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MEMORANDUM

TO: Tulsa County Board of Commissioners

FROM: Claudia Brierre

DATE: June 13, 2016

RE: HOME CONSORTIUM FY2014 HOMEBUYER ASSISTANCE PROGRAM
CONTRACT APPROVAL

Tulsa County, as the lead entity for the Metropolitan Tulsa HOME Consortium, solicited Requests for Proposals for a Homebuyer Assistance Program to be funded with FY2014 HOME Consortium funds. The RFP was solicited from non-profit organizations in the Consortium service area certified to provide homebuyer education and employing Certified Homebuyer Education Professionals. Proposals were received by the County on May 2, 2016 and awarded on May 16, 2016.

Attached is a contract between the County and CARD for the homebuyer funds.

The contract language is identical to contracts approved in previous years for these activities.

The contract has been reviewed and approved by the District Attorney's office.

FOR JUNE 20, 2016 COMMISSION AGENDA

Contract For Technical and Professional Services HOME Program

This Contract is made and entered into as of this ____ day of June 2016, by and between Tulsa County, as the lead entity and representative of the Metropolitan Tulsa HOME Consortium hereinafter called "County", and Community Action Resource and Development, Inc., a public non-profit corporation, hereinafter called "Contractor".

This Contract shall become effective the 1st day of June 2016 and terminate the 31st day of May 2017. The Contract period may be extended by mutual written agreement of both parties.

WHEREAS, the County has entered into a Contract with the Department of Housing and Urban Development for a HOME Investment Partnership Program pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (CFDA Number 14.239); and

WHEREAS, the County desires to engage the Contractor to render certain services in conjunction with the HOME program;

NOW THEREFORE, the parties do mutually agree as follows:

I. SCOPE OF SERVICES

The Contractor shall be responsible for staff for the operation of a HOME Program entitled "**FY2014 Home Buyers Program**" in accordance with the terms and conditions as set forth herein. The Contractor will be the designated party solely responsible for the administration of the program. The purpose of this program to increase the number of homeowners by providing financial assistance for those initial costs that would facilitate the home purchase process for qualified families. To accomplish this purpose, the Contractor shall:

- A.** Administer this program and provide such equipment and services as are necessary to operate the program for a period of twelve (12) months from the 1st day of June 2016.
- B.** Provide specific services which shall benefit low to moderate income households as per U.S. Department of Housing and Urban Development guidelines in effect and as amended by the U.S. Department of HUD. Loans will incorporate structures found within the Consortium Service Area.
- C.** Provide the County's administrator, INCOG, set-up forms, voucher, and completion reports for the purposes of entering into the HUD/IDIS financial system.

D. The Home Buyer Program shall consist of one activity: **Down Payment and Closing Costs Assistance** that shall be provided in accordance with the following:

- (1) Assistance Available:
For income-eligible households, up to 5% of the contract sales price to use for down payment assistance and closing expenses not to exceed \$5,000. The prospective homebuyer must invest a minimum of \$1,000 in the transaction. The Contractor shall counsel all applicants on the issue of lead-based paint hazards.
- (2) Terms and Conditions:
Self-amortizing five (5) year zero percent (0%) interest loans with a due on sale clause secured by a mortgage instrument (1/5 of loan forgiven each year of occupancy to encourage neighborhood stability). ***Loan funds returned by Homebuyers shall be forwarded to the Metropolitan Tulsa HOME Consortium and shall be retained in a HOME fund account for redistribution to other HOME eligible projects.***
- (3) Resale Restriction:
Home buyer shall repay a prorated share of HOME funds if property is sold prior to the five (5) year agreed-upon time period with ***funds returned to the Consortium as described in item (2) above.***
- (4) Recapture of HOME Investment:
No restriction on subsequent buyer. HOME Investment Funds subject to recapture shall be derived from net proceeds at the time of sale. If net proceeds are insufficient the repayment obligation will be reduced.
- (5) Eligible Properties:
Housing Units that meet Section 8 Housing Quality Standards (HQS) at the time of closing or that will be brought up to standard conditions as a result of a purchase/rehab loan.
- (6) Participating Lenders:
 - a) Purchase loans-any lending institution that offers purchase (mortgage) loans (commercial bank, savings and loan, mortgage bank).
 - b) Purchase/rehab loans - any lending institution that offers FHA 203(k) purchase rehab loans.

II. HOME HOUSING RULES AND CONDITIONS:

A. Eligible Property Owner

- (1) Shall be low income; purchaser shall have an annual gross income that does not exceed eighty percent (80%) median income for the Tulsa Metropolitan Statistical area. Purchasing household shall be low income at either:
 - a) The time the household initially occupies the property or;
 - b) At the time the HOME Funds are invested, whichever is later.
- (2) Must occupy the property as a principal residence. The purchaser household shall use the single-family property as its principal residence:
 - a) A deed restriction or covenant running with the land should incorporate this requirement;
 - b) The loan documents (Promissory Note) between the purchaser and the contractor shall incorporate this requirement; and
 - c) Temporary subleases are not allowed.

B. Form of Ownership

- (1) Home ownership means ownership in fee simple title.
- (2) The ownership interest may be subject to the following:
 - a) Mortgages, deeds of trust or other debt instruments approved by the Contractor.
 - b) Any other encumbrances or restrictions that do not impair the market ability of the ownership interest, other than the HOME Program restrictions on resale.

C. Property Standards - Before property transfer, Contractor shall:

- (1) Inspect the housing for health and safety defects including a visual survey for possible lead-based paint hazards;
- (2) Notify the prospective purchaser of the actions needed to cure defects (including lead-based paint abatements, if necessary); and

- (3) Notify the prospective purchaser of time frame to complete repairs.

D. Acquisition Only

Property shall meet the Section 8 (HQS) at time of initial occupancy of the Home Buyer.

E. Property Value at Time of Purchase

The value of the HOME Assisted Property to be acquired by a homebuyer shall not exceed the 203(b) mortgage limit for the area for the type of housing being purchased (single family, condominium, manufactured home, etc.).

HUD will make purchase value limits available to all participating jurisdictions each year, and annually adjusts the limits. Contractor may utilize the most current adjusted value limits as issued by HUD. The current 203(b) limit for single-family property in the Tulsa MSA and Washington County is \$271,050 (2013 FHA Limits).

F. Value shall be established by:

- (1) An appraisal by a qualified appraiser;
- (2) Transfer of property that includes rehabilitation requires an appraisal.

G. Rehabilitation

If rehabilitation is required, the appraisal value of the property (after rehabilitation) cannot exceed the 203(b) mortgage limit of \$271,050.

- (1) The after rehabilitation value estimate shall be completed prior to investment of HOME Funds;
- (2) The appraisal, if performed by third party, is an eligible project "soft" cost; and
- (3) The property value (not purchase price) shall be equal to or less than the prevailing 203(b) limits.

H. Affordable

Affordable means monthly payments for principal, interest, property taxes and insurance do not exceed thirty percent (33%) of the gross income of a family.

All aforesaid purposes of the Contractor shall be to increase the supply of affordable housing for low-

income families, stabilize property values, promote home ownership, economic reinvestment, development and revitalization within the Consortium's jurisdiction

III. PERFORMANCE STANDARDS:

- A. The purpose of this program is to increase the number of homebuyers by providing closing cost/down payment assistance. Evaluation of the contractor's performance will be based on providing financial assistance to a minimum of 65 homebuyers.
- B. The Contractor shall furnish the County, at the end of the Consortium's fiscal year, a summary of the following statistical data. Such data shall be used by the County to determine the benefit of the Contractor's services to persons of low-and-moderate income under the terms of the contract. Low and moderate income shall be defined using HUD Section 8 Income limits.
- (1) Number of clients served;
 - (2) Household income of clients served;
 - (3) Size of household;
 - (4) Family-type of households served;
 - (5) Racial characteristics of households served;
 - (6) Number of bedrooms in home purchased;
 - (7) Results of annual client monitoring (when applicable).

The data summary shall be submitted to the County 15 days following the end of the fiscal year.

In addition, the Contractor shall provide the County with the project information necessary to calculate program match.

IV. BUDGET

The Contractor shall be allocated **\$287,500.00** from Fiscal Year 2014 HOME funds to be used in the following budget categories:

Administrative (HOME)	\$ 37,500.00
Homebuyer Assistance Program	<u>\$ 250,000.00</u>
TOTAL	\$ 287,500.00

- A. No property or equipment shall be purchased by the Contractor with HOME funds.
- B. Contractor may request changes in the budget, as necessary. Budgetary line item changes must be authorized by the County Commission. The aforementioned changes shall be made only when a line item change does not involve an increase in the total funds allocated to the contract.

V. METHOD OF PAYMENT

- A. Payment for administrative funds may be made to the Contractor on a monthly reimbursement basis. The Contractor shall submit a request for funds to the County by the tenth of each month. Requests will be entered into the Integrated Disbursement and Information System (IDIS). Request will be reimbursed to the Contractor upon receipt of HOME funds by the County.
- B. Contractor will maintain proper financial records for the project, which the County reserves the right to inspect on a periodic basis.
- C. In no event will the total compensation to be paid hereunder exceed the expressly agreed maximum sum of Two Hundred Eighty Seven Thousand Five Hundred Dollars and no/100 (\$287,500.00) for all services required.
- D. From the ending date of this contract, the Contractor shall have forty-five (45) days in which to reconcile and close the project books and submit any remaining unpaid claims (for eligible expenses incurred within the contract period) to the County Treasurer's office for payment. Claims not submitted within this period will not be honored.

VI. REIMBURSEMENT OF HOME PROJECT FUNDS

All HOME funds must be spent within 15 days of draw down from the IDIS System. After that time the Contractor must return any unused funds to the County.

GENERAL TERMS AND CONDITIONS

Subcontract Notification Provision

None of the work and services covered by this contract may be subcontracted without written consent of the County. In no event

will any subcontractor incur any obligation on the part of the County.

Modification

This contract is subject to such modification as may be required by federal or state law or regulations. The work and services to be performed and the total contract amount may be modified only upon written agreement of both parties.

Disputes, Interpretation, Remedies

- A. In the event the parties fail to agree on interpretations of this contract and such conflict cannot be mutually resolved, the decision of an arbitrator shall prevail.
- B. In the event of any disagreement between the Contractor and the County relating to the technical competence of the work and services being performed and its conformity to requirements of this contract and such conflict cannot mutually resolved, the decision of an arbitrator shall prevail.
- C. Neither forbearance nor payment by the County shall be construed to constitute waiver of any remedies for any default or breach by the Contractor that exists then or occurs later.

Complaint Process and Arbitration

All claims or disputes between the Contractor and Tulsa County shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association, unless the parties agree otherwise. The Contractor and Tulsa County shall submit all disputes or claims to:

County Clerk
Tulsa County Board of County Commissioners
500 South Denver
Tulsa, OK 74103

Notice of the demand for arbitration shall be filed in writing with the other party to the homebuyer contract, and shall be made within a reasonable time after the dispute has arisen. The Notice of Demand for arbitration shall be forwarded to the arbitrator selected by the County for settlement of the dispute. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Severability Clause

If any provision under this contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this contract or its application that can be given effect without the invalid provision or application.

Hold Harmless Clause

Contractor shall save harmless the United States government, its agents, officers, and employees and the County, its agents, officers, and employees from all claims and actions, and all expenses defending same, that are brought as a result of any injury or damage sustained by any person or property in consequence of any act or omission by contractor. Contractor shall save harmless the United States government, its agents, officers, and employees and the County, its agents, officers and employees from any claim or amount recovered under Workers' Compensation Law or any other law. In any agreement with any subcontractor or any agent for Contractor, Contractor will specify that such subcontractors or agents shall hold harmless the United States government, its agents, officers, and employees, and the County, its agents, officers and employees from all the herein before described expenses, claims, actions, or amounts recovered.

Personnel

- A. The Contractor represents that he/she will secure all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County.
- B. The Contractor has full responsibility for payment of worker's compensation insurance, unemployment insurance, social security, state and federal income tax and any other deductions required by law for its employees.
- C. All of the services required hereunder will be performed by the Contractor or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

Termination of Contract for Cause

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his/her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 30 days before the effective date of such termination. In such event, the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor, and the County may withhold any payments to the Contractor until such

time as the exact amount of damages due the County from the Contractor is determined.

Termination for Convenience of the County

The County may terminate this contract at any time by giving at least 30 days notice in writing to the Contractor. If the contract is terminated by the County as provided herein, the Contractor will be paid for the time provided and all allowable expenses incurred up to the termination date.

Conflict of Interest

No member of the governing body of the County, and no other officer, employee, or agent of the County who exercises any function or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this agreement, and the Contractor shall take appropriate steps to assure compliance.

Interest of Contractor and Employees

The Contractor covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this agreement no person having any such interest shall be employed.

Reports and Information

The Contractor, at such times and in such forms as the County may require, shall furnish the County such periodic reports as it may request pertaining to the work or services undertaken pursuant to the contract, costs and obligations incurred or to be incurred in connection there with and any other matters covered by this contract.

Contractor shall furnish the County narrative reports and financial reports related to the elements of this contract in the forms and at such times as may be required by the County or federal grantor agencies.

Compliance with Local Laws

The Contractor shall comply with all applicable laws, ordinances and codes of the state and local governments, and the Contractor shall save the County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

Copyright

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor.

Records and Audits

Contractor shall retain all books, documents, papers, records, and other materials involving all activities and transactions related to this contract for at least three (3) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later. Contractor shall, as often as deemed necessary by the County, permit authorized representatives of the County and its Auditors, The U.S. Department of Housing and Urban Development, the federal or state Department of Labor and the U.S. Comptroller General to have full access to and the right to fully examine all such materials.

The Contractor shall comply with OMB circulars A-110 and A-122 requirements, where applicable. The OMB circulars are hereby made a part of this contract.

Federal Funds in Excess of \$750,000

If the Contractor is in receipt of federal funds that total in excess of \$750,000 from all sources, the Contractor shall provide a copy of its annual audit to the County for the periods of these HOME funds.

Anti-Kickback Regulations

The Contractor shall comply with all applicable anti-kickback regulations covered under the Department of Labor Regulation 29 CFR, Part III.

Equal Employment Opportunity

The Contractor shall comply with the following equal opportunity requirements as part of HOME assurances:

A. Civil Rights Act of 1964, Title VI

Contractor shall comply with Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall on the grounds of race, religion, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance.

B. Housing and Community Development Act of 1974, Section 109

Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974, which provides that no person in the United States shall on the grounds of race,

color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded under the Act.

C. Housing and Urban Development Act of 1968, Section 3

Contractor shall comply with Section 3, which provides that to the greatest extent feasible, training and employment opportunities shall be made available to lower-income residents of the unit of local government or metropolitan area (or non-metropolitan county) in which the project is located and that contracts be awarded to small businesses located within or owned in substantial part by residents of the same metropolitan area (or non-metropolitan county) as the project.

D. Affirmative Action

Contractor shall take affirmative actions steps to contract with small and minority owned firms and women business enterprises in a part of the requirements of 24 CFR Part 85.36 or 24 CFR Part 570, Sub-part J. Affirmative Actions steps include, but are not limited to, the following:

- (1) Including qualified small, minority and women business enterprises on solicitation lists.
- (2) Assuring that small, minority and women business enterprises are solicited whenever they are potential sources.
- (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, minority and women business enterprises participation.
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, minority and women business enterprises.
- (5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U.S. Department of Commerce and the local minority business development center that assists with management and technical aspects and maintains a directory of minority contractors, suppliers and vendors.
- (6) If any subcontracts are to be let, requiring the prime Contractor to take the affirmative action steps in 1 through 5 above.

Age Discrimination Act of 1975

Contractor shall comply with the provisions of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services and benefits supported by federal funds.

Rehabilitation Act of 1973, Section 504

Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in any programs or activities receiving federal financial assistance.

IN WITNESS WHEREOF, the County and Contractor have executed this contract as of the date first written above.

Metropolitan Tulsa HOME Consortium

By: _____, Chairman, Tulsa County Board of Commissioners

ATTEST:

County Clerk

APPROVED AS TO FORM:


Assistant District Attorney

Contractor: Community Action Resource and Development

BY: 
Executive Director

ATTEST:


Notary

