

**CITY OF FRESNO  
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

**SUBGRANT AGREEMENT FOR SITE REMEDIATION**

This SUBGRANT AGREEMENT FOR SITE REMEDIATION, dated February 17, 2022, for purposes of identification, is between the CITY OF FRESNO (the “**City**”), a California municipal corporation, and the FRESNO METROPOLITAN MINISTRY (“**Subgrantee**”), a non-profit organization.

**Background**

WHEREAS, the City received funds through United States Environmental Protection Agency’s Brownfields Cleanup Revolving Loan Fund Program (the “**BCRLF**”) and is authorized to make loans and subgrants from these funds.

WHEREAS, the City has established a Fresno Brownfields Cleanup Revolving Loan Fund Program (the “**BCRLF Program**”) to assist property owners and developers to remediate properties in the City of Fresno.

WHEREAS, Subgrantee owns the following real property in the City of Fresno: 2316 South Elm Avenue (APN 478-18-307) (referred to as the “**Site**”). The Site is described in Exhibit A.

WHEREAS, Subgrantee wishes to receive a subgrant from the City to be used for remediation of the Site (the “**Project**”) and has completed the subgrant - pre-qualification and application requirements for the BCRLF Program.

WHEREAS, the City is willing to subgrant to Subgrantee BCRLF funds for that purpose. The subgrantee must abide by the terms of this agreement, including the Terms and Conditions as defined in Exhibit B; as well as any additional applicable Environmental Protection Agency conditions for the City’s Brownfields Cleanup Revolving Loan Fund.

NOW THEREFORE, *the City and Subgrantee intending to be legally bound*, agree as follows:

I. **SUBGRANT**

A. **SUBGRANT.** The City hereby agrees to subgrant to Subgrantee the sum of \$191,000 (the “**Subgrant**”) to be used for the purpose described in this agreement. [insert details on spending per site and not to exceed amount]

B. **COLLATERAL TERMS.** In accepting the Subgrant, the Subgrantee

agrees:

1. The City shall maintain custody of the Subgrant funds until the City disburses them to Subgrantee, or any Contractor for the benefit of Subgrantee, in accordance with the terms of this agreement.
  2. Subgrantee shall have no control over the Subgrant funds that are in the custody of the City.
  3. In the event of Subgrantee's material default of this agreement, the City shall retain any undisbursed Subgrant funds, and Subgrantee will be required to return all previously disbursed Subgrant funds in accordance with Sections IV and VII of this agreement.
- C. TERM. This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below and terminates on December 31, 2023.
- D. PURPOSE.
1. Subgrantee shall use the Subgrant funds only for the costs of the removal of, and activities that are integral to the removal of, hazardous substances from the Site as set forth in the following documents and exhibits (collectively, the "**Project Documents**"):   
Exhibit C: Work Plan;   
Exhibit D: Project Budget;   
Exhibit E: Schedule.
  2. Subgrantee understands and agrees that all work performed on the Site for which Subgrant funds are used and the receipt of the Subgrant under this Agreement is conditioned upon the Subgrantee's full compliance with the Project Documents and this agreement.
  3. The cleanup must be protective of human health and the environment.
- E. REMEDATION AGREEMENT. Should Subgrantee i enter into an agreement with a qualified contractor ("**Contractor**") to execute the Work Plan. The Subgrantee shall attach and incorporate a copy of EPA Terms and Conditions (Exhibit B), as well as this agreement to any agreement between Subgrantee and the Contractor.

F. CONTRACTOR QUALIFICATIONS AND INSURANCE. Subgrantee affirms that Contractor will be required to examine the Site, will be fully familiar with local conditions, and will be able to execute the Work Plan. Contractor shall perform the Work Plan consistent with the level of care and skill exercised by similar contractors performing comparable services under comparable circumstances. Contractor shall possess a Hazardous Substance Removal and Remedial Action License Certification and the appropriate license from the California Contractor's State License Board for the past twenty-four (24) months prior to date of the Remediation Agreement.

G. TRANSACTION FEES.

1. Before closing of the Subgrant, the Subgrantee shall submit the following documents, any of which may be waived by the City:
  - a. Title report, and evidence that no outstanding taxes, fees, charges, mortgages, liens, encumbrances, or other assessments have been filed or recorded against the Site, or that the City waives exceptions on the Title Report.
  - b. Opinion by Subgrantee's legal counsel that Subgrantee, if corporation, is in good standing and that all documents executed by Subgrantee are valid and enforceable in accordance with their respective terms.
  - c. Written authorization in the form of a resolution, authorizing the Subgrant to Subgrantee, and authorizing the Subgrantee's representatives to execute the Subgrant documents on behalf of Subgrantee.
  - d. Evidence of insurance coverage with limits of liability determined by the City. All insurance coverage required shall remain in full force and effect during the term of this agreement.
2. Transaction Fees. The City, may, at its option, charge transaction fees for document preparation and recording and all other services related to the Site including, but not limited to subordination, sale or other transfer, demand notices, refinancing, reconveyance, and litigation. Subgrantee shall pay or reimburse the City on demand for all present or future documentary stamp taxes, if any, required by any state as a

condition of filing a financial statement covering collateral which is the subject of this agreement.

3. Upon Default. Upon default arising from provisions of Section VI, Subgrantee promises to pay the City all collection and attorney's fees and expenses actually incurred by the City, whether or not litigation is commenced, including but not limited to attorney's fees and penalties and/or fees due under this agreement.
  
- H. SECURITY. As security for Subgrantee's obligation to repay disbursed Subgrant funds if there is an Event of Default, the City may require Subgrantee to execute a promissory note and a deed of trust to secure such indebtedness if it arises.
  
- I. INSPECTION AND RIGHT TO STOP WORK. The City may inspect work at the Site during and upon completion of remediation, with Subgrantee to provide notice to the City when completion is imminent (not later than five days prior). The City shall select a site manager who shall perform duties including, but not limited to, coordination, oversight, and inspection of the BCRLF project response action at the Site (the "**Site Manager**"). The City shall, at all times, have the right, but not the obligation, to enter the Site during the execution of the Work Plan. If the City finds that the work is unsatisfactory or is not substantially in accordance with the Project Documents, the City shall have the right to stop work, and order work replacement by Subgrantee at Subgrantee's expense. The City shall not be obligated to make any disbursements of the Subgrant funds until all work is satisfactory to the City.
  
- J. DISBURSEMENT OF SUBGRANT FUNDS. The Subgrant funds shall be disbursed to Subgrantee or the Contractor in monthly installments as reimbursement for allowable expenses incurred by Subgrantee or the Contractor based upon the progress of the work and in accordance with the approved project budget and schedule. No installments shall be advanced to Subgrantee or the Contractor without the written approval of the Site Manager. Contract shall be provided itemized invoices for any request for eligible expenses that contains a description of services rendered, start date of service and completion date of service, if applicable.
  
- K. PROGRESS PAYMENTS AND RETENTION. All requests by Subgrantee for progress payments will be on a reimbursement basis and shall be approved by the Qualified Environmental Professional ("QEP") or a certified City Building Inspector and submitted to the City for review and approval of the City. The reimbursement

payment will be made within 30 days of receipt of the request. The City reserves the right to withhold up to ten percent of each payment as retention. Any withheld funds will be released after submitting a construction completion report and receipt of a certificate of completion, approved by the Site Manager, and receipt of properly executed lien waivers.

- L. **ADHERENCE TO BUDGET.** Subgrantee agrees to keep all expenditures from Subgrant funds within the approved budget. Subgrantee shall not exceed any of the costs enumerated in the approved project budget without the prior written approval of the Site Manager and the City.

- II. **REPRESENTATIONS.** Subgrantee makes the following representations as of the effective date of this agreement, and Grantee shall re-make these representations upon each disbursement of Subgrant funds.

- A. **CLEANUP PLANNING REQUIREMENTS.** The following provisions will apply for agreements to be executed.

1. Subgrantee shall provide the City with a copy of Phase I and Phase II Environmental Assessment of the Site performed according to the American Society of Testing and Materials (ASTM) Standards. Subgrantee may be responsible for the payment of all costs and expenses related to the Assessment, and Subgrant funds shall not be used for payment of any such costs or expenses. The environmental assessment or assessments must include Site background, the threat posed by the contaminant to public health, welfare, and the environment, all past activities conducted by any government agency, and the Site testing results.
2. An “analysis of brownfields cleanup alternatives” document that contains information about the Site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup needs to be submitted to the City. The evaluation of alternatives must include effectiveness, implementability, and the cost of the cleanup proposed.
3. Subgrantee shall make the draft analysis of brownfields cleanup alternatives document available for review and public comment for a period of not less than 30 days from the date of publication of a public notice which announces the availability of the document for public review.

4. Subgrantee shall also submit copies of the draft analysis of brownfields cleanup alternatives to the appropriate regulatory agency for review and approval and to the Site Manager, if applicable, for review and comment.
  5. After the public comment period, Subgrantee shall incorporate all appropriate comments into a final analysis of brownfields cleanup alternatives document and prepare a written response to the public comments if appropriate.
  6. Subgrantee shall prepare remedial design and engineering documents and submit them to the appropriate regulatory agency for review and approval and to Site Manager, if applicable, for review and comment. This may occur simultaneously with the submittal of the analysis of cleanup alternatives document.
  7. Prior to the initiation of any cleanup activities, Subgrantee shall prepare a detailed budget for the proposed cleanup activities and submit it to the City and EPA for approval.
- B. ENVIRONMENTAL WARRANTIS. The Subgrantee certifies that:
1. The Property is not listed or proposed for listing on the National Priorities List of the EPA.
  2. Subgrantee is not responsible for the existing environmental hazards as generator or transporter of the contamination pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended (CERCLA).
  3. Subgrantee certifies that it is not an owner operator of the site pursuant to CERCLA. If Subgrantee is or becomes an owner operator of the site pursuant to CERCLA prior to the execution of this Agreement, the Subgrantee shall certify that it falls under a CERCLA statutory exemption from liability, or that EPA could use its enforcement discretion as deemed necessary and appropriate by the said agency.
  4. Subgrantee has entered into an appropriate State response program and has received approvals required by the program and has or will submit copies of the State approvals to City and EPA.
  5. If Subgrantee will collect environmental samples using Subgrant funds, Subgrantee shall prepare a Quality

Assurance Project Plan which sets for the manner and method of collecting samples to assure the complete removal of hazardous substances and submit it to EPA for review and approval.

- C. NO VIOLATION. The making and performance by Subgrantee of this agreement does not violate any provision of federal or state law, or City of Fresno ordinance, or result in a breach of or constitute a default under any agreement, indenture, or other instrument to which Subgrantee is a party or by which Subgrantee may be bound.
  - D. AUTHORIZATION. This agreement has been duly authorized, executed and delivered, and is a valid and binding agreement of Subgrantee.
  - E. LITIGATION. There is no pending or threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Subgrantee other than those heretofore disclosed by Subgrantee to the City in writing.
  - F. NO ADDITIONAL SUBORDINATION. The obligations of Subgrantee under this agreement will not be further subordinated in right of payment to any obligation of Subgrantee, other than that which may be provided under this agreement, unless otherwise acknowledged or agreed to by the City in writing.
  - G. OWNER. Subgrantee is the owner of the Site.
- III. CONDITIONS PRECEDENT. The obligation of the City to make this Subgrant contemplated hereunder is subject to the following conditions:
- A. EPA APPROVALS. The execution of the Subgrant is subject the EPA's approval of this agreement.
  - B. APPROVAL OF CITY'S LEGAL COUNSEL. All legal matters incidental to the City's commitment to issue the Subgrant must be satisfactory to the City's City Attorney, including the form, validity, and enforceability of this agreement.
  - C. COMPLIANCE. The representations contained in this agreement shall be true on and as of the date of the signing of this agreement with the same effect as though such representations had been made on and as of such date, and on such date no event of default as defined in Section VI ("**EVENTS OF DEFAULT**") and no condition, event or act which, with the giving of notice or the lapse of time or

both would constitute an Event of Default, shall have occurred and be continuing or shall exist.

D. SUBMISSION OF REMEDIATION CONTRACTS. Subgrantee shall submit to the City copies of all bids and remediation contracts to be conducted by Contractors and subcontractors for all work required under the Work Plan approved by the appropriate regulatory agency.

IV. AFFIRMATIVE COVENANTS. Subgrantee covenants that so long as this agreement is in effect, or Subgrantee is obligated to return any funds disbursed hereunder, Subgrantee shall do the following:

A. ACCOUNTING RECORDS. Subgrantee shall document all the uses of the Subgrant funds and maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied. Subgrantee shall seek the written approval of the City prior to disposing of records. Subgrantee shall maintain documentation on the use of the Subgrant funds for a minimum of three years after the completion remediation activities supported by the Subgrant, or for the term of the Subgrant, whichever is greater, except as follows:

1. Records that are subject to audit findings shall be retained three years after such findings have been resolved.
2. Subgrantee shall permit any representative of the City, at any reasonable time, to inspect, audit and examine such books and inspect the properties of Subgrantee. All such records and supporting documents shall be made available, upon request, for inspection or audit by the City or its representatives.

B. FINANCIAL STATEMENTS AND ONGOING REPORTING.

Subgrantee shall furnish to the City:

1. Quarterly reports that demonstrate that Subgrantee is in compliance with all relevant federal and state environmental regulations and that Subgrantee meets the requirements of the BCRLF.
2. Site specific quarterly financial statements to the City, including basic accounting and control mechanisms to track use of funds and document that the funds are spent for legitimate authorized uses. Subgrantee's accounting system must track site-specific costs, and track cost activity and



operable unit if applicable.

3. Such other information as the City may reasonably request from time to time.
- C. INSPECTION OF RECORDS. Subgrantee agrees to permit the City or its designated representative to inspect and/or audit its records and books relative to this agreement at any time during normal business hours and under reasonable circumstances, and to copy therefrom any information that the City desires relevant to this agreement. The City shall provide written notice to the Subgrantee prior to the execution of this provision. Subgrantee agrees to deliver the records or to have the records delivered to the City or its designated representative at an address designated by such party within the City of Fresno. If the City or its representative finds that the records delivered are incomplete, Subgrantee agrees to pay the City's or its representative's cost to travel to the Subgrantee's office, or to other location where books or records are located, to audit or retrieve the complete records.
- D. COMPLIANCE WITH ALL LAWS. Subgrantee shall comply with all legal requirements outlined in the Terms and Conditions (Exhibit B).
- E. PREVAILING WAGES.
1. Subgrantee shall comply with the requirements outlined in the Terms and Conditions (Exhibit B) and of the Davis-Bacon Act of 1931 (42 U.S.C. §§3141 - 3148) as required by 42 U.S.C. §9604(g)(1) and 42 U.S.C. §3222. CERCLA compliance with Davis Bacon requires payment of federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with Subgrant funds. Subgrantee shall obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the Remediation Contract. If there is a conflict between the federal prevailing wages and State of California prevailing wages, Subgrantee shall pay the higher prevailing wage.
  2. Subgrantee shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages. Subgrantee shall ensure that all workers, laborers and mechanics employed in construction, alteration, installation, demolition or repair work done under this agreement are paid not less than the general prevailing rate of per diem wages, including holidays and overtime work, for each craft, classification or

type of worker by the Contractor or by any Subcontractor doing the work. The appropriate wage determinations can be obtained from the California Department of Industrial Relations (<http://www.dir.ca.gov>) and are available for inspection at the City's offices. Subgrantee shall post, or shall cause its Contractor to post, at each job site, a copy of the prevailing rate of per diem wages. Subgrantee and its Contractor shall each forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates.

3. If Subgrantee or its Contractor or any subcontractor fails to pay the applicable prevailing wage rate, Subgrantee shall indemnify, defend and hold harmless the City and its officials, officers, employees and agents against any resulting actions, demands, suits, claims or losses.

F.

#### INSURANCE.

(a) Throughout the life of this Agreement, SUBGRANTEE shall pay for and maintain in full force and effect all insurance as required in Exhibit C with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, SUBGRANTEE or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to SUBGRANTEE shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve SUBGRANTEE of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by SUBGRANTEE shall not be deemed to release or diminish the liability of SUBGRANTEE, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SUBGRANTEE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SUBGRANTEE, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

G. TAXES AND OTHER LIABILITIES. Subgrantee shall pay and discharge when due all indebted obligations, assessments, taxes real and personal, including federal and state payroll and income taxes, except such as Subgrantee may in good faith contest or as to which a bona fide dispute may arise; provided provision is made to the satisfaction of the City for eventual payment thereof in the event that it is found that the same is an obligation of Subgrantee.

H. LITIGATION. Subgrantee shall promptly give notice in writing to the City of any litigation pending or threatened against Subgrantee or the Site in excess of Five Thousand Dollars (\$5,000.00).

I. NON-DISCRIMINATION AND EQUAL OPPORTUNITY. Subgrantee will comply with all federal, state, and Local laws prohibiting discrimination on the grounds of race, color, national origin, sex, and disability. In addition, Subgrantee will undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. Subgrantee shall submit a report of such efforts on the City-provided form.

J. DEBARMENT AND SUSPENSION. The Subgrantee certifies that Subgrantee and Contractor:

1. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state, or local ("**public**") transactions;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing

a public transaction or contract under a public transaction; violation of federal or state antitrust or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.

3. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Section IV.J.2, above; and
  4. Have not within the preceding three years had a public transaction terminated for cause or default.
- K. ENVIRONMENTAL COMPLIANCE. Subgrantee certifies that Subgrantee and Contractor are not currently, nor have been, subject to any penalties resulting from environmental non-compliance at the Site. Subgrantee further certifies that they will modify the cleanup activities, as necessary and as determined by the City, based on unforeseen site conditions or public involvement requirements.
- L. NOTICE TO CHANGE IN WORK PLANS. Subgrantee will immediately report in writing any potential changes to the Work Plan referenced in Section I(D)(1) and the discovery of pollutants not identified in the Work Plan. All changes or modification to the Project or the Project Documents shall be approved in writing by the Site Manager and/or the appropriate regulatory Agency, where appropriate, and the City prior to such change or modification becoming effective. Additional costs incurred as the result of any Change Orders may be the responsibility of Subgrantee. In the event that unforeseen conditions are discovered during the project implementation, the City reserves the right to revise the Project Documents, which the Subgrantee must implement.
- M. START AND COMPLETION OF PROJECT. Subgrantee will begin the project within thirty days after execution of this agreement and will complete all work prior to December 31, 2022. Subgrantee agrees to complete the work in a timely manner in accordance with the Work Plan and Budget. Subgrantee shall notify the City when the Project is complete. The notice shall contain certification or documentation necessary to establish the following, and shall be submitted to the Site Manager and/or the appropriate regulatory Agency, where appropriate, for review and approval:
1. Certificate of Completion has been issued for the Project by QEP;

2. A Construction Completion Report in accordance with all applicable EPA guidance. This report shall summarize the actions taken, the resources committed, and the problems encountered in completion of the Project, if any.
  3. Identify any institutional controls required.
- N. **RETURN OF SUBGRANT FUNDS.** If Subgrantee is required to return any Subgrant funds to the City due to Subgrantee's defaulting on this agreement, the Subgrantee shall punctually pay previously dispersed grant funds at the times and place and in the manner specified by the City pursuant to Section VII of this agreement.
- V. **NEGATIVE COVENANTS.** Subgrantee further covenants that so long as this agreement is in effect, Subgrantee will not without prior written consent of the City use Subgrant funds other than for activities approved under the EPA Terms and Conditions and for the activities stated under Section I(D)(1). Subgrant funds will not be used for administrative or programmatic activities.
- VI. **EVENTS OF DEFAULT.**
- A. Each of the following is an "**Event of Default**":
1. Subgrantee assigns this agreement, or any proceeds advanced hereunder or any interest herein to a third party, or if the Site or any interest conveyed, assigned, or otherwise transferred, without the prior written consent of the City.
  2. Any representation or warranty made by Subgrantee hereunder proves to be false or misleading in any material respect.
  3. Use of the Subgrant funds for a purpose other than that stated in Section I(D)(1).
  4. Default by Subgrantee in the performance of any other term, covenant or agreement contained herein which is not cured within 30 days from its occurrence.
  5. Default by Subgrantee under the terms of any agreement or instrument pursuant to which Subgrantee has borrowed money from any person or entity.
  6. The failure of Subgrantee to promptly pay and discharge any

judgment or levy of any attachment, execution, or other process against the assets of Subgrantee, and such judgment be not satisfied, or such levy or other process be not removed within 30 days after the entry or levy thereof, or at least 5 days prior to the time of any proposed sale under any such judgment or levy.

7. Subgrantee shall be adjudicated as bankrupt or insolvent, or shall consent to or apply for the appointment of a receiver, trustee or liquidator of itself or any of its property, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assessment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization or arrangement in a proceeding under any bankruptcy law, or Subgrantee or its directors or majority stockholders shall take action looking into the dissolution, liquidation, or reorganization of Subgrantee.
8. Sale or transfer of any part of the Site prior to completion of the remediation work, without prior approval of the City.
9. Failure of Subgrantee to complete Work Plan.

B. SURRENDER OF FUNDS. If there is an Event of Default, any undispersed Subgrant funds under this agreement shall be surrendered by Subgrantee and shall become immediately due and payable to the City without presentment, notice or demand, all of which are hereby expressly waived by Subgrantee, and the obligations, if any, of the City to permit further disbursements under this agreement shall immediately cease and terminate.

C. SECURE SITE. If there is an Event of Default, the Subgrantee shall secure the Site. The cost of securing the Site is the responsibility of Subgrantee. If Subgrantee fails to secure the Site within 24 hours, the City may do so at the Subgrantee's sole cost.

D. CITY ACCESS. If there is an Event of Default or failure to complete the Work Plan, Subgrantee hereby grants the City access to the Site, at the City's discretion, to complete the Work Plan.

VII. REMEDIES OF CITY. Upon the occurrence of any one or more Event of Default and at any time thereafter:

- A. The City may exercise, singly or in combination, any or all of the rights, powers and privileges provided in this Section VII and all other

remedies available to the City under this agreement, at law or in equity, at any time and from time to time, and such exercise shall not constitute a waiver of any of the City's rights or remedies thereunder whether or not the Subgrantee is required to return any of the Subgrant funds and whether or not the City shall have instituted any foreclosure proceedings or other actions for the enforcement of its rights under this agreement.

- B. The City shall be entitled to exercise all other remedies provided to the City under this agreement or otherwise available under California law, including, but not limited to:
  - 1. The appointment of a receiver;
  - 2. The institution of a suit in equity or other appropriate proceedings for specific performance or an injunction against a violation of this agreement; and
  - 3. Taking possession of the Site and performing any work and labor necessary to complete the Work Plan in which event expenditures therefore may be deemed a loan to Subgrantee, payable on demand, bearing interest at the maximum rate allowed by law.
- C. If, as the result of any Event of Default, the Subgrantee is required to return previously disbursed Subgrant funds under Section IV.N, such amounts shall be deemed a loan payable on demand, bearing interest at the maximum rate allowed by law.
- D. The City may, but is not obligated to, set-off against any Subgrantee's property in which it has a security interest.

#### **VIII. INDEMNIFICATION.**

To the furthest extent allowed by law, SUBGRANTEE shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, SUBGRANTEE or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. SUBGRANTEE 'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall

not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If SUBGRANTEE should subcontract all or any portion of the work to be performed under this Agreement, SUBGRANTEE shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

IX. **MISCELLANEOUS.**

A. **WAIVER.** No delay or failure of the City shall affect any right, power, or privilege hereunder; nor shall any single or partial exercise thereof of any abandonment or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of the City hereunder are cumulative and not exclusive. Any waiver, permit, consent, or approval of any kind by the City of any breach or default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

B. **SUCCESSORS.** This agreement shall be binding upon the permitted assigns or successors of Subgrantee and the City. This agreement shall not be assigned or transferred by Subgrantee without the written consent of the City and any purported assignment or transfer without such prior written consent shall be void.

C. **NOTICES.** All notices, requests and demands given to or made upon the respective parties under this agreement shall be deemed to have been given or made when deposited in the mail, first class postage prepaid, and addressed as follows:

Subgrantee:

City:

D. **COSTS AND ATTORNEY'S FEES.** Subgrantee will reimburse the City for all costs incurred by the City, including those reasonably incurred by the City's staff attorneys or outside attorneys, in enforcing this agreement, in actions for declaratory relief in any way related to this agreement, or in collecting any sum which becomes due the City as a loan under Section VII.C.

E. **CALIFORNIA LAW APPLICABLE.** This agreement shall be construed in accordance with the laws of the State of California.




Venue for any actions arising from this agreement shall be Fresno County.

- F. EXHIBITS. Exhibits A – E are a part of this agreement.
- G. RELATIONSHIP. The relationship of the City and Subgrantee is that of subgrantor and subgrantee. No party hereto intends to create any other relationship hereby, and the parties disavow and negate any intention to create a partnership or joint venture hereby.
- H. ENTIRE AGREEMENT.
1. The terms and conditions of this agreement, all exhibits attached, and any documents expressly incorporated by reference represents the entire agreement between the parties with respect to the subject matter of this agreement. This agreement shall supersede any prior agreements, oral or written, regarding the subject matter of this agreement between the City and Subgrantee. No other agreement, contract, statement, or promise relating to the subject matter of this agreement shall be valid or binding except by a written amendment to this agreement.
  2. If any conflicts arise between the terms and conditions of this agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this agreement shall control.
  3. If any nonmaterial part of this agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

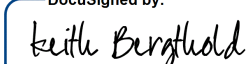
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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

DocuSigned by:  
  
By: \_\_\_\_\_  
7468A2609E1A4DF...  
Jennifer Clark,  
Director

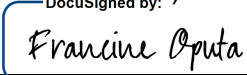
FRESNO METROPOLITAN MINISTRY,  
Incorporated

DocuSigned by:  
  
By: \_\_\_\_\_  
D445348757C84F6...  
Name: Keith Bergthold

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

DocuSigned by:  
  
By: \_\_\_\_\_ 2/4/2022  
0A8188F889DD247...  
Angela M. Karst Date  
Deputy City Attorney

Title: Executive Director  
(If corporation or LLC., Board Chair, Pres.  
or Vice Pres.)

DocuSigned by:  
  
By: \_\_\_\_\_  
BF8CDE8CF6DF473...  
Name: Francine Oputa

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

Title: Board President  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

## Exhibit C

### INSURANCE REQUIREMENTS

#### Consultant Service Agreement between City of Fresno (“CITY”) and Fresno Metropolitan Ministry (“SUBGRANTEE”) Site Remediation

#### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

#### **MINIMUM LIMITS OF INSURANCE**

SUBGRANTEE shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of

the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability*

*insurance* covering materials to be transported by SUBGRANTEE pursuant to the Agreement.

### **UMBRELLA OR EXCESS INSURANCE**

In the event SUBGRANTEE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

SUBGRANTEE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and SUBGRANTEE shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) SUBGRANTEE shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. SUBGRANTEE is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, SUBGRANTEE shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to

expire during the work to be performed for CITY, SUBGRANTEE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

- (ii) In the event this Contract involves any lead-based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Contract involves any asbestos environmental hazard (e.g., asbestos remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Contract involves any mold environmental hazard (e.g., mold remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and “microbial matter including mold” within the definition of “Pollution” under the policy.
- (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iv) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. SUBGRANTEE shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (v) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the SUBGRANTEES’ insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and non contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If SUBGRANTEE maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by SUBGRANTEE.

- (vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vii) For any claims related to this Agreement, SUBGRANTEE'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the SUBGRANTEE'S insurance and shall not contribute with it.
- (viii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- (ix) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

**PROVIDING OF DOCUMENTS** - SUBGRANTEE shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, SUBGRANTEE shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of SUBGRANTEE shall also be required to provide all documents noted herein.

**CLAIMS-MADE POLICIES** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by SUBGRANTEE.
- (ii) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.

- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, SUBGRANTEE must purchase “extended reporting” period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

**SUBCONTRACTORS** - If SUBGRANTEE subcontracts any or all of the services to be performed under this Agreement, SUBGRANTEE shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, SUBGRANTEE will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.