



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

☐ Award ☐ Contract ☒ Grant

Requested Board Meeting Date: June 18, 2019

*\* = Mandatory, information must be provided*

or Procurement Director Award ☐

**\*Contractor/Vendor Name/Grantor (DBA):**

U.S. Department of Housing and Urban Development (HUD)

**\*Project Title/Description:**

HOME Investment Partnership Subrecipient Agreement between City of Tucson and Pima County.

**\*Purpose:**

To establish the terms, conditions and HUD approved consortia share allocations between the City of Tucson, as Lead Entity, and Pima County, as the Subrecipient, for HOME Investment Partnerships Program entitlement funds for the federal fiscal years 2020, 2021 and 2022.

**\*Procurement Method:**

This IGA is a non-Procurement contract and not subject to Procurement rules.

**\*Program Goals/Predicted Outcomes:**

Provide and preserve affordable housing for low-income residents of Pima County. Expected outcomes include increased access to housing opportunities for Pima County residents.

**\*Public Benefit:**

Affordable housing, both rental and ownership.

**\*Metrics Available to Measure Performance:**

Number of completed units as identified in the current City-County HUD 5 Year Consolidated Plan and HUD Consolidated Annual Performance and Evaluation Report.

**\*Retroactive:**

No.

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ALW

**Contract / Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Prior Contract Number (Synergen/CMS): \_\_\_\_\_

☐ Expense Amount: \$\* \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_**\*Funding Source(s) required:**Funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_Contract is fully or partially funded with Federal Funds? ☐ Yes ☐ No**If Yes, is the Contract to a vendor or subrecipient?**Were insurance or indemnity clauses modified? ☐ Yes ☐ No*If Yes, attach Risk's approval.*Vendor is using a Social Security Number? ☐ Yes ☐ No*If Yes, attach the required form per Administrative Procedure 22-73.***Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Prior Contract No. (Synergen/CMS): \_\_\_\_\_

☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ \_\_\_\_\_Is there revenue included? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_**\*Funding Source(s) required:**Funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: GTAW Department Code: CD Grant Number (i.e., 15-123): 19-111

Effective Date: 7-1-2019 Termination Date: 6-30-2022 Amendment Number: \_\_\_\_\_

☐ Match Amount: \$ \_\_\_\_\_ ☒ Revenue Amount: \$ 1,020,169 (estimate)**\*All Funding Source(s) required:** HUD, funding will change pursuant to annual Congressional budget approval for the HOME Investment Partnership Program.**\*Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_**\*Match funding from other sources?** ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_**\*Funding Source:** \_\_\_\_\_**\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Passed through City of Tucson per HUD Consortium Agreement CTN CD 19-217

Contact: Marcos Ysmael, Housing Program Manager

Department: Community Development &amp; Neighborhood Conservation Telephone: 520.724.2462

Department Director Signature/Date: *[Signature]* 6-10-19Deputy County Administrator Signature/Date: *[Signature]* 6-10-2019County Administrator Signature/Date: *[Signature]* 6/11/19  
(Required for Board Agenda/Addendum Items)

# GRANT APPLICATION APPROVAL REQUEST

**Instructions:** Fill out the top section of this form completely. Contact the program Grants Management & Innovation (GMI) Lead if you require assistance (724-2240). Email your completed request to: [GMI@pima.gov](mailto:GMI@pima.gov). Your request will be forwarded to County Administration for review. Notification of approval requests should be submitted at least 15 business days prior to the application's submission deadline (AP 5-1 Procedure).

Requesting department or entity:	CDNC	Date: 5/22/19
Contact Information:	Name: Marcos Ysmael	Telephone: (520) 724-2463
Funding opportunity title:	HOME Investment Partnerships Program	
Link to opportunity:	<a href="https://www.hudexchange.info/resource/2451/home-consortia-participating-members-percent">https://www.hudexchange.info/resource/2451/home-consortia-participating-members-percent</a>	
Funding agency:	U.S. Department of Housing and Urban Development	
Amount to be requested:	\$ 3,000,000.00	
Due date and time:	Select One	
What are you going to spend the money on?	Affordable housing including rehabilitation, replacement, downpayment assistance, new construction and tenant based rental assistance.	
What will be the benefit to Pima County?	Additional housing units for low-income residents of Pima County, AZ.  <i>as applied to program guidelines and approved by HUD.</i>	
Indirect costs - check one:	<input checked="" type="checkbox"/> I will be requesting indirect costs. Indirect-cost rate to be requested: 10 percent <input type="checkbox"/> I have attached a request for waiver of indirect costs (GMI Intranet) <input type="checkbox"/> I need help understanding indirect costs	
By: <i>Marcos Ysmael</i>	Date: <i>5/23/19</i>	
Department Director or Designee <i>Daniel Lytle</i> <i>6.12.19</i>		

<b>GRANT COST/BENEFIT ANALYSIS</b> <b>To be completed by GMI staff</b>																													
CFDA No.																													
Competitive Criteria:																													
Other Factors:																													
Number of Awards:	Total amount to be awarded:																												
Match Required: <input type="checkbox"/> Yes <input type="checkbox"/> No If required what is the amount/percent: _____																													
Terms Notes (e.g. unusual restrictions, reporting burdens, etc.):																													
<table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Will this project require additional office/project space?</td> <td style="width: 10%; text-align: center;"><input type="checkbox"/> Yes</td> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/> No</td> <td style="width: 20%;"></td> </tr> <tr> <td>Will this project require staff time that cannot be paid for by the grant?</td> <td style="text-align: center;"><input type="checkbox"/> Yes</td> <td style="text-align: center;"><input checked="" type="checkbox"/> No</td> <td></td> </tr> <tr> <td>Will your project require any equipment items over \$5,000 per item?</td> <td style="text-align: center;"><input type="checkbox"/> Yes</td> <td style="text-align: center;"><input checked="" type="checkbox"/> No</td> <td></td> </tr> <tr> <td>Does the proposal use a fixed price contract?</td> <td style="text-align: center;"><input type="checkbox"/> Yes</td> <td style="text-align: center;"><input checked="" type="checkbox"/> No</td> <td></td> </tr> <tr> <td>Is this project subject to Human Subjects compliance?</td> <td style="text-align: center;"><input type="checkbox"/> Yes</td> <td style="text-align: center;"><input checked="" type="checkbox"/> No</td> <td></td> </tr> <tr> <td>Does this project involve subrecipients?</td> <td style="text-align: center;"><input checked="" type="checkbox"/> Yes</td> <td style="text-align: center;"><input type="checkbox"/> No</td> <td></td> </tr> <tr> <td>Is there a Statutory Funding Preference from the funding agency?</td> <td style="text-align: center;"><input checked="" type="checkbox"/> Yes</td> <td style="text-align: center;"><input type="checkbox"/> No</td> <td></td> </tr> </table>		Will this project require additional office/project space?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		Will this project require staff time that cannot be paid for by the grant?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		Will your project require any equipment items over \$5,000 per item?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		Does the proposal use a fixed price contract?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		Is this project subject to Human Subjects compliance?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		Does this project involve subrecipients?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		Is there a Statutory Funding Preference from the funding agency?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
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Allowable Indirect Rate: _____ If indirect is not allowed, attach documentation. <span style="float: right;">(Low-income) (HS4 Programs)</span>																													
List any other proposal or funder specific requirements:																													
GMI notes & recommendations:																													
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">               By: _____              GMI Director           </div> <div style="text-align: center;">             Date: <u>5/29/19</u> </div> </div>																													
<b>County Administrator Approval Request</b>																													
Approved: <input checked="" type="checkbox"/> Not Approved: _____ Subject to Further Review: <input type="checkbox"/> Yes <input type="checkbox"/> No																													
If your project is subject to further review, please contact your GMI Lead to discuss necessary revisions prior to resubmission of the Grant Approval Application Request.																													
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">               By: _____              County Administrator or Designee           </div> <div style="text-align: center;">             Date: <u>5/29/2019</u> </div> </div>																													

## HOME INVESTMENT PARTNERSHIP INTERGOVERNMENTAL AGREEMENT FOR SUBRECIPIENT BETWEEN CITY OF TUCSON AND PIMA COUNTY

This Intergovernmental Agreement specified above is entered into by and between the City of Tucson, an Arizona municipal corporation and Participating Jurisdiction for the federal HOME program ("City"), and Pima County, a body politic and corporate of the State of Arizona and Subrecipient for the federal HOME Program ("County").

### RECITALS

- A. City and County may contract for services and enter into agreements with one another for joint or cooperative actions pursuant to A.R.S. § 11-952 *et seq.*
- B. Pursuant to the provisions of Title 36, Chapter 12, Article 1, Arizona Revised Statutes, as amended, County is authorized to engage in or assist in the development or operation of housing for low income families.
- C. Pursuant to Chapter VII, Section I, Subsections 32 and 33 of the Tucson City Charter, City is authorized to engage in or assist in the development or operation of housing for low-income families.
- D. City and County formed the Tucson/Pima County HOME Consortium ("Consortium") in 1992 for the purpose of applying for and obtaining HOME Investment Partnership Program ("HOME") from the United States Department of Housing and Urban Development ("HUD") for use in urban Pima County.
- E. City is the Participating Jurisdiction, as described in 24 CFR § 92, Subpart K, for the federal HOME program, and is, therefore, authorized to receive funds on behalf of the Consortium.
- F. County is a Subrecipient, as defined in 24 CFR, § 92.2, eligible to receive and use the HOME funds awarded to the Consortium.
- G. The Parties intend to extend the Consortium agreement which will expire on September 30, 2019 in order to continue the Consortium operations for three additional years.
- H. The Consortium is expected to be awarded HOME funds to develop affordable housing between July 1, 2019 and June 30, 2022.

**NOW, THEREFORE**, in consideration for the covenants and conditions set forth in this Intergovernmental Agreement, City and County hereby agree as follows:

- 1.0 Purpose.** This Intergovernmental Agreement for Subrecipient ("IGA" or "Agreement") establishes the allocation of HOME funds to County and defines the responsibilities of the Parties for developing and maintaining home ownership and rental housing opportunities for households in Pima County, Arizona that earn up to 80% of Area Median Income ("AMI").
- 2.0 Consortium Program Goals.** The Consortium ensures consistency and coordination in the provision of affordable housing in Pima County. The Consortium will seek annual funding from the HOME program and also endeavor to identify other funding opportunities for affordable housing to benefit the residents of both the City and County. City and County will communicate openly with each other through meetings and other promotional or training activities about developing projects of interest in Pima County.

### **3.0 Scope.**

#### **3.1. Duties of City.** City, will:

- 3.1.1. Assume all responsibilities of the Participating Jurisdiction for the administration of the HOME program;
- 3.1.2. Afford County all rights of a Subrecipient of HOME funds;
- 3.1.3. Monitor County HOME program on an annual basis;
- 3.1.4. Give final approval of Environmental Review Requests (“ERR”) associated with County HOME projects;
- 3.1.5. Provide quarterly HOME fund encumbrances and expenditures reports to County within fifteen (15) days of the end of each quarter;
- 3.1.6. Provide view-only access to County of the HUD HOME Integrated Disbursement and Information System (“IDIS”) related to Consortium HOME projects;
- 3.1.7. Reimburse County within 30 days of receipt of monthly billing for HOME activities; and
- 3.1.8. Reallocate HOME funds not committed in IDIS paragraph 3.2.1 below by July 1 of the applicable year shall be reallocated by City;

#### **3.2. Duties of County.** County will:

- 3.2.1. Commit and expend allocated HOME funds pursuant to 24 CFR Part 92, Subpart K and any applicable HOME Rules established and enacted by HUD;
- 3.2.2. Monitor County HOME projects as required by HUD;
- 3.2.3. Submit invoices to City no later than the 30<sup>th</sup> of the month for the previous month’s administration and project costs;
- 3.2.4. Submit ERR documents to City for approval prior to execution of a project Agreement;
- 3.2.5. Provide the required annual match in accordance to 24 CFR § 92.218 (Matching Contribution Requirement) to City for the Consolidated Annual Performance Evaluation Report (“CAPER”); and
- 3.2.6. Provide quarterly performance measure reports at each of the Consortium’s Quarterly meetings.

#### **3.3. Joint duties of City and County.** Both Parties will:

- 3.3.1. Comply with all applicable terms and conditions contained in the General Conditions of this Agreement in carrying out the respective duties and activities pursuant to this IGA;
- 3.3.2. Prepare, schedule and participate in public meetings and other events regarding the Consolidated/Annual Plan/CAPER in order to meet the requirements of 24 CFR Part 91;
- 3.3.3. Exchange copies of documents submitted to HUD to meet the Consolidated/Annual Plan/CAPER requirements of 24 CFR Part 91;
- 3.3.4. Meet quarterly to review:
  - 3.3.4.1. HOME fund encumbrances and expenditures;
  - 3.3.4.2. The status of HOME projects in progress;
  - 3.3.4.3. Consortium accomplishments; and
  - 3.3.4.4. Opportunities for improvement in the delivery of affordable housing to the residents of Pima County;

- 3.3.5. Prior to the distribution of the annual allocation to Community Housing Development Organizations (“CHDOs”), pursuant to 24 CFR §92.208 and 92.300 (a)(1), meet to determine policies and procedures governing the use of Community Development Housing Organization (“CDHO”) funds and to jointly determine the allocation of funds to projects and organizations;
- 3.3.6. Appropriately acknowledge the respective contributions of HOME program funds from City and/or County on publicly distributed documents. Documents may include, but are not limited to, grant applications, announcements, award notifications and press releases; and
- 3.3.7. When aware of training and technical assistance opportunities for City and County staff, offered by HUD or other entities, that are relevant to implementation of HOME program, provide the other party with as much prior notice of the event as possible.

#### **4.0 Financing.**

- 4.1. County activities under this Agreement will be funded with a portion of the HOME funds allocated to City as the Participating Jurisdiction of the Consortium. City will not be liable for providing HOME funds to County beyond the fiscal year for which HUD has awarded such funds. City will use best efforts to secure an annual award of HOME funds on behalf of the Consortium.
- 4.2. Annual distribution of HOME funds to County will be made upon HUD’s approval of the Annual Consolidated Plan of the Consortium. The amount distributed to County will be calculated as follows:

Use of Total FY allocation to Consortium		County share of allocation	City Share of Allocation
CDHO set aside	15%	Allocations will be determined by HUD HOME Consortia Share Report for the applicable Fiscal Year	
Discretionary Projects	75%		
Administration	10%		

- 4.3. City will give County formal, written notification within 60 days of the calculation of the allocation and budget in accordance with the HOME Consortia Participating Members Percentage Report.
  - 4.4. The Parties will mutually agree, in writing, to hire consultants or other professionals for planning activities related to the preparation of the Consolidated Plan and affiliated studies. The Party entering into the contract with the consultant or professional will be paid 50% of the total cost expended under such contract by the non-contracting Party. Payment will be made within 30 days of a request for such reimbursement.
  - 4.5. Upon mutual written agreement and appropriate Resolution or other action by the Pima County Board of Supervisors, County may designate any portion of its allocated HOME funds under this IGA for joint project(s) with the City. City must commit the designated funds in IDIS and begin to drawdown the funds contributed by County before any additional City HOME funds are expended for the joint project. City will be responsible for oversight of any joint projects, but will credit County for the funds contributed for any joint project.
  - 4.6. Program Income (“PI”) earned by County will be returned to City. PI returned to City will be available for use by County for HOME-eligible projects after receipt in IDIS.
- 5.0 Term.** The term of this IGA shall begin July 1, 2019 through June 30, 2022. The parties have the option to extend this IGA for additional three-year terms or any portion thereof, so long as HOME funds are sought by and awarded to the Consortium.

## **6.0 Termination.**

- 6.1. This IGA may be terminated by mutual agreement of the Parties in the event that the Consortium is dissolved or that HUD does not award HOME funds to the Consortium for the continuation of Consortium's HOME program activities.
- 6.2. This provision supersedes and replaces the Termination provisions set forth in Provision C.7 of the General Conditions of the agreement.

## **7.0 Indemnification.**

- 7.1. Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnatee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnatee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.
- 7.2. This provision supersedes and replaces the Indemnification provisions set forth in Provision C.12 of the General Conditions of the agreement.

## **8.0 Non-Discrimination.**

- 8.1. Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors.
- 8.2. During the performance of this contract, the Parties will not discriminate against any employee, client or any other individual in anyway because of that person's age, race, creed, color, religion, sex, sexual orientation, gender identity, disability, national origin, familial status or any other protected class status under applicable law.
- 8.3. This provision supersedes and replaces the Non-discrimination provision set forth in Provision C.13 of the General Conditions of the agreement.

**9.0 Insurance.** The parties acknowledge that they are self-insured and that such self-insurance is sufficient to meet the terms and conditions set forth in Provision C.11 of the General Conditions of the agreement and County requirements for City.

**10.0 Legal Jurisdiction and Authority.** Nothing in this Agreement will be construed as either limiting or extending the legal jurisdiction of City or County. Neither party warrants to the other its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that either party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.

**11.0 Workers Compensation.** Each party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022 each party will be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and said party will have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.



**12.0 Notification.** All notices or demands upon any party to the IGA will be in writing, unless other forms are designated elsewhere, and will be delivered in person, email or sent by mail addressed as follows:

<b>CITY:</b> Keith L. Gregory, Interim Director Housing & Community Development City of Tucson PO Box 27210 Tucson, AZ 85726 <a href="mailto:Keith.Gregory@tucsonaz.gov">Keith.Gregory@tucsonaz.gov</a>	<b>COUNTY:</b> Daniel Tylutki, Interim Director Community Development & Neighborhood Conservation 2797 E. Ajo Way Tucson, AZ 85713 <a href="mailto:Daniel.Tylutki@pima.gov">Daniel.Tylutki@pima.gov</a>
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**13.0 Entire Agreement.** This document, with its General Conditions of the agreement, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understanding, oral or written, are hereby superseded and merged herein. This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

*IN WITNESS WHEREOF*, the parties have executed three (3) identical counterpart copies of this Agreement on the date and year first written above, each of which shall for all purposes be deemed an original hereof.

**CITY OF TUCSON:**

**PIMA COUNTY:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chairman, Board of Supervisors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

REVIEWED BY:

REVIEWED BY:

\_\_\_\_\_  
Interim Director, Housing & Community  
Development

  
\_\_\_\_\_  
Interim Director, Community Development &  
Neighborhood Conservation

\_\_\_\_\_  
Date

The foregoing Subrecipient and Intergovernmental Agreement between City of Tucson and Pima County has been reviewed pursuant to A.R.S. §11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Subrecipient and Intergovernmental Agreement represented by the undersigned.

\_\_\_\_\_  
Mike Rankin, City Attorney

  
\_\_\_\_\_  
Karen S. Friar, Deputy County Attorney

# **Exhibit A**

## **GENERAL CONDITIONS OF THE CONTRACT For**

### **SUBRECIPIENTS**

**City of Tucson, Housing and Community Development Department**

**HOME Investment Partnership Program**

## **TABLE OF CONTENTS**

### **Article A – Definitions**

### **Article B- Responsibilities**

- B.1 Subrecipient's Responsibilities
- B.2 Conflicts of Interest

### **Article C – Administrative Requirements**

- C.1 Order of Precedence
- C.2 Payments
- C.3 Contract Modifications
- C.4 Disputes
- C.5 Default
- C.6 Remedies
- C.7 Termination
- C.8 Offsetting Claim
- C.9 Assignment of Contract
- C.10 Retention of Rights
- C.11 Insurance
- C.12 Indemnification
- C.13 Non-Discrimination
- C.14 Cancellation for Conflict of Interest
- C.15 Non-Appropriation
- C.16 Americans with Disability Act
- C.17 Compliance with Laws
- C.18 Severability
- C.19 Joint-Venture
- C.20 Third Party Beneficiaries

### **Article D – HOME Requirements**

- D.1 Uniform Administrative Requirements
- D.2 Other Program Requirements
- D.3 Affirmative Marketing
- D.4 Reports and Records
- D.5 Written Agreements

### **Article E – Additional Federal Requirements**

- E.1 Conflicts of interest
- E.2 Interest of Members of Congress
- E.3 Limitation of Payments to Influence Transactions
- E.4 Restrictive Specifications
- E.5 Contract Adjustments
- E.6 Cost Price Analysis
- E.7 Disputes
- E.8 Termination
- E.9 Equal Employment Opportunity
- E.10 Copeland Act
- E.11 Davis-Bacon Act
- E.12 Work Hours and Safety Standards
- E.13 Reporting
- E.14 Copyrights and Rights in Data
- E.15 Retention and Inspection of Records
- E.16 Section 3 Requirements
- E.17 Procurement of Recovered Materials – Solid Waste Disposal Act

## Article A - Definitions

(a) **"Act"** means the HOME Investment Partnership Act at Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et seq.

(b) **"Contract"** means the agreement entered into between the City and the Subrecipient. It includes the HOME Investment Partnership Subrecipient and Intergovernmental Agreement and all Exhibits listed therein, and these General Conditions of the Contract for HOME Investment Partnerships Program. It includes all formal changes to any of those documents.

(c) **"Contract Administrator"** means the City's Housing and Community Development staff person delegated the authority by the City to administer, and/or terminate this Contract and designated as such in the Agreement. The term includes any successor Contract Administrator and any duly authorized representative of the Contract Administrator also designated in writing. The Contract Administrator shall be deemed the authorized agent of the City in all dealings with the Subrecipient.

(d) **"Subrecipient"** means Pima County, the entity contracted to administer HOME funds as defined in 24 CFR part 92.2.

(e) **"HUD"** means the U.S. Department of Housing and Urban Development.

(f) **"HOME Program"** means the HOME Investment Partnership Program described in 24 CFR Part 92 as it currently exists and as it may be modified in the future.

(g) **"HOME Funds"** means funds made available under 24 CFR Part 92 as defined in 24 CFR 92.2 through allocations and reallocations, plus all repayments and interest or other return on investment of these funds.

(h) **"Scope of Services"** means the activities enumerated in this Contract that will develop affordable housing.

(i) **"Records"** means all pertinent books, documents, papers, accounts, reports, files, and all other records relating to the Scope of Services.

## Article B - Responsibilities

### B.1 Subrecipient's Responsibilities for the Scope of Services

(a) The Subrecipient shall furnish all necessary employees, materials, and equipment necessary for implementation of the Scope of Services.

(b) The Subrecipient shall be responsible for all damages to persons or property that occur as a result of the Subrecipient's fault or negligence, and shall take proper safety and health precautions to protect the public, and the property of others.

(c) To the extent permitted by law the Subrecipient shall hold the City harmless, indemnify and defend it and its officers and agents of and from any and all claims of loss, damages, death or injury sustained by any person or damage to any property, any claim asserted by HUD regarding non-compliance with HOME Program requirements and to pay all expenses, including reasonable attorney's fees incurred or thereby arising from the

performance of the Subrecipient's principals, staff, agents, or employees under the provisions of the Contract

### B.2 Conflicts of Interest

The Subrecipient shall establish safeguards to prohibit its employees, board members, advisors and agents from engaging in violations of applicable conflict of interest laws and from using their positions for any purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others with whom they have family or business ties. The Subrecipient shall disclose in writing to the City any conflict of interest or potential conflict of interest immediately upon discovery.

## Article C - Administrative Requirements

### C.1 Order of Precedence

In the event of a conflict between these General Conditions and the HOME Program, the HOME Program shall prevail. In the event of a conflict between the Contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

### C.2 Payments

(a) The City shall timely reimburse the Subrecipient the amount as provided in this Contract.

(b) The City shall make progress payments as the Scope of Services proceeds.

(c) Before any payment is made under this Contract, the Subrecipient shall furnish, in such detail as requested by the Contract Administrator, a breakdown of the total Contract amount showing the amount included therein for each principal category of the Scope of Services, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contract Administrator and must be acceptable to the City.

(d) The Subrecipient shall submit, on forms provided by the Contract Administrator, periodic estimates showing the eligible expenses during each period based upon the approved breakdown of the Contract amount. Such estimates shall be subject to correction and revision as required. The estimates must be approved by the Contract Administrator prior to payment.

(e) The Subrecipient may not request payment until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the Subrecipient requests funds from the City.

(f) All eligible expenses covered by progress payments made shall not be construed as waiving the right of the City to require the fulfillment of all of the terms of the Contract.

(g) The City shall make the final payment due the Subrecipient under this Contract after delivery of all reports and other documents required by the Contract.

(h) Prior to making any payment, the Contract Administrator may require the Subrecipient to furnish receipts or other evidence of payment of all eligible expenses incurred by the Subrecipient, if the Contract Administrator determines such evidence is necessary to substantiate claimed expenses.

(i) In the request for payment, the Subrecipient shall include all claims of every kind and nature against the City, arising under the Contract or any covenant thereof, expressed or implied, or from any cause whatsoever, during the period preceding the date of request for payment. The purpose of this provision is to guard the City against surprise claims, to permit the City to investigate claims as they arise, and to prevent vexatious litigation of claims.

(j) Upon expiration of this Contract, the Subrecipient must transfer to the City any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

### **C.3 Contract Modifications**

(a) Only the Contract Administrator has authority to modify any term or condition of this Contract. Any Contract modification shall be authorized in writing.

(b) The Contract Administrator may modify the Contract unilaterally for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the City's address). All other Contract modifications shall be in the form of supplemental Contracts signed by the Subrecipient and the Contract Administrator.

### **C.4 Disputes**

(a) "Claim," as used in this clause, means a written demand or written assertion by one of the Contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract. A claim arising under the Contract, unlike a claim relating to the Contract, is a claim that can be resolved under a Contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses involving Federal, State or local regulatory agencies, all disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by Contract, shall be resolved under this clause.

(c) All claims by the Subrecipient shall be made in writing and submitted to the Contract Administrator for a written decision.

(d) The Contract Administrator shall, within thirty (30) days after receipt of the request, decide the claim or notify the Subrecipient of the date by which the decision will be made.

(e) The Contract Administrator's decision shall be final unless the Subrecipient (1) files a written appeal to the Division Administrator of the Technical Services Division of the Community Services Department, City of Tucson, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within thirty (30) days after receipt of the Contract Administrator's decision.

(f) The Subrecipient shall proceed diligently with performance of this Contract, pending formal resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contract Administrator.

### **C.5 Default**

(a) If the Subrecipient refuses or fails to prosecute the Scope of Services, or any separable part thereof, with the diligence that will insure its completion within the time specified in this Contract, or fails to comply with any requirements of the HOME Program, the Contract Administrator may, by written notice to the Subrecipient, terminate the Contract. The Subrecipient shall be liable for any damage to the City resulting from the Subrecipient's refusal or failure to comply with any requirements of the HOME Program.

(b) The Subrecipient's right to proceed shall not be terminated or the Subrecipient charged with damages under this clause if:

(1) The delay in completing the Scope of Services arises from unforeseeable causes beyond the control and without the fault or negligence of the Subrecipient. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the City in either its sovereign or Contractual capacity; and,

(2) The Subrecipient, within thirty (30) days from the beginning of such delay (unless extended by the Contract Administrator) notifies the Contract Administrator in writing of the causes of delay. The Contract Administrator shall ascertain the facts and the extent of the delay. If, in the judgment of the Contract Administrator, the findings of fact warrant such action, time for completing the Plan shall be extended by written modification to the Contract. The findings of the Contract Administrator shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this Contract.

(c) If, after termination of the Subrecipient's right to proceed, it is determined that the Subrecipient was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the City.

## C.6 Remedies

(a) If the Subrecipient is found to be in default of the Contract, and such default remains uncured for a period of sixty (60) days after notice thereof has been given by the City, the City shall be entitled to any or all of the following remedies:

- (1) Return of all HOME Funds provided that were used for ineligible expenses, plus interest at the maximum rate permitted by law; and,
- (2) Resort to any court having jurisdiction of the subject matter for specific performance of this Contract; and,
- (3) Reimbursement to the City of all reasonable attorneys' fees and all costs incurred in any judicial action resulting from the Subrecipient's breach of the Contract in which the City shall prevail.

## C.7 Termination

(a) The City may terminate this Contract for the City's convenience or, in accordance with 24 CFR 85.43, for failure of the Subrecipient to comply with any term of the Contract. The City shall terminate by delivering to the Subrecipient a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Subrecipient shall immediately discontinue all services affected and deliver to the City all information, reports, papers, and other materials accumulated or generated in performing this Contract whether completed or in process.

(b) The County may terminate this Contract for the County's convenience, provided that the County gives City at least one hundred and eighty (180) days notice of termination prior to the effective date of termination.

(c) In the event of termination pursuant to this Section C.7, the City shall be liable only for payment for accepted eligible expenses and binding contractual obligations before the effective date of termination. The Subrecipient shall prepare and present a claim to the City detailing reasonable and proper costs resulting from such termination, setting out in detail:

- (1) The total eligible expenses and binding Contractual obligations to date of termination less the total amount of Contract payments made to the Subrecipient; and,
- (2) The cost of settling and paying claims for eligible activities performed, payment for which has not been made by the City to the Subrecipient; and,
- (3) The actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the City.

(d) The Contract Administrator will act on the Subrecipient's claim within sixty (60) days of receipt of the Subrecipient's claim.

(e) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this Contract.

## C.8 Offsetting Claim

To the extent permitted by law the Subrecipient shall be liable to the City for claims brought against the City by virtue of any breach of this Contract by the Subrecipient, its officers, agents, managers or employees. The City may withhold payment of eligible operating expenses to the Subrecipient for the purpose of an offsetting claim, until such time as the full amount of damage incurred by the City is determined and paid.

## C.9 Assignment of Contract

The Subrecipient shall not assign or transfer any interest in this Contract without the written concurrence of the Contract Administrator.

## C.10 Retention of Rights

Neither the City's review, approval, nor payment for eligible expenses under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Subrecipient shall be and remain liable to the City in accordance with the applicable law for all damages to the City caused by the Subrecipient's negligent performance of any of the HOME Program requirements under this Contract.

## C.11 Insurance

(a) The Subrecipient shall carry Comprehensive General Liability and other insurance in minimum amounts as set forth below or provide self insurance pursuant to state law. The Subrecipient shall furnish the City Certificates of insurance and those shall state that a thirty-day written notice of prior cancellation, change, termination or expiration will be provided to the City. The Subrecipient agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing. Provide and maintain minimum insurance as follows:

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Worker's Compensation Employer's Liability	Statue \$100,000
Comprehensive General Liability Injury Insurance including: 1. Blanket Contractual 2. Products & Completed Operations 3. Premises-Operations 4. Personal Injury	\$1,000,000 – Bodily & Property Damage Combined Single Limit  Fidelity Bonding: \$25,000 or CSD approval
Comprehensive Auto Liability Injury Insurance including: 1. Non-owned 2. Leased 3. Hired Vehicle	\$1,000,000 – Bodily & Property Damage Combined Single Limit

(b) Deductibles will be stated on the certificate of insurance and are subject to review and approval of the City.

#### **C.12 Indemnification**

To the extent permitted by law the Subrecipient agrees to indemnify, defend, and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, and employees, individually and collectively from all losses, claims, suits, demands, expenses, attorney's fees, or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of either (1) the Subrecipient's negligent performance of the terms of this Contract, or (2) any of the Subrecipient's negligent acts or omissions. The amount and type of insurance coverage requirements set forth in this Contract will in no way be construed as limiting the scope of indemnity in this paragraph.

#### **C.13 Non Discrimination**

Neither party shall discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out duties pursuant to this Contract. Both parties shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein.

#### **C.14 Cancellation for Conflict of Interest**

This Contract is subject to cancellation for conflict of interest pursuant to ARS. 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

#### **C.15 Non-Appropriation**

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason there are not appropriate sufficient appropriated and available monies for the purpose of maintaining Subrecipient or other public entity obligations. In the event of such termination, Subrecipient shall have no further obligation to City other than for payment for reasonable services rendered prior to cancellation

#### **C. 16 Americans with Disability Act**

City and County shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

#### **C. 17 Compliance with Laws**

The parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the parties, the

performance of this Agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in an Arizona court in Pima County.

#### **C.18 Severability**

If any provision of this IGA, or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.

#### **C.19 No Joint Venture**

It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any City employees, or between City and any County employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

#### **C. 20 No Third Party Beneficiaries**

Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

#### **Article D - HOME Requirements**

The Subrecipient shall conduct all activities under this Contract in compliance with 24 CFR Part 92.

##### **D.1 Uniform Administrative Requirements**

The Subrecipient shall comply with the uniform administrative requirements as described in 24 CFR 92.505(a).

##### **D.2 Other Program Requirements**

The Subrecipient shall comply with all Federal laws and regulations described in 24 CFR Part 92, Subpart H, except that the Subrecipient will not assume the City's responsibilities for environmental review under 92.352 and the intergovernmental review process in 92.357 does not apply.

##### **D.3 Affirmative Marketing**

The Subrecipient shall comply with the affirmative marketing requirements as described in 24 CFR 92.351.

##### **D.4 Reports and Records**

The Subrecipient shall maintain and deliver to the City reports as requested by the Contract Administrator with the information necessary to meet the requirements of 24 CFR 92.508.

## **D.5 Written Agreements**

If the Subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or Contractors, the Subrecipient must have a written agreement which meets the requirements of 24 CFR Part 92, as required by 24 CFR 92.504 (b).

## **D.6 Reversion of Assets**

Upon expiration of this Contract, the Subrecipient shall transfer to the City any unobligated HOME funds on hand and any accounts receivable attributable to the use of HOME funds. County will complete projects defined in Exhibit B - Budget.

## **Article E – Additional Federal Requirements (92.505(a))**

Contact Provisions Required by federal regulations (24 CFR Part 85.36 Procurement) and Federal law or City Contract with HUD.

### **E.1 Conflicts of Interest**

Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and agreement between the City and HUD, no employee, officer, or agent of the City (HUD grantee) shall participate in selection, or in the award or administration of a Contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent.
- (ii) Any member of his or her immediate family.
- (iii) His or her partner.
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The City's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Subrecipient's, or parties to sub-agreements. The City may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the City's officers, employees, or agents or by Subrecipient's or their agents. HUD may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

### **E.2 Interest of Members of Congress**

Because of agreement between the City and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of the Contract or to any benefit to arise from it.

### **E.3 Limitation of Payments to Influence Certain Federal Transaction**

The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial

Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal Contract, grant, loan, or cooperative agreement to pay any person, including the Subrecipient, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal Contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.

### **E.4 Restrictive Specifications**

In accordance with 24 CFR 85.36(c)(3)(i) and agreements between the City and HUD, the Subrecipient shall not require the use of materials, products, or services that unduly restrict competition.

### **E.5 Contract Adjustments**

Notwithstanding any other term or condition of this Contract, any settlement or equitable adjustment due to termination, suspension or delays by the City shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

### **E.6 Cost Price Analysis**

The City shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a Contract modification or amendment requested by the Subrecipient. Such a Contract modification or amendment shall be within the general scope of services covered by this Contract. The Subrecipient shall provide supporting cost information in sufficient detail to permit the City to perform the required cost or price analysis.

### **E.7 Disputes**

In part because of HUD regulations (24 CFR 85.36(i)(1)), this Contract has administrative, contractual, or legal remedies for instances where the Subrecipient violates or breaches Contract terms, and provides for such sanctions and penalties as may be appropriate.

### **E.8 Termination**

In part because of HUD regulations (24 CFR 85.36(i)(2)), this Contract has requirements regarding termination by the City when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

### **E.9 Equal Employment Opportunity**

Pursuant to Federal regulations (24 CFR 85.36(i)(3)) and Federal law, the Subrecipient shall comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60).

### **E.10 Copeland Act.**

Pursuant to Federal regulations (24 CFR 85.36(i)(4)) and Federal law, the Subrecipient shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).



### **E.11 Davis-Bacon**

Act. The Subrecipient shall comply with the provisions of 24 CFR 92.354.

### **E.12 Work Hours and Safety Standards**

Pursuant to Federal regulations (24 CFR 85.36(i)(6)) and Federal law, the Subrecipient shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by the Department of Labor regulations (29 CFR Part 5).

### **E.13 Reporting**

Pursuant to Federal regulations (24 CFR 85.36(i)(7)) and Federal law, the Subrecipient shall comply with HOME Investment Partnership Program reporting requirements as defined in 24 CFR Part 92 as it currently exists and as it may be modified in the future.

### **E.14 Copyrights and Rights in Data**

HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36(i)(9). It is the Subrecipient's responsibility to pay all royalties and license fees associated with its operation.

### **E.15 Retention and Inspection of Records**

Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Subrecipient to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Subrecipient which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for five years after the City or Subrecipient make final payments and all other pending matters are closed.

### **E.16 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968. (24 CFR 92.508(7)(i)(B))**

(a) The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Subrecipient agrees to send to each labor organization or representative of workers with which the Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the

Subrecipient's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Subrecipient is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted Contracts.

### **E.17 Procurement of Recovered Materials**

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act the contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract, or (2) during the preceding Federal fiscal year, the Contractor (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.