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Agenda Item: ID16-440 (2-F)

Date: 4/28/16

CITY CLERK, FRESNO, CA

## FRESNO CITY COUNCIL



### Supplemental Information Packet

Agenda Related Item(s) – ID16-440 (2-F)

**Contents of Supplement: CDBG Subrecipient Agreement**  
**Item(s)**

Attached please find a Supplement to File ID16-440 (2-F). The title of the item is as follows:

Actions pertaining to the City of Fresno 2016-2017 Annual Action Plan

**Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

**Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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

THIS AGREEMENT, entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Fresno, California, a municipal corporation, acting by and through its Development and Resource Management GRANTEE – Housing and Community Development Commission, (GRANTEE) and \_\_\_\_\_ (SUBRECIPIENT).

WHEREAS, the U.S. Department of Housing and Urban Development, (HUD), provides funding under its Community Development Block Grant Program, (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 (FY) 2016-2017, 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 2016-2017 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. \_\_\_\_\_, 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 \_\_\_\_\_, 2016, and unless terminated earlier pursuant to the terms of this Agreement, shall continue until \_\_\_\_\_, 20\_\_\_\_. 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, which 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 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 meet 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 84.21-28 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



## **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 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 business enterprises" and "women's business enterprise" means a business at least fifty-one percent owned and controlled by minority group members or women. SUBRECIPIENT may rely on written representations by businesses regarding their status as minority and 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 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 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.

## **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. , which includes, but is not limited to the following:

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 5 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 24 CFR 84.31 and 84.48. 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,

finer, 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**

## **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 and 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**

If 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.

(The remainder of this page is intentionally left blank; signature page to follow)

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

<p><b>“GRANTEE”</b> CITY OF FRESNO</p> <p>By: _____</p> <p>Date: _____</p> <p>ATTEST: YVONNE SPENCE, CMC City Clerk</p> <p>By: _____ Deputy</p> <p>Date: _____</p> <p>CITY: City of Fresno, a municipal corporation Development and Resource Management Department, Housing and Community Development Division 2600 Fresno Street Room 3076 Fresno, CA 93721</p>	<p><b>“SUBRECIPIENT”</b></p> <p>By: _____</p> <p>Date: _____</p> <p>APPROVED AS TO FORM: DOUGLAS T. SLOAN City Attorney</p> <p>By: _____ Deputy City Attorney</p> <p>Date: _____</p> <p>SUBRECIPIENT:</p>
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- Attachments:
- EXHIBIT A: SCOPE OF WORK
  - EXHIBIT B: PROPOSED BUDGET
  - EXHIBIT C: INSURANCE REQUIRMENTS
  - EXHIBIT D: CONFLICT OF INTEREST

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

**EXHIBIT B**  
**PROPOSED BUDGET**



**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**EXHIBIT D**  
**CONFLICT OF INTEREST**