD-BASED PAINT**

This Agreement is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.), and the Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR 570.487). The use of lead-based paint is prohibited whenever CDBG funds are used directly or indirectly for the construction, rehabilitation, or modernization of residential structures. Immediate lead-based paint hazards existing in residential structures assisted with CDBG funds must be eliminated, and purchasers and tenants of assisted structures constructed prior to 1978 must be notified of the hazards of lead-based paint poisoning.

**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 shall 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 and not more than \$100,000 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.

**N. ACQUISITION/RELOCATION**

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulation.

**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 five 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. Application and 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. Records and documents for acquisition/relocation activities for each parcel acquired or family displaced.

10. Overall policies and procedures for housing rehabilitation and a separate file for each applicant/family or multi-family unit.
11. Documentation and records for job creation/retention activities and each business assisted.
12. Overall policies and procedures for any revolving loan funds and a separate file for each applicant/business assisted.
13. Policies and procedures for technical assistance and a record of each applicant/entity assisted.

## **Exhibit D**

### **Bonds and Insurance**

#### **A. BONDS**

In the event the City provides advance funding, the Subrecipient shall purchase a blanket fidelity bond covering all Subrecipient's employees and subcontractors in an amount equal to cash advances from the City.

#### **B. INSURANCE**

##### **B.1 General.**

Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes ("A.R.S.") § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

Primary Insurance. Subrecipient's insurance shall be primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Subrecipient. Subrecipient shall arrange to have such subrogation waivers

incorporated into each policy via formal written endorsement.

Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Subrecipient shall be solely responsible for any such deductible or self-insured retention amount.

Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Subrecipient shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Subrecipient. Subrecipient shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

Evidence of Insurance. Prior to commencing any work or services under this Agreement, Subrecipient will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Subrecipient's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Subrecipient shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
  - (a) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
  - (b) Auto Liability – Under ISO Form CA 20 48 or equivalent.
  - (c) Excess Liability – Follow Form to underlying insurance.
- (2) Subrecipient's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Subrecipient under this Agreement.
- (4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form

shall have similar restrictive language deleted.

**B.2 Required Insurance Coverage.**

Commercial General Liability. Subrecipient shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Vehicle Liability. Subrecipient shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Subrecipient's owned, hired and non-owned vehicles assigned to or used in the performance of the Subrecipient's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Professional Liability. If this Agreement is the subject of any professional services or work, or if the Subrecipient engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Subrecipient shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Subrecipient, or anyone employed by the Subrecipient, or anyone for whose negligent acts, mistakes, errors and omissions the Subrecipient is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

Workers' Compensation Insurance. Subrecipient shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Subrecipient's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

Additional Coverage. To the fullest extent permitted by law, if the Subrecipient maintains higher insurance limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limit maintained.

**B.3 Cancellation and Expiration Notice.** Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.