



a voluntary association of local governments serving Creek, Osage, Rogers, Tulsa and Wagoner Counties

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STATE OF OKLAHOMA  
TULSA COUNTY  
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**MEMORANDUM**

TO: Tulsa County Board of Commissioners

FROM: Claudia Brierre

DATE: February 14, 2019

RE: HOME CONSORTIUM FY2018 HOMEBUYER ASSISTANCE PROGRAM  
CONTRACT APPROVAL

The Consortium has HOME funds from Fiscal Year 2018 available to fund projects that promote affordable homeownership within the Consortium service area. On behalf of Tulsa County as lead entity for the Tulsa County HOME Consortium, INCOG solicited RFPs for the performance of a Homebuyer Assistance Program from non-profit organizations certified to provide homebuyer education and employing Certified Homebuyer Education Professionals. Proposals were received by INCOG on February 4, 2019 and awarded by the County on February 11, 2019. CARD was awarded funding in the amount of \$175,000 to serve approximately 35 new homebuyers.

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 MARCH 4, 2019 COMMISSION AGENDA**

## **Contract For Technical and Professional Services HOME Program**

This Contract is made and entered into as of this \_\_\_ day of March, 2019 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. (CARD), a public non-profit corporation, hereinafter called "Subrecipient".

This Contract shall become effective the 1st day of March 2019 and terminate the 30th day of June 2020. If the funds are not exhausted at the end of the contract period, the Contract period may be extended by mutual 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 Subrecipient to render certain services in conjunction with the HOME program;

NOW THEREFORE, the parties do mutually agree as follows:

### **I. SCOPE OF SERVICES**

The Subrecipient shall be responsible for the operation of a HOME Program entitled "**FY2018 Home Buyers Program**" in accordance with the terms and conditions as set forth herein. The Subrecipient 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 Subrecipient shall:

- A.** Administer this program and provide such staff, equipment and services as are necessary to operate the program from the 1st day of March 2019.
- 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. Homebuyer assistance down payment and closing cost loans will incorporate single family housing structures found within the Consortium Service Area.
- C.** Operate the program in accordance with the CARD Homebuyer Assistance Program Policies and Procedures (March 2018), reviewed and approved by the County's administrator, INCOG.

- D. Provide the County's administrator, INCOG, set-up forms, voucher, and completion reports for the purposes of entering into the HUD/IDIS financial system.
- E. 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 Subrecipient 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) **Recapture 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.*** 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. No income restriction on subsequent buyer.
  - (4) **Resale of HOME Investment:**  
The County uses only recapture restrictions in the homebuyer assistance program.
  - (5) **Eligible Properties:**  
Housing units must meet Uniform Physical Condition Standards (UPCS) or Housing Quality Standards (HQS) at the time of closing or must be brought up to standard conditions as a result of a purchase/rehab loan (not funded with these HOME funds).
  - (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 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 will incorporate this requirement;
  - b) The loan documents (Promissory Note) between the purchaser and the Subrecipient 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 Subrecipient.
  - 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, Subrecipient 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 Uniform Physical Condition Standards (UPCS) or Housing Quality Standards (HQS) at the time of closing or 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 95 percent of area median purchase price mortgage limit for the area for the type of housing being purchased

HUD-determined limits for existing single family housing units being acquired and/or rehabilitated with HOME funds, will be based on 95 percent of the median purchase price of existing housing in the area using data from the FHA single family mortgage program data for existing housing. HUD will make purchase value limits available to all participating jurisdictions each year, and annually adjust the limits. Subrecipient may utilize the most current adjusted value limits as issued by HUD.

**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 95 percent of the median purchase price of existing housing in the area using data from the FHA single family mortgage program data for existing housing.

- (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;

**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 Subrecipient 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 Subrecipient's performance will be based on providing financial assistance to a minimum of 35 homebuyers.
- B. Subrecipient shall provide Homebuyer Education Counseling Workshop to eligible applicants prior to providing assistance.
- C. The Subrecipient 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 Subrecipient'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 Subrecipient shall provide the County with the project information necessary to calculate program match.

#### **IV. BUDGET**

The Subrecipient shall be allocated **\$175,000.00** from Fiscal Year 2018 HOME funds to be used in the following budget categories:

- A. The amount allocated includes program funds for assistance to individual clients and a maximum of 15% of the HBA Loan per client for administration.
- B. No property or equipment shall be purchased by the Subrecipient with HOME funds.

#### **V. METHOD OF PAYMENT**

- A. Payment for program and administrative funds shall be made to the Subrecipient on a reimbursement basis. The Subrecipient shall submit a request for funds to the County; such supporting documentation shall include Homebuyer Set-Up Report, Homebuyer Completion report, HOME Payment Certification Voucher form, Closing Disclosure forms. Requests will be entered into the Integrated Disbursement and Information System (IDIS). Request will be reimbursed to the Subrecipient upon receipt of HOME funds by the County.
- B. Subrecipient 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 One Hundred Seventy Five Thousand Dollars and 00/100 (\$175,000.00) for all services required.
- D. From the ending date of this contract, the Subrecipient 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.

## **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 Subrecipient 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 be 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 Subrecipient that exists then or occurs later.

### **Complaint Process and Arbitration**

All claims or disputes between the Subrecipient 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 Subrecipient 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**

Subrecipient 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 Subrecipient. Subrecipient 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 subSubrecipient or any agent for Subrecipient, Subrecipient will specify that such subSubrecipients 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient shall fail to fulfill in a timely and proper manner his/her obligations under this contract, or if the Subrecipient 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 Subrecipient of such termination and specifying the effective date thereof, at least 30 days before the effective date of such termination. In such event, the Subrecipient shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Subrecipient 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 Subrecipient, and the County may withhold any payments to the Subrecipient until such time as the exact amount of damages due the County from the Subrecipient 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 Subrecipient. If the contract is terminated by the County as provided herein, the Subrecipient 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 Subrecipient shall take appropriate steps to assure compliance.

### **Interest of Subrecipient and Employees**

The Subrecipient 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 Subrecipient further covenants that in the performance of this agreement no person having any such interest shall be employed.

### **Reports and Information**

The Subrecipient, 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.

Subrecipient 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 Subrecipient shall comply with all applicable laws, ordinances and codes of the state and local governments, and the Subrecipient 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 Subrecipient.

## **Records and Audits**

Subrecipient shall retain all books, documents, papers, records, and other materials involving all activities and transactions related to this contract for at least five (5) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later. Subrecipient 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 Subrecipient shall comply with 2 CFR24 Part 200 requirements, where applicable. The OMB circulars are hereby made a part of this contract. The Grantee shall provide a copy of its annual audit to the County for the periods of these HOME funds within the earlier of 30 days after the Grantee's receipt of the auditor's report or nine months after the end of the audit period

## **Federal Funds in Excess of \$750,000**

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

## **Anti-Kickback Regulations**

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

## **Equal Employment Opportunity**

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

### **A. Civil Rights Act of 1964, Title VI**

Subrecipient 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**

Subrecipient 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**

Subrecipient 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**

Subrecipient 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 Subrecipients, suppliers and vendors.

- (6) If any subcontracts are to be let, requiring the prime Subrecipient to take the affirmative action steps in 1 through 5 above.

**Age Discrimination Act of 1975**

Subrecipient 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**

Subrecipient 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 Subrecipient 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:

Nolan M. Fields IV 2-27-19  
Assistant District Attorney

**Subrecipient: Community Action Resource and Development, Inc.**

BY: Tara De May  
Executive Director

ATTEST:

Kathie Weatherford  
Notary

