

**CITY OF FRESNO  
COMMUNITY DEVELOPMENT BLOCK SUBRECIPIENT AGREEMENT**

THIS AGREEMENT, entered this 19<sup>th</sup> day of November, 2018 by and between the City of Fresno, California, a municipal corporation, acting by and through its Development and Resource Management – Housing and Community Development Division, (GRANTEE) and Habitat For Humanity Fresno, Inc. (SUBRECIPIENT).

WHEREAS, the U.S. Department of Housing and Urban Development, hereinafter referred to as “HUD”, provides funding under its Community Development Block Grant Program, hereinafter “CDBG”, as authorized under Title I of the Housing and Community Development Act of 1974, as amended, and implemented under Title 24 of the Code of Federal Regulations, hereinafter collectively referred to as the “Act”, incorporated herein by its reference; and

WHEREAS, GRANTEE is a recipient of CDBG funding for fiscal year 2018-2019 for use in funding eligible activities furthering established national objectives to benefit its low and moderate income residents as defined in the Act; and

WHEREAS, GRANTEE in accordance with its 2015-2019 Consolidated Plan and FY 2019 Annual Action Plan, as amended, desires to provide CDBG funds to SUBRECIPIENT, for activities and services, as more fully described in Exhibit A, Scope of Services, upon the terms and conditions in this Agreement; and

WHEREAS, pursuant to City Resolution No. 2018-130, the City Manager is authorized to execute CDBG Agreements, on behalf of GRANTEE, that are within available allocated CDBG funding and in a standard form approved by the City Attorney.

NOW, THEREFORE, it is agreed between the parties hereto that:

**1. TERM**

The term of this Agreement shall commence on July 26, 2018, and unless terminated earlier pursuant to the terms of this Agreement, shall continue until July 25, 2019. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which SUBRECIPIENT remains in control of CDBG funds or other CDBG assets, including Program Income.

**2. SCOPE OF WORK**

SUBRECIPIENT will be responsible for administering services in a manner satisfactory to GRANTEE and consistent with any standards required as a condition of providing these funds. GRANTEE will also perform the services set forth in Exhibit “A” entitled “Scope of Work” attached hereto and incorporated by reference herein and made a part hereof.

SUBRECIPIENT shall administer the Program for the whole of the term of the Agreement. SUBRECIPIENT shall administer the Program in compliance with the CDBG requirements and in a manner that meets the CDBG national objective(s) of 24 CFR 570.208.

GRANTEE will monitor the performance of SUBRECIPIENT against goals and performance standards as stated above. Substandard performance as determined by GRANTEE will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by SUBRECIPIENT within a reasonable amount of time after being notified by GRANTEE, contract suspension or termination procedures will be initiated.

### **3. RECORDS AND REPORTS**

On a quarterly basis, SUBRECIPIENT shall submit to GRANTEE, in a form acceptable to GRANTEE, a performance report summarizing the number of unduplicated persons served, including race, ethnicity, and income data. The performance report shall be submitted within thirty days of the close of each quarter.

SUBRECIPIENT shall ensure the CDBG grant funds provided by GRANTEE are clearly identified as a subaward and include the following information:

- SUBRECIPIENT NAME:
- Subrecipient ID (DUNS):
- Federal Award Identification Number: (CDBG Grant#)
- Federal Award Date:
- Period of Performance:
- Federal Funds Obligated by this Agreement:
- Total Federal Funds Obligated to SUBRECIPIENT:
- Total Amount of the Federal Award:
- Federal Award project description:
- Name of Federal awarding agency: Dept. of Housing Urban Development
- Name of pass-through entity: City of Fresno, California
- Award Official Contact Information: Name and Address
- CFDA Number: 14.218
- CFDA Name: Community Development Block Grant
- Identification of R&D: No
- Indirect cost rate for the Federal award: 10%

SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities funded under this Agreement. Such records shall include but not be limited to:

- a) A full description of each activity undertaken;
- b) Records demonstrating each activity undertaken meets one of the National Objectives of the CDBG program;

- c) Records required to determine the eligibility of activities;
- d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f) Financial records as required by 24 CFR Part 200 as amended by 24 CFR 570.502, and
- g) Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

SUBRECIPIENT shall retain all project files, financial records, and any other documents related to the Program for a period of three years from the date of the close out of this Agreement, except in the following cases:

- If any litigation, claim, or audit is started before the expiration of the three year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- When the SUBRECIPIENT is notified in writing by the GRANTEE to extend the retention period.
- Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.

GRANTEE shall monitor and evaluate SUBRECIPIENT's performance under this Agreement to determine compliance with this Agreement and CDBG requirements. SUBRECIPIENT shall cooperate with GRANTEE and any federal auditors authorized by GRANTEE and shall make available all information, documents, and records reasonably requested and shall provide GRANTEE the reasonable right of access to both records and personnel during normal business hours for the purpose of assuring compliance with this Agreement and evaluating performance hereunder. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

#### **4. METHOD OF PAYMENT**

Grant funds shall be disbursed to reimburse SUBRECIPIENT in accordance with the Proposed Budget attached hereto as Exhibit "B" and incorporated herein. SUBRECIPIENT's sole source of compensation hereunder will be in the form of a grant of CDBG funds as described herein. It is expressly agreed and understood that the total amount to be paid by GRANTEE under this Agreement shall not exceed TWO HUNDRED FIFTEEN THOUSAND AND 00/100 (\$215,000). SUBRECIPIENT shall submit to GRANTEE a request for payment, in a form acceptable to GRANTEE, on a monthly basis for the term of the Agreement. Said request shall be accompanied with supporting documentation, including but not limited to paid receipts, invoices and timesheets, to allow GRANTEE to determine compliance with applicable federal regulations, including cost allowability.

GRANTEE shall pay all approved requests for payment pursuant to this Agreement within the normal course of business, typically within forty-five days of receipt. If GRANTEE disallows any cost submitted by SUBRECIPIENT, within ten business days GRANTEE will provide written notification to SUBRECIPIENT of the disallowance, including any corrective action necessary to process payment.

All funds are paid contingent upon SUBRECIPIENT's continuous compliance with all applicable, uniform administrative requirements, program regulations, and recapture and reversion requirements set out in the Act. Any unearned or recaptured CDBG funding shall be returned to GRANTEE within thirty days of the earlier of termination of this Agreement or notice by GRANTEE. Any interest earned or received by SUBRECIPIENT thereon shall be remitted to the GRANTEE.

An authorized official for SUBRECIPIENT must provide a signed certification with each request that states the following: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

SUBRECIPIENT understands and agrees the availability of CDBG funds is subject to the control of HUD, or other federal agencies, and should the CDBG funds be encumbered, withdrawn or otherwise made unavailable to GRANTEE, whether earned by or promised to SUBRECIPIENT, and/or should GRANTEE in any fiscal year hereunder fail to allocate CDBG funds, GRANTEE shall not provide said funds unless and until they are made available for payment to GRANTEE by HUD and GRANTEE receives and allocates said funds. No other funds owned or controlled by GRANTEE shall be obligated under this Agreement to the Project(s).

## **5. PROGRAM INCOME**

Any income generated by SUBRECIPIENT from the use of CDBG funds governed by this Agreement shall be considered CDBG program income. All CDBG program income (as defined at 24 CFR 570.500(a)) shall be retained by SUBRECIPIENT for the term of this Agreement. The use of all CDBG program income is reserved specifically for services outlined in the Scope of Work and is subject to the terms of this Agreement.

## **6. UNIFORM ADMINISTRATIVE REQUIREMENTS**

SUBRECIPIENT shall adhere to and follow the Uniform Administrative Requirements found in the U.S. federal regulations at 2 CFR Part 200.

SUBRECIPIENT shall establish and maintain effective internal control over CDBG funds made available through this Agreement to provide reasonable assurance that the Program is administered in compliance with applicable federal statutes, regulations, and the terms and conditions of this Agreement. This includes evaluation and internal monitoring of the Program and prompt, appropriate action when instances of noncompliance are identified.

SUBRECIPIENT shall follow a written procurement policy that allows for full and open competition that meets the minimum standards of the U.S. federal regulations at 2 CFR 200.317 through 200.326.

SUBRECIPIENT shall take reasonable measures to safeguard protected personally identifiable information and other information GRANTEE designates as sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

SUBRECIPIENT will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least 51% owned and controlled by minority group members or women. SUBRECIPIENT may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

SUBRECIPIENT is prohibited from using CDBG funds or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

SUBRECIPIENT shall comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

SUBRECIPIENT shall comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. SUBRECIPIENT shall maintain documentation that demonstrates compliance with hour and wage requirements of this part.

SUBRECIPIENT agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities.

SUBRECIPIENT shall maintain a financial management system that identifies all federal awards received and expended and the federal programs under which they were received, including:

- The CFDA title and number,
- Federal award identification number and year,
- Name of the Federal agency, and
- Name of the pass-through entity, if any.

SUBRECIPIENT shall follow written financial management policies and procedures that, at a minimum, provide for:

- Determination of allowable costs in accordance with the terms and conditions of this Agreement and the federal cost principles published in the U.S. federal regulations at 2 CFR 200 Subpart E;
- Effective control over, and accountability for, all funds, property, and other assets to ensure all assets are safeguarded and they are used solely for authorized purposes; and
- Accurate financial reporting on federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

## **7. AUDIT REQUIREMENTS**

Within thirty days of the close of SUBRECIPIENT's fiscal year, SUBRECIPIENT shall provide to GRANTEE a certification stating the total amount of federal awards expended in the fiscal year. The certification shall be signed by an authorized official.

SUBRECIPIENT agrees to have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200 Subpart F if SUBRECIPIENT expends \$750,000 or more in federal awards during any fiscal year that overlaps with the term of this Agreement. SUBRECIPIENT shall submit a copy of the audit to GRANTEE and the Federal Audit Clearinghouse (FAC) within thirty calendar days after receipt of the auditor's report(s). SUBRECIPIENT shall make copies of the audit available for public inspection for three years from the date of submission to the FAC.

GRANTEE shall issue a management decision for audit findings that relate to this Agreement within six months of acceptance of the audit report by the FAC.

## **8. USE AND REVERSION OF ASSETS**

SUBRECIPIENT shall transfer to GRANTEE any CDGB funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR 570.502-504, as applicable.

## **9. CONFLICT OF INTEREST**

SUBRECIPIENT shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of SUBRECIPIENT. If SUBRECIPIENT has a

parent, affiliate, or subsidiary organization, the standards of conduct must cover organizational conflicts of interest to ensure SUBRECIPIENT is able to be impartial in conducting a procurement action involving a related organization.

At a minimum, the standards of conduct shall include any person who is an employee, agent, consultant, officer, or elected official or appointed official of SUBRECIPIENT. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Both SUBRECIPIENT and any subcontractors shall complete a Disclosure of Conflict of Interest Form included as Exhibit "D". Upon written request, GRANTEE may grant an exception to the conflict of interest provisions on a case-by-case basis.

## **10. OTHER PROGRAM REQUIREMENTS**

SUBRECIPIENT agrees to administer the services in compliance with all applicable City, State, and Federal guidelines including, but not limited to the following federal program requirements as now in effect and as may be amended from time to time:

Section 109 of the Housing and Community Development Act of 1974 requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs.

Equal Opportunity requirements as described in Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107.

Equal Protection of the Laws for Faith-Based and Community Organizations as described in Executive Order 13279 and the implementing regulations at 41 CFR chapter 60.

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply.

Exclusion of Debarred and Suspended Contractor requirements as described in 2 CFR Part 180.

Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for CDBG benefits, including financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available with CDBG. Benefits do not include relocation services and payments to which persons displaced are entitled by law (24 CFR §570.613).

A building or facility designed, constructed, or altered with CDBG funds governed by this Agreement that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

The contract provisions for non-federal entity contract under federal awards as set forth in Exhibit "E".

## **11. CLOSEOUT AND REVERSION OF ASSETS**

GRANTEE will close out this Agreement when it determines that all applicable administrative actions and all required work of the Agreement have been completed by SUBRECIPIENT.

Unless provided an extension through written notification by GRANTEE, SUBRECIPIENT shall complete the following actions no later than thirty calendar days after the end date of the term of this Agreement:

- Submit, all financial, performance, and other reports as required by the terms of this Agreement;
- Liquidate all obligations incurred under the Agreement; and
- Transfer to GRANTEE any accounts receivable attributable to the use of CDBG funds, including CDBG program income.

Notwithstanding the expiration or earlier termination of this Agreement, SUBRECIPIENT's obligations to GRANTEE shall not terminate until all closeout requirements are completed. The following obligations of SUBRECIPIENT shall survive the termination of this Agreement:

- SUBRECIPIENT'S indemnity obligations;
- the obligation to cause audits to be performed relating to SUBRECIPIENT'S activities and costs under this Agreement;
- the obligation to repay to GRANTEE any CDBG proceeds improperly disbursed to SUBRECIPIENT or disbursed for ineligible expenditures;



- any other obligations which cannot by their nature be performed until after the expiration of the Agreement such as the submittal of final payment request and performance reports.

Any real or personal property purchased in whole or in part with CDBG funds provided under this Agreement are subject to the following requirements that shall survive the termination of this Agreement:

- Insurance and reporting requirements regarding real and personal property acquired with federal funds in accordance with the uniform administrative requirements contained in the U.S. federal regulations published at 2 CFR Part 200; and
- For real property under SUBRECIPIENT's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000, said property shall be used to meet one of the national objectives in 24 CFR 570.208 for five years after close out of this Agreement. If the property is disposed of within five years of the close out of this Agreement, SUBRECIPIENT shall reimburse GRANTEE the a percentage of the current fair market value of the property equal to the percentage of CDBG funds expended to the overall acquisition and improvement cost of the property.

## **12. SUSPENSION AND TERMINATION**

Termination for Convenience. This Agreement may be terminated by either party if SUBRECIPIENT and GRANTEE mutually agree in writing to its termination and upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

Furthermore, GRANTEE may suspend or terminate this Agreement if SUBRECIPIENT materially fails to comply with any terms of this Agreement.

If, through any cause, the SUBRECIPIENT fails to fulfill in timely and proper manner its obligations under this Agreement, ineffectively or improperly use funds provided under this Agreement, or if SUBRECIPIENT shall violate any of the covenants, agreements, or stipulations of this Agreement, GRANTEE shall thereupon have the right to terminate this Agreement by giving written notice to SUBRECIPIENT of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents and reports prepared by SUBRECIPIENT under this Agreement shall, at the option of GRANTEE, become its property and SUBRECIPIENT shall be entitled to receive just and equitable payment for any satisfactory work completed subject to the limitations of this Agreement.

## **13. MANDATORY DISCLOSURES**

SUBRECIPIENT shall provide written notice to the GRANTEE within five days of all potential conflicts of interest and violations of criminal law involving fraud, bribery, or gratuity violations potentially affecting this Agreement. Failure to make required disclosures can result in termination of the Agreement and suspension or debarment from future federal awards.

#### **14. FINDINGS CONFIDENTIAL**

Any reports, information or data given to or prepared by SUBRECIPIENT concerning GRANTEE under this Agreement shall not be made available to any individual or organization by SUBRECIPIENT without first submitting them to GRANTEE.

#### **15. GENERAL CONDITIONS**

SUBRECIPIENT shall implement this Agreement in accordance with applicable Federal, State, and City laws, ordinances and codes. Should a Project receive additional funding after the commencement of this Agreement, SUBRECIPIENT shall notify GRANTEE in writing within thirty days of receiving notification from the funding source and submit a cost allocation plan for approval by GRANTEE within forty-five days of said official notification.

SUBRECIPIENT agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) SUBRECIPIENT does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) SUBRECIPIENT does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

SUBRECIPIENT shall comply with the bonding and insurance requirements set forth in 2 CFR Part 200. The SUBRECIPIENT shall additionally carry sufficient insurance and bond coverage as set forth in Exhibit "C".

SUBRECIPIENT shall subcontract all work or services through written contract or agreement subject to each provision of this Agreement and applicable City, State and Federal guidelines and regulations. Prior to execution of any subcontract hereunder, such subcontracts must be submitted by SUBRECIPIENT to GRANTEE for its review and approval, which will specifically include a determination of compliance. None of the work or services covered by this Agreement, including but not limited to consultant work or services, shall be subcontracted by SUBRECIPIENT or reimbursed by GRANTEE without prior written approval.

#### **16. INDEPENDENT CONTRACTOR**

In furnishing the services provided for herein, SUBRECIPIENT is acting solely as an independent contractor. Neither SUBRECIPIENT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of GRANTEE for any purpose. GRANTEE shall have no right to control or supervise or direct the manner or method by which SUBRECIPIENT shall perform its work and functions. However, GRANTEE shall

retain the right to administer this Agreement so as to verify that SUBRECIPIENT is performing its obligations in accordance with the terms and conditions thereof.

This Agreement does not evidence a partnership or joint venture between SUBRECIPIENT and GRANTEE. SUBRECIPIENT shall have no authority to bind GRANTEE absent GRANTEE's express written consent. Except to the extent otherwise provided in this Agreement, SUBRECIPIENT shall bear its own costs and expenses in pursuit thereof.

Because of its status as an independent contractor, SUBRECIPIENT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to GRANTEE's employees. SUBRECIPIENT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, SUBRECIPIENT shall be solely responsible, indemnify, defend and save GRANTEE harmless from all matters relating to employment and tax withholding for and payment of SUBRECIPIENT's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in GRANTEE employment benefits, entitlements, programs and/or funds offered employees of GRANTEE whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, SUBRECIPIENT may be providing services to others unrelated to GRANTEE or to this Agreement.

#### **17. INDEMNIFICATION**

To the furthest extent allowed by law including California Civil Code section 2782, SUBRECIPIENT shall indemnify, hold harmless and defend GRANTEE 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 GRANTEE, SUBRECIPIENT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. SUBRECIPIENT's obligations under the preceding sentence shall apply regardless of whether GRANTEE or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of GRANTEE or any of its officers, officials, employees, agents or volunteers.

If SUBRECIPIENT should contract or subcontract all or any portion of the work to be performed under this Agreement, SUBRECIPIENT shall require each SUBRECIPIENT and/or subcontractor to indemnify, hold harmless and defend

GRANTEE 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.

## **18. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following contract representatives:

### **GRANTEE**

City of Fresno  
Development and Resource  
Management Department, Housing  
and Community Development Division  
2600 Fresno Street Room 3076  
Fresno, CA 93721

### **SUBRECIPIENT**

Habitat for Humanity Fresno, Inc.  
C/O Matthew Grundy, CEO  
4991 E McKinley Ave, Suite 123  
Fresno, CA 93727

## **19. AMENDMENTS**

GRANTEE or SUBRECIPIENT may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the GRANTEE's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the GRANTEE or SUBRECIPIENT from its obligations under this Agreement.

GRANTEE may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both GRANTEE and SUBRECIPIENT.

## **20. ASSIGNMENT**

SUBRECIPIENT shall not assign or transfer any interest in this Agreement without the prior written consent of the GRANTEE.

## **21. SEVERABILITY**

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining

provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

## **22. ATTORNEY FEES**

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party will be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

## **23. BINDING ON ALL SUCCESSORS AND ASSIGNS**

Unless otherwise expressly provided in this Agreement, all the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective nominees, heirs, successors, assigns, and legal representatives.

## **24. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

## **25. CUMULATIVE REMEDIES**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. All powers and remedies given by this Agreement shall be cumulative and in addition to those otherwise provided by law.

## **26. EFFECTIVE DATE**

This Agreement shall be effective upon the Parties' complete execution following City Council approval.

## **27. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by written instrument duly authorized and executed by both GRANTEE and SUBRECIPIENT.

## **28. EXHIBITS**

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

## **29. EXPENSES INCURRED UPON EVENT OF DEFAULT**

SUBRECIPIENT shall reimburse GRANTEE for all reasonable expenses and costs of collection and enforcement, including reasonable attorney's fees, incurred by GRANTEE as a result of one or more Events of Default by SUBRECIPIENT under this Agreement.

### **30. GOVERNING LAW AND VENUE**

Except to the extent preempted by applicable federal law, the laws of the State of California shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement. Venue for filing any action to enforce or interpret this Agreement will be Fresno County, California.

### **31. HEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

### **32. INTERPRETATION**

This Agreement in its final form is the result of the combined efforts of the parties. Any ambiguity will not be construed in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

### **33. NO THIRD PARTY BENEFICIARY**

The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties other than expressly identified herein. No subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by SUBRECIPIENT shall have any rights hereunder and shall look to SUBRECIPIENT as their sole source of recovery if not paid. No third party may enter any claim or bring any such action against GRANTEE under any circumstances. Except as provided by law, or as otherwise agreed to in writing between GRANTEE and such person, each such person shall be deemed to have waived in writing all right to seek redress from GRANTEE under any circumstances whatsoever. SUBRECIPIENT shall include this paragraph in all contracts/subcontracts.

### **34. NO WAIVER**

Neither failure nor delay on the part of the GRANTEE in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the SUBRECIPIENT therefrom shall be effective unless the same shall be in writing, signed on behalf of the GRANTEE by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the SUBRECIPIENT in any case shall entitle the SUBRECIPIENT to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the GRANTEE's right to take other or further action in any circumstances without notice or demand.

**35. NON-RELIANCE**

SUBRECIPIENT hereby acknowledges having obtained such independent legal or other advice as it has deemed necessary and declares that in no manner has it relied on GRANTEE, its agents, employees or attorneys in entering into this Agreement.

**36. PRECEDENCE OF DOCUMENTS**

In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement will control.

**37. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

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


**GRANTEE**  
CITY OF FRESNO,  
A California municipal corporation

By:   
WILMA QUAN-SCHECTER,  
CITY MANAGER

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney


By:   
Tracy N. Parvanian                      Date  
Senior Deputy City Attorney      11-15-18

ATTEST:  
YVONNE SPENCE, MMC  
City Clerk


By:   
Deputy      Marcos Martinez  
11/29/18

Addresses:  
CITY:  
City of Fresno  
Attention: Thomas Morgan  
Housing Manager  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
Phone: (559) 621-8300  
FAX: (559)

**SUBRECIPIENT**  
HABITAT FOR HUMANITY FRESNO, INC.

By:   
Name: Glenda Hill

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

By:   
Name: Matthew Grundy

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

SUBRECIPIENT:  
Habitat for Humanity Fresno, Inc.  
Attention: Matthew Grundy  
CEO  
4991 E McKinley Ave, Suite 123  
Fresno, CA 93727  
Phone: (559) 237-4102 x100  
FAX:

- Attachments:  
EXHIBIT A: SCOPE OF WORK  
EXHIBIT B: PROPOSED BUDGET  
EXHIBIT C: INSURANCE REQUIRMENTS  
EXHIBIT D: CONFLICT OF INTEREST  
EXHIBIT E: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY  
CONTRACTS UNDER FEDERAL AWARDS



**EXHIBIT A**  
**SCOPE OF WORK**

Matrix Code: 14A Rehab: Single-Unit Residential  
National Objective: LMH  
CDBG Eligibility: 24 CFR 570.202

**Project Description:**

Habitat for Humanity Fresno County will provide three types of rehabilitation programs:

- 1) Emergency Home Repair Program available to low-income senior households who own and occupy their homes within the city of Fresno. The program provides for emergency home repairs or replacement of a major household component that subjects the senior household to live without basic plumbing, electrical, heating, air conditioning or security;
- 2) Minor Home Repair Program available to income eligible households in the City's target areas. The program provides for corrections of code violations that threaten a household's health and general well-being or safety; and
- 3) Roof Repair and Replacement Program that provides for the repair and replacement of roofing for income eligible households located in the City's target area and/or senior households citywide.

Services will be provided based on the information included in the 2018 application received by the City.

***Records to Be Maintained***

The subrecipient shall maintain records including, but not limited to:

**Basic Activity Information**

The SUBRECIPIENT shall maintain a project file that contains a full description of each activity assisted with CDBG funds, including its location, the amount of CDBG funds budgeted, obligated and expended for the activity, and the eligibility and national objective under which it is eligible.

Data on the extent to which each racial and ethnic group and have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.

**Financial Management Records**

The SUBRECIPIENT shall maintain financial records in accordance with the applicable requirements listed in Sec. 570.502, including source documentation.

The project file must document how the CDBG funds are expended. Such documentation must include, to the extent applicable:

- Invoices with supporting documentation
- Evidence that adequate procurement practices were in place and followed
- Schedules containing comparisons of budgeted amounts and actual expenditures,
- Construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), if applicable
- Other documentation appropriate to the nature of the activity

**National Objective Compliance - Low Mod Housing Activities (LMH) – Owner**

The SUBRECIPIENT shall maintain records for each owner-occupied unit, including:

- The total cost of the activity, including both CDBG and non-CDBG funds.
- a determination of beneficiary's household size and estimated annual income (as defined under the 24 CFR 5.609) completed and signed by the SUBRECIPIENT supported by documentation such as pay stubs and other accepted forms of income verification.

SUBRECIPIENT shall ensure the CDBG grant funds provided by GRANTEE are clearly identified as a subaward and include the following information:

- SUBRECIPIENT NAME: Habitat for Humanity Fresno, Inc.
- Subrecipient ID (DUNS): 602083818
- Federal Award Identification Number: B-18-MC-06-0001
- Federal Award Date: 09/12/2018
- Period of Performance: July 26, 2018 – July 25, 2019
- Federal Funds Obligated by this Agreement: CDBG
- Total Federal Funds Obligated to SUBRECIPIENT: \$215,000
- Total Amount of the Federal Award: \$6,904,510
- Federal Award project description: See Exhibit A – Scope of Work
- Name of Federal awarding agency: Dept. of Housing Urban Development
- Name of pass-through entity: City of Fresno, California
- Award Official Contact Information: See Section 18 – Notices
- CFDA Number: 14.218
- CFDA Name: Community Development Block Grant
- Identification of R&D: No
- Indirect cost rate for the Federal award: 10%

**EXHIBIT B  
PROPOSED BUDGET**

#	Line Item	Approved Budget
1	Salaries	\$77,000
2	Fringe Benefits	
3	Professional Services	\$90,000
4	Supplies & Equipment	\$48,000
5	Rent / Lease / Utilities	
6	Utilities / Telephone	
7	Mileage / Transportation	
8	Other: Workers Comp and Liability Insurance	
9	Other: Education & Outreach	
10	Other:	
	TOTAL	\$215,000

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS Agreement between City of Fresno (“CITY”) and Habitat for Humanity Fresno County (“SUBRECIPIENT”)**

#### Home Repair Program

#### **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.
4. Professional Liability (Errors and Omissions) that includes Cyber Liability (Privacy and Data breach) insurance appropriate to SUBRECIPIENT profession.

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

SUBRECIPIENT, or any party the SUBRECIPIENT subcontracts with, shall maintain limits of liability of 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) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 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.
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY** (Errors and Omissions) & (Privacy & Data breach coverage):
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

**UMBRELLA OR EXCESS INSURANCE**

In the event SUBRECIPIENT 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**

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

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents, and volunteers; or
- (ii) SUBRECIPIENT shall provide a financial guarantee, satisfactory to CITY's Risk Manager or 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**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. SUBRECIPIENT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, SUBRECIPIENT's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of SUBRECIPIENT's insurance and shall not contribute with it. SUBRECIPIENT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: SUBRECIPIENT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) with Cyber Liability insurance policy is written on a claims-made form:

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

first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. 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 the commencement of work by SUBRECIPIENT, SUBRECIPIENT must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

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 by certified mail, return receipt requested, has been given to CITY. SUBRECIPIENT 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, SUBRECIPIENT 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, SUBRECIPIENT 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.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by SUBRECIPIENT shall not be deemed to release or diminish the liability of SUBRECIPIENT, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SUBRECIPIENT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SUBRECIPIENT, its principals, officers, agents, employees, persons under the supervision of SUBRECIPIENT, vendors, suppliers, invitees, consultant, sub-consultant, subcontractors, or anyone employed directly or indirectly by any of them.

**SUBCONTRACTORS** - If SUBRECIPIENT subcontracts any or all of the services to be performed under this Agreement, SUBRECIPIENT 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, SUBRECIPIENT 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.

#### **VERIFICATION OF COVERAGE**


SUBRECIPIENT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. 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, SUBRECIPIENT 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.



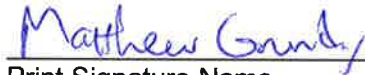
**EXHIBIT D  
CONFLICT OF INTEREST**

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

  
 \_\_\_\_\_  
 Signature

11/8/10  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Print Signature Name

Habitat for Humanity Fresno, Inc.  
 4991 E McKinley Ave, Suite 123  
 Fresno, CA 93727

Additional page(s) attached.

**EXHIBIT E**  
**CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS**  
**UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from

inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that

implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See §200.322 Procurement of recovered materials.