

SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF COLUSA AND HABITAT FOR HUMANITY YUBA/SUTTER

This subrecipient agreement (the “**Agreement**”) is made and entered into as of the date of execution by both parties evidenced by the later of the dated signatures hereto, by and between the **CITY OF COLUSA, a government instrumentality**, whose address 425 Webster Street, Colusa, CA 95932 (the “**CITY**”), and **HABITAT FOR HUMANITY YUBA/SUTTER, a nonprofit corporation**, having its principal office at 202 D Street, Marysville, CA 95901 (the “**Program Operator**”).

WHEREAS, the **CITY** will enter into a Standard Agreement No. **18-HOME-12581**, EXHIBIT C, referred to as STANDARD AGREEMENT, to receive funding from the HOME Investment Partnerships Program, referred to as HOME, from the State of California, Department of Housing and Community Development, referred to as HCD, to finance the City of Colusa Housing Rehabilitation Program, referred to as PROGRAM; and

WHEREAS, among the eligible uses of HOME is the provision of Owner-Occupied Housing Rehabilitation Assistance and Homeownership Assistance Programs; and

WHEREAS, the purpose of the HOME Program Owner-Occupied Housing Rehabilitation Assistance and Homeownership Assistance Program is to increase the supply of decent, safe, sanitary, and affordable housing for households with combined incomes at or below 80% of the area median income adjusted per household size; and

WHEREAS, the **CITY** has entered into a contractual relationship with the California Department of Housing and Community Development (“HCD”) to administer one or more HCD-funded housing rehabilitation programs. The program described herein and hereinafter referred to as the “Program” is designed to provide assistance to eligible homeowners for correction of health and safety items, as well as code violations, located within the Program’s eligible area and provide homeownership assistance. The Program provides this assistance in the form of deferred payment loans used to finance the cost of necessary repairs that will provide the homeowner with a healthy, safe, sanitary and code compliant home, referred to herein as “housing unit”. The Program also provides homeownership assistance funding to assist with the purchase of homes. The Program will be administered by HABITAT FOR HUMANITY YUBA/SUTTER; and

WHEREAS, the CITY has identified HABITAT FOR HUMANITY YUBA/SUTTER as an eligible “Program Operator” (as such term is defined in 24 CFR 92.2) capable of administering the Program on behalf of the CITY; and

WHEREAS, the CITY COUNCIL approved Resolution 22-xxx approving the Program Operator for the purpose of establishing and operating the Program; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants set forth herein, the CITY and Program Operator do agree, for themselves and for their respective successors and assigns, as follows:

SECTION 1: GENERAL PROGRAM DESCRIPTION; ROLES & RESPONSIBILITIES

1.1 Program Description:

As further described herein and in the City of Colusa's Housing Rehabilitation Program Guidelines, the PROGRAM is designed to provide assistance to eligible homeowners for correction of health and safety items, as well as code violations, located within the Program's eligible area. The Program provides this assistance in the form of deferred payment loans used to finance the cost of necessary repairs that will provide the homeowner with a healthy, safe, sanitary and code-compliant home. The Program also provides homeownership assistance funding to assist with the purchase of homes.

1.2 CITY Role & Responsibilities

The CITY is responsible for the operation of the Program and compliance with applicable federal requirements, including the HOME requirements outlined in 24 CFR part 92,. This will include, but not be limited to, the following:

1.2.1 Program Design

Furnishing the Program Operator with the Program Guidelines and any other Program requirements, including any future changes to HOME regulations or HOME Program guidance issued by HUD;

1.2.2 Environmental Review

Completing necessary environmental reviews and/or determinations pursuant to 24 CFR 92.352 and 24 CFR 58;

1.2.3 Reporting to HCD

Preparing and submitting reports to HCD including but not limited to Project Set-up and Completion, Quarterly Performance, Quarterly PI, and Annual Performance Report;

1.2.4 Program Operator Monitoring

Completing remote and on-site monitoring reviews of the Program Operator's operation of the Program.

1.3 Program Operator Role & Responsibilities

In addition to the responsibilities listed in **Exhibit A – A2**, Program Operator is responsible for the routine implementation of the Program, including interaction with applicants to the Program and Contractors. In all cases, Program Operator will implement the program in compliance with the CITY's Program Guidelines and all applicable federal requirements. In no case will the Program Operator be considered the "responsible entity" for environmental reviews required under 24 CFR 58. In its role, Program Operator will:

1.3.1 Marketing

Market and advertise the Program pursuant to the CITY's affirmative marketing plan, in accordance with the requirements in 24 CFR 92.351, including the requirements to (i) identify those portions of the population of the CITY that are least likely to apply, (ii) establish specific marketing actions (e.g. advertising in specialty publications, native languages, etc.) intended to reach such populations, and (iii) maintain records of the results of such activities;

1.3.2 Application Intake

Develop needed application materials and establish and implement an application process in accordance with the CITY's Program Guidelines;

1.3.3 Screening

Review individual applications, including income determinations, in accordance with the CITY's Program Guidelines and the HOME requirements in 24 CFR part 92 to establish applicants' eligibility for the Program and notify applicants of their status;

1.3.4 Inspections

In accordance with the CITY's Program Guidelines, inspect units to ensure that such units meet the Program's property standards, including but not limited to conducting visual assessments of potential lead-based paint hazards in any properties constructed prior to 1978 in accordance with 24 CFR part 35;

1.3.5 Program Policies

Apply the CITY's Program Guidelines, including any updates thereto provided by the CITY pursuant to the notice provisions in Section 5.2 of this Agreement, ensuring that housing rehabilitation and homeownership assistance projects meet all HOME and Program requirements;

1.3.6 Management of Contractors and Property Owners

During the term of a contract between Contractor and property owner, address questions, concerns, or disputes between Contractors and property owners, provide clarifications of

Program Guidelines, federal, and HOME requirements, and otherwise work with Contractors and owners to ensure effective and compliant delivery of assistance.

SECTION 2: USE AND DISBURSEMENT OF HOME FUNDS

2.1 HOME Award and Budget

As part of this Agreement, the CITY is providing up to \$423,866 in HOME funding for project expenses (i.e., direct costs of assisting homeowners), up to \$5,605 in HOME funding for allowable administrative expenses, and \$60,249 in HOME funding for activity delivery.

2.1.1 ITEMIZED BUDGET

The following line-item budget is the basis for determining the amount of PROGRAM OPERATOR costs eligible for reimbursement by CITY. (See SCOPE OF WORK, Exhibit A - A2, for a description of each reimbursable activity.)

Line Items	HOME General Administration	HOME Activity Delivery	Total HOME Budget
Housing Rehabilitation Program Mgmt.	\$1,736	\$45,579	\$47,315
Homeownership Assistance Program Mgmt.	\$3,869	\$14,670	\$18,539

Budget amount for Activity Delivery is based on a maximum 23% of the Housing Rehabilitation Activity Budget of \$198,171, and a maximum of 6.5% of the Homeownership Assistance Activity Budget of \$225,695. Loan Portfolio Management and other program administration services will be billed at a cost of \$75 per hour and will be paid from General Administration.

HOME Program Income that is required to be expended prior to drawdown of open grant funds will be reimbursed by CITY to PROGRAM OPERATOR up to a maximum of 23% of the HOME Program Income loan amount.

Each invoice submitted to CITY by the PROGRAM OPERATOR must include the following:

1. Running total of expenditures to date by line item for HOME compensable services.
2. Documentation of services provided or expenditures, including copies of invoices, contracts, receipts, bills, time sheets, or other references documenting the charges billed to the CITY or incurred by PROGRAM OPERATOR.

2.1.2 BUDGET ADJUSTMENTS

A budget adjustment is defined as a change in value for reimbursable line items without a change in the dollar value for reimbursable services rendered by PROGRAM OPERATOR. CITY

may consider PROGRAM OPERATOR budget adjustments after submittal of a formal proposal, including the following documentation:

- a) Progress report outlining expenditures, milestones achieved to date and an outstanding balance;
- b) Proposed budget outlining projected costs for the entire duration of the contract, highlighting where actual costs are expected to differ from the original budget;
- c) Explanations and justifications for changes in each line item; and
- d) Plan outlining expected uses of additional funds received.

2.1.3 BUDGET AMENDMENTS

A budget amendment is defined as a change in value for reimbursable line items and a change in the dollar value for reimbursable services rendered by PROGRAM OPERATOR. CITY may consider PROGRAM OPERATOR budget amendments after submittal of a formal proposal, including the same documentation required for a budget adjustment as listed above; however, a budget amendment also requires a formal contract amendment approved in a resolution by the CITY.

2.1.4 CHARGE RATE SCHEDULE

PROGRAM OPERATOR will request reimbursement for this agreement based on an actual cost for actual work basis. Reasonableness, allowability and allocability of costs not to exceed the budget noted above.

2.2 Term

This Agreement shall become effective upon the execution of this Agreement by the City of Colusa and shall expire on April 2, 2023. All approved project funds must be expended by February 2, 2023. The Program Operator shall have until April 2, 2023 to make final requests for reimbursement. The deadline to submit all Drawdown Requests as defined by the STANDARD AGREEMENT between the City of Colusa and Housing and Community Development is April 2, 2023, or the latest amendment of the closeout date thereto unless otherwise terminated as provided in this Agreement.

2.3 Anticipated Production

The CITY and Program Operator anticipate three homeownership assistance and five housing rehabilitation loans to eligible individuals or families under this Agreement.

2.4 Project Completion Deadlines

The Program Operator must provide the CITY with all necessary project information. All approved project funds must be expended by April 2, 2023.

2.5 Program Income

CITY and Program Operator acknowledge and agree that if any “**Program Income,**” as defined in 24 CFR 92.2, is received by the Program Operator, Program Operator will promptly remit Program Income to the CITY.

2.6 Disbursement of Funds

Program Operator must remit disbursement requests (or, in the case where no reimbursement is due, a report explaining inactivity) at least quarterly and may request payments no more than once per month. In all cases, Program Operator is prohibited from requesting HOME funds from the CITY until such funds are needed to pay HOME-eligible costs. Requests for disbursements are limited to the amount needed at the time of such request.

2.6.1 Reimbursement Basis

The CITY will provide HOME funds to the Program Operator for Program costs on a reimbursement basis only.

2.6.2 Project Costs

Program Operator will submit a request for funds to the City for housing rehabilitation costs. All requests for project-specific soft costs must be supported by (i) time-sheet documentation for any costs associated with Program Operator staff, (ii) invoices for any third-party costs, and/or (iii) other source documentation (e.g., receipts and mileage logs for travel expenses, etc.).

2.6.3 Administrative Costs

Requests for payment of eligible administrative costs must be supported by time-sheet documentation for any costs associated with Program Operator staff, invoices for any third-party costs, and/or other similar documentation.

2.6.4 Final Payment

Program Operator shall submit a final payment request by April 2, 2023.

SECTION 3: ADMINISTRATIVE AND PROGRAM REQUIREMENTS

3.1 Applicability of Uniform Administrative Requirements

In performing under this Agreement, the requirements of 2 CFR part 200 apply to the Program Operator, except for the following provisions: §200.306, §200.307, §200.311 (except as provided in 24 CFR 92.257), §200.312, §200.329, §200.333, and §200.334. The provisions of 2 CFR 200.305 apply as modified by 24 CFR 92.502(c). If there is a conflict between definitions in 2 CFR 200 and 24 CFR part 92, the definitions in 24 CFR part 92 govern. While not intended to be an exhaustive

list, Program Operator acknowledges that the requirements of 2 CFR 200 include, inter alia, compliance with:

3.1.1 Procurement

Standards and procedures consistent with 2 CFR 200.318 through 200.326 related to the procurement of property or services with HOME funds;

3.1.2 Audit

The requirement under 2 CFR 200.501 that the Program Operator must obtain a single- or program-specific audit if, during any given Program Operator fiscal year, Program Operator expends more than \$750,000 in federal funds;

3.1.3 Cost Principles

The cost principles included in 2 CFR 200 Subpart F, including that any costs charged to HOME be supported by adequate documentation, allocable to the program, necessary, and reasonable.

3.2 Administrative Funding

Within the funding limit provided in Section 2.1, Program Operator may use HOME funds for administrative expenses associated with operating the Program. Eligible administrative costs include costs associated with activities described in the general management oversight and coordination requirements at 24 CFR 92.207(a) to the extent that such activities are allowable under this Agreement. These include, but may not be limited to, costs associated with coordinating and overseeing the Program; advertising and promoting the Program, including affirmatively marketing the Program pursuant to the requirements of 24 CFR 92.351; maintaining appropriate Program records, including financial records, and submitting progress, financial, and other reporting to the CITY; taking applications, conducting intake interviews, and otherwise processing applications that do not proceed; and conducting required unit inspections.

3.2.1 Treatment of Income Determination and Inspection Costs

Pursuant to 24 CFR 92.206, the Program Operator may also use HOME project funding for its project-specific soft costs associated with determining the income eligibility and completing property inspections of homes.

Alternatively, the costs associated with determining the income eligibility and completing property inspections of, may be charged as an administrative cost, provided that in no case may a single item of cost be charged both as an administrative expense and as a project-related soft cost as provided for herein.

3.3 Reversion of Assets

Upon receipt of the final payment by the CITY under this Agreement and after payment by the Program Operator of any final eligible costs under this Agreement, the Program Operator must transfer to the CITY any remaining HOME funds on hand and any accounts receivable attributable to the use of HOME funds to the CITY.

3.4 Compliance with Other Federal Requirements

Program Operator must comply with all applicable federal requirements, including those listed in 24 CFR part 92, Subpart H and 24 CFR part 5, Subpart A, and the nondiscrimination requirements of section 282 of the Act, as amended. This includes, but is not limited to, compliance with:

3.4.1 Equal Opportunity and Fair Housing

In accordance with 24 CFR 92.350 and 92.351, no person shall on the ground of race, color, religion, sex, disability, familial status, national origin, or age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any Program activity funded in whole or in part from HOME funds. In addition, Program Operator shall develop and operate the Program in accordance with the requirement contained in 24 CFR 5.105, including but not limited to the following requirements:

- a) The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- b) The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146,
- c) The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- d) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135;
- e) The requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;

- f) The requirements of 24 CFR 92.351, 2 CFR 200.321, Executive Orders 11625, as amended, and 12432 (concerning Minority Business Enterprise), and 12138, as amended (concerning Women’s Business Enterprise); and
- g) The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting Program Operators, owners, developers, or their agents from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

3.4.2 Lobbying Disclosure Requirements

In accordance with the requirements of 24 CFR part 87, the Program Operator certifies, to the best of its knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an PROGRAM OPERATOR, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any PROGRAM OPERATOR, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Program Operator shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;
- c) The Program Operator shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such lower-tier parties shall certify and disclose accordingly; and
- d) Program Operator acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3.4.3 Drug-Free Workplace

The drug-free workplace requirements of 2 CFR part 2429;

3.4.4 Debarred or Suspended Entities

By signing this Agreement, Program Operator certifies that it is not presently listed by any federal PROGRAM OPERATOR as debarred, suspended, or proposed for debarment from any federal contract activity. If during the term of this Agreement this information changes, Program Operator shall notify CITY without delay. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment. Further, in carrying out its responsibilities hereunder, Program Operator will not employ, contract with, or otherwise make use of subcontractors, service providers, consultants, or any other party that is debarred, suspended, or proposed for debarment from any federal contract activity.

3.4.5 Environmental Review

While the CITY is responsible for environmental reviews and determinations under this Agreement, Program Operator will cooperate and assist in documenting the environmental status of each assisted unit, including but not limited to the initial preparation of an *Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5* checklist. In no case will Program Operator request funding for a housing rehabilitation project with respect to a specific unit to be assisted without notification from the CITY that the project is either exempt from environmental review or that needed reviews have been completed.

3.4.6 Lead Based Paint

Program Operator will ensure that all assisted units in properties which were originally constructed prior to 1978 pass a visual assessment pursuant to the requirements of 24 CFR 35.

3.4.7 Conflict of Interest

Pursuant to 24 CFR 92.356, no employee, agent, consultant, officer, or elected official or appointed official of the CITY or the Program Operator, individually known as a “**Covered Person,**” that exercises or has exercised any functions or responsibilities with respect to HOME-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to HOME-assisted activities, is eligible to receive HOME assistance under the Program or to have a financial interest or financial benefit in any

contract, subcontract, or other agreement with respect to the HOME-funded activities contemplated in this Agreement, or the proceeds from such activities. This provision shall apply to both Covered Persons and those with whom they have business or immediate family ties, during their tenure with the CITY or Program Operator or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a Covered Person. In the event a Covered Person, or a person with whom the Covered Person has business or family ties, is otherwise eligible and applies to the Program, Program Operator will immediately notify the CITY. CITY, in its sole discretion, may pursue an exception from HUD under the provisions of 24 CFR 92.356(d) to allow participation notwithstanding the conflict of interest. Only HUD may grant such an exception; neither the CITY nor the Program Operator may grant such an exception on its own. Moreover, the CITY and Program Operator shall comply with the conflict of interest requirements in 2 CFR 200.317 and 2 CFR 200.318 in the procurement of property and services.

3.4.8 Consultant Activities

Program Operator will comply with the reasonable rate of compensation requirements in accordance with 24 CFR 92.358.

3.5 Recordkeeping

Program Operator shall maintain detailed records of all its activities under this Agreement, including records on all persons served pursuant to this Agreement. Representatives of the CITY will maintain administrative and financial records as required by 24 CFR 92.508, applicable to the activities to be carried out under this Agreement, including but not necessarily limited to:

3.5.1 General Administrative and Financial Records

- a) Information about contractors, vendors, and other service providers to include, but not necessarily be limited to, verification of non-debarment and suspension, verification of qualifications and experience, legally binding contracts and agreements, invoices and payment records, and related correspondence (see 24 CFR Part 24 and 2 CFR part 2424);
- b) Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and internal controls and reconciliations;
- c) Financial records identifying the source and use of funds for each person assisted under the Program pursuant to this Agreement, as well as well as underlying documentation (e.g.

timesheet records, invoices/receipts, proof of payment, etc.) for all costs charged to HOME;

- d) Records demonstrating compliance with the Uniform Administrative Requirements of 24 CFR 200, as applicable;

3.5.2 Program Recipient Records

Program recipient records in accordance with 24 CFR 92.508(a)(3) that demonstrate that each HOME-assisted project met the requirements of the HOME program including but not limited to:

- a) Full descriptions of each household assisted with Program funds;
- b) Income determination proving eligibility and records to document the eligibility each household;
- c) Records, consistent with the Program Guidelines, demonstrating that each Program assisted unit meets the Program's property standards;
- d) Records demonstrating that each assisted household is income eligible in accordance with 24 CFR 5.603;
- e) Copies of project documentation including construction contract and change orders;
- f) Program Operator will return all records to the City upon project completion;

3.5.3 Records of Other Federal Requirements

Other records that include documentation of compliance with other federal requirements in accordance with 24 CFR 92.508 that includes the following requirements to the extent applicable to the Program:

- a) Documentation of Program Operator's efforts to affirmatively further fair housing, including both marketing efforts and records on the extent to which each racial and ethnic group and single-headed households (by gender of household head) applied for, participated in, or benefited from the Program;
- b) Records concerning lead-based paint in accordance with 24 CFR Part 35;
- c) Records supporting any requests for exceptions to the conflict of interest provisions in accordance with 24 CFR 92.356.

3.6 Record Retention

All Program records will be returned to the City upon project completion and be maintained by the City for the lifetime of the loan. Notwithstanding, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later.

3.7 Reporting Requirements

The Program Operator agrees to submit any and all reports required by the CITY or HCD within 30 days of the CITY or HCD's request. The Program Operator will provide updates on Program implementation to the CITY on a quarterly basis. A quarterly report to City will include information on the marketing and startup of the Program, number of applications received, challenges or concerns about implementation, and estimates of the timing of upcoming commitments and expenditures of HOME funds.

The CITY reserves the right to unilaterally alter, supplement, or otherwise modify the frequency, content, or form of delivery of required reports as needed to maintain adequate oversight of the Program, address changes to HOME regulations, or to address findings related to noncompliance by the Program Operator.

SECTION 4: DEFAULT AND TERMINATION

4.1 Default

The following are considered a default by the Program Operator under this Agreement:

1. Program Operator fails, in any manner, to fully perform and carry out any of the terms, covenants, and conditions of this Agreement;
2. Program Operator refuses or fails to proceed with the work and tasks contemplated in this Agreement in accordance with such diligence as will ensure their completion within the time fixed by the schedule set forth in this agreement;
3. Material noncompliance with any applicable HOME regulatory requirements in 24 CFR part 92 or any other applicable federal requirements; or any applicable State or local law, regulation, ordinance, or requirement related to the Program; and

4. Dissolution or other termination of existence; insolvency; forfeiture of right to do business in the State of California or business failure; appointment of a receiver of any part of the Program Operator's property; the calling of any meetings of, or the assignment for the benefit of, creditors of the Program Operator; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Program Operator which are not dismissed within 60 days.

4.2 Termination

4.2.1 Without Cause: CITY and PROGRAM OPERATOR will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. CITY will pay to PROGRAM OPERATOR the compensation earned for work performed and not previously paid for to the date of termination. CITY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from PROGRAM OPERATOR of any and all plans, specifications and estimates, and other documents prepared by PROGRAM OPERATOR in accordance with this Agreement. No sanctions will be imposed.

4.2.2 With Cause: This Agreement may be terminated by either party should the other party:

- a) be adjudged a bankrupt, or
- b) become insolvent or have a receiver appointed, or
- c) make a general assignment for the benefit of creditors, or
- d) suffer any judgment which remains unsatisfied for thirty (30) days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- e) materially breach this Agreement. Material breach includes but is not limited to PROGRAM OPERATOR failing to perform obligations under this Agreement, and PROGRAM OPERATOR failing to perform obligations in accordance with the PROGRAM'S time schedules set forth in STANDARD AGREEMENT.

For any of the occurrences except item v., termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the reasonable satisfaction of the non-defaulting party within thirty (30) days of the receipt of written notice specifying the breach. If the breach is not remedied within that thirty (30) day period, the non-defaulting party may terminate the agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a thirty (30) day period, the defaulting party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-

defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of termination. CITY will pay to PROGRAM OPERATOR the compensation earned for work performed and not previously paid for to the date of termination. CITY will not pay lost anticipated profits or other economic loss, nor will CITY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination.

4.2.3 Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

4.2.4 Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of CITY for which PROGRAM OPERATOR'S services are to be performed, may immediately suspend performance by PROGRAM OPERATOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by PROGRAM OPERATOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

SECTION 5: ADDITIONAL PROVISIONS

5.1 Fees to homeowners or members of households prohibited

Program Operator is prohibited from charging application or other fees for the purpose of covering costs of administering the Program.

5.2 Notice

Except in the case of a notice of default, which must be delivered via mail or delivery service, the CITY may issue written notices as required or anticipated herein to the Program Operator via email, facsimile, mail, delivery service, or in person as may be appropriate. Notices delivered via electronic means or in person will be deemed delivered on the same day. Notices delivered via mail or delivery service shall be deemed delivered five (5) days after being placed in the United States mail or delivery service, postage pre-paid, addressed to the Program Operator as follows:

HABITAT FOR HUMANITY YUBA/SUTTER
ATTN: JOSEPH HALE, CEO
202 D STREET
Marysville, CA 95901

Notices due the CITY shall be in writing and may be delivered via email, facsimile, mail, delivery service, or in person as may be appropriate. Notwithstanding, a notice of default to the CITY must be delivered via certified mail with return receipt requested and shall be deemed delivered upon signature of a CITY representative. Notices to the CITY should be addressed as follows:

CITY OF COLUSA
425 WEBSTER STREET
COLUSA, CA 95932

5.3 CITY Liability

The CITY shall have no liability except as specifically provided in this Agreement. The CITY, by execution of this Agreement, assumes no liability for damages caused to persons or property by reason of Program Operator providing goods or services herein or for injury to any employee, agent or subcontractor of the Program Operator performing under this Agreement.

5.4 Indemnification

Program Operator shall indemnify and save and hold CITY, and its successors or assigns, harmless from and against any negligent claims, liabilities, losses and causes of action which may arise out of Program Operator's activities under this Agreement, including all other acts or omissions to act on the part of Program Operator, including any person acting for or on its behalf, and, from and against any orders, judgments, or decrees which may be entered and from and against all costs, attorneys fees, expenses and liabilities incurred in the defense of any such claims, or in the investigation thereof. Program Operator's indemnity shall not expire with the expiration or termination of this agreement but will continue indefinitely.

5.5 Insurance

See attached Exhibit B. Throughout the term of this Agreement, Program Operator must maintain general liability (\$2,000,000 per occurrence and \$2,000,000 aggregate) and automobile liability insurance (\$1,000,000 per accident), and errors and omissions insurance (\$1,000,000 per occurrence and \$2,000,000 annual aggregate). The CITY must be listed as an additional insured party on each of the required insurance policies with at least 30 days' notice prior to expiration. Program Operator must also maintain workers compensation coverage in an amount specified by state law.

5.6 Independence of Program Operator

Nothing in this Agreement shall be deemed or construed to represent that Program Operator, or any of Program Operator's employees or agents, are the agents, representatives, or employees of the CITY. Program Operator acknowledges that it is an independent contractor in its performance under this Agreement. Anything in this Agreement that provides the CITY with the

right to direct Program Operator in its performance of its obligations under this Agreement is solely for purposes of compliance with local, state, and federal regulations.

5.7 Assignment

This Agreement is binding on the CITY and Program Operator, and their respective successors and assigns. Program Operator shall not assign or transfer its interest in this Agreement without the prior written approval of CITY which shall be in the CITY's sole and exclusive discretion.

5.8 Amendments

This Agreement may be modified or amended only if the amendment is made in writing and is signed by both parties. Notwithstanding, in the event that (i) HUD imposes new or modified requirements in the HOME Program through regulation, administrative notice, publication, or other notice, or (ii) HUD specifically identifies violations of HOME program requirements pertaining to this Agreement or the Program undertaken hereunder, Program Operator agrees to comply with any new or modified requirements to ensure this Agreement and the activities hereunder remain in or are brought into compliance with such requirements. The CITY shall provide prompt notice to the Program Operator of any such modifications. Program Operator further agrees to execute an amendment to modify the terms of this Agreement in such manner as necessary to formally reflect and implement new HOME requirements or correct identified deficiencies.

5.9 Interpretation

This Agreement is the sole agreement between the two parties, and no prior or subsequent discussions, negotiations, or agreements, whether verbally or in writing, shall be merged with this Agreement. Any question or dispute regarding the interpretation of the terms of this Agreement shall be decided by the CITY. The CITY's decision on any dispute under this Agreement, which shall be furnished in a manner of their choosing, shall be final and binding. In the event of a conflict between this Agreement, the Program Guidelines, and/or other regulatory requirements, the regulatory requirements control, and the CITY reserves the right to resolve the conflict and determine the Program Operator's compliance with such provisions.

5.10 Applicable Law

This Agreement shall be construed and interpreted in accordance with California law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and federal courts of the State of California shall have jurisdiction and that the proper forum for such action shall be in Sacramento, California.

5.11 Headings & Pronouns

The headings in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and singular nouns used herein shall include the plural and vice versa.

5.12 Severability

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

IN WITNESS WHEREOF, the CITY and Program Operator have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

CITY OF COLUSA	 <hr/> Jessie Cain, City Manager	 <hr/> Date
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PROGRAM OPERATOR: HABITAT FOR HUMANITY YUBA/SUTTER	 <hr/> Joseph Hale, Chief Executive Officer	 <hr/> Date
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ATTEST: CITY CLERK, CITY OF COLUSA	 <hr/> Shelly Kittle, City Clerk	 <hr/> Date
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EXHIBIT "A" – SCOPE OF WORK

City of Colusa Housing Rehabilitation Program (PROGRAM)

PROGRAM OBJECTIVE

The purpose of the PROGRAM is to complete rehabilitation of eligible housing units located in the City of Colusa. The units must be occupied by members of the Low to Moderate Income Group (LMI) as defined by the U.S. Department of Housing and Urban Development (HUD) and HCD.

PROGRAM GOALS

PROGRAM OPERATOR shall be held to the same goals, milestones, performance measurements, and requirements as entered into by CITY in STANDARD AGREEMENT 18-Home-12581 and more thoroughly explained in the grant application. PROGRAM OPERATOR will assist CITY in the achievement of the following PROGRAM goals by the contract expiration date:

1. Complete an estimated five (5) single-family housing rehabilitation housing rehabilitation projects as required to fully expend CITY's housing rehabilitation loan fund.

PROGRAM SERVICES

COMPENSABLE SERVICES: PROGRAM OPERATOR will perform the following compensable services as outlined in the City-approved Program Guidelines (referred to as PROGRAM GUIDELINES) in implementation of PROGRAM activities, including administration and expenditure of HOME Program Income.

1) Refinement of housing rehabilitation program plans, procedures and forms: subject to review and approval by CITY, PROGRAM OPERATOR will establish, or make any necessary revisions to, the housing rehabilitation program design and procedures (including but not limited to the priorities among applicants and among rehabilitation measures, the limits and structure of financial assistance, and the recapture and affordability policies), as well as any other necessary forms, documents or sample contracts.

2) Outreach: PROGRAM OPERATOR will conduct sufficient advertisement of the housing rehabilitation program and other forms of outreach to ensure that enough eligible applicants participate in the program to meet the housing rehabilitation program goals.

3) Intake/assessment of eligibility: PROGRAM OPERATOR will assist property owners and residents in the completion of applications to permit eligibility determinations for rehabilitation assistance. PROGRAM OPERATOR will make provision for translation services to meet the needs of non-English-speaking applicants. In the event of applicants who have impaired mobility or other disabilities, PROGRAM OPERATOR will make provisions for completing the application at the applicant's residence or other acceptable procedures for ensuring equal access to services.

Initial eligibility determination of households/structures will be made by the PROGRAM OPERATOR on the basis of satisfaction of income requirements, the apparent need for rehabilitation measures to correct relevant housing code or Housing Quality Standard (HQS) deficiencies, and any other pertinent criteria set forth in the approved program design.

4) Work write-ups: for each eligible unit to be assisted, PROGRAM OPERATOR will complete a detailed work write-up of the rehabilitation to be performed, including estimated costs of each activity, materials to be used, and industry or regulatory standards to be met. This write-up will be initialed and dated by the homeowner.

5) Solicitation and selection of contractors: PROGRAM OPERATOR will assist approved applicants in the identification, proper solicitation, and selection of contractors qualified to perform the authorized rehabilitation of eligible housing units. PROGRAM OPERATOR will provide forms and sample contract formats for the applicants to use in contracting with the contractors and will assist the applicant in ensuring that the description of the work contained in any contracts with contractors is accurate and complete.

6) Loan Review Committee: CITY will establish and maintain a loan review committee. The loan review committee will review all loan recommendations prepared by the PROGRAM OPERATOR. No loan will be made under the housing rehabilitation program without the approval of a majority of the members of the loan review committee. Loan recommendations will be routed to loan committee members for consideration, or a loan committee meeting may be held virtually.

7) Loan closing: With the authorization of the City Loan Review Committee, the PROGRAM OPERATOR will execute all necessary documents and will coordinate with CITY the drawdown of funds as necessary to cover the expenses of approved applicants for activities authorized by executed loan agreements. The loan documents executed with applicants will include explicit provisions describing a) the occupancy requirements and other standards to maintain the eligibility of the HOME expenditures, and b) the conditions and procedures under which late payment penalties, default and/or foreclosure will occur.

8) Periodic and final inspections: PROGRAM OPERATOR will perform periodic site visits to ascertain that approved and contracted rehabilitation work is proceeding properly and satisfactorily, will authorize (with the owner's written approval, including signature and date) appropriate change orders, and will mediate in the event of owner dissatisfaction with the work done by the contractor.

9) Approval of contractor payments: as rehabilitation progresses and as invoices are submitted by contractors, PROGRAM OPERATOR will verify that the expenses are reasonable and the work has been completed properly (including a sign-off by the owner), and will authorize drawdown of funds from CITY, and disbursement to the contractors.

10) Loan servicing/loan portfolio management: PROGRAM OPERATOR will assist CITY in managing the housing rehabilitation loan portfolio through the following tasks: reviewing loan status reports provided by CITY to determine loan clients in violation of the terms of their loan, corresponding with loan recipients who are in violation of the terms of their loan, suggesting remedies to both the CITY and loan recipient to correct any violations, and reviewing employment and income status at the request of CITY.

11) Maintenance of case files and other records: for each applicant, PROGRAM OPERATOR will maintain case files, including application and documentation of eligibility, work write-ups, the assistance agreement between the property owner and CITY (along with repayment provisions, documentation of liens and any other forms of security), contractor selection criteria, copy of contract between owner and contractors, documentation on all necessary licenses and permits, site visit/inspection reports (including final inspection), change orders, and approved contractor invoices for payment (with owner sign-off). PROGRAM OPERATOR will also maintain appropriate information on persons residing in the property, including a list or lists identifying persons in a project immediately before the project, after project completion, and those moving in during the project, as well as information on those displaced or temporarily relocated. PROGRAM OPERATOR will maintain these files until project completion when the original file will be returned to the City.

PROJECT SCHEDULE

Unless amended by mutual written agreement by PROGRAM OPERATOR and CITY, PROGRAM OPERATOR will perform the described housing rehabilitation tasks and complete the rehabilitation of eligible units in a timely manner.

OTHER PROGRAM REQUIREMENTS

- 1) Affordability provisions (Not Applicable for HOME):** for activities benefiting low- and moderate-income persons, PROGRAM OPERATOR must adopt and make public the CITY's standards for determining that for rental housing assisted under the program, the rents of units occupied by low- and moderate-income persons are "affordable."
- 2) Davis-Bacon requirements and other Labor Standards:** these statutes require the payment of prevailing wages for HOME-assisted construction work, including construction or rehabilitation of residential property containing eight units or more, in excess of \$2,000. The Contract Work Hours and Safety Standards Act also applies to such activities.
- 3) Historic Preservation [16 U.S.C. 470 et seq. and 36 CFR Part 800]:** these requirements mandate (a) consultation with specified agencies having responsibility for historic preservation to identify properties listed (or eligible for inclusion) in the National Register of Historic Places that may be subject to adverse effects by the proposed HOME activities, and (b) compliance with procedures or other requirements to avoid or mitigate such adverse effects.

- 4) **National Flood Insurance Program:** if a community has had notice for more than a year that an area has been identified by FEMA as having special flood hazards, HOME funds cannot be spent for acquisition or construction purposes within that area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question.

- 5) **Relocation, Real Property Acquisition, and One-For-One Housing Replacement:** The acquisition of real property for a HOME-assisted project and the displacement of any person (family, individual, business, non-profit organization or farm) as a direct result of acquisition, rehabilitation, demolition or conversion for a HOME-assisted project must comply with 49 CFR part 24. PROGRAM OPERATOR must also conduct its HOME activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act, as amended, or Section 104(d), as applicable. In addition, there must be a one-for-one replacement of any occupied (or vacant, occupiable) low- and moderate-income dwelling that is demolished or converted to another use in connection with a HOME-funded activity.

- 6) **Lead-based Paint [24 CFR Part 35]:** There is a general prohibition against the use of any lead-based paint in connection with any HOME activity involving the construction or rehabilitation of residential structures. If the structure was constructed prior to 1978, the tenants or purchasers must be notified of the hazards of lead-based paint poisoning; and, depending on the level of Federal assistance made available to the structure, paint inspection, risk assessment, treatment and/or abatement must be provided.

EXHIBIT "A-2" – SCOPE OF WORK

City of Colusa Homeownership Assistance Program (PROGRAM)

PROGRAM OBJECTIVE

The purpose of the PROGRAM is to provide low-interest loans to homebuyers purchasing a home located in the City of Colusa. The homebuyer(s) must be members of the Low to Moderate Income Group (LMI) as defined by the U.S. Department of Housing and Urban Development (HUD) and HCD.

PROGRAM GOALS

AGENCY shall be held to the same goals, milestones, performance measurements, and requirements as entered into by CITY in STANDARD AGREEMENT and more thoroughly explained in the grant application. AGENCY will assist CITY in the achievement of the following PROGRAM goals by the contract expiration date:

1. Close on an estimated three homeownership assistance loans as required to fully expend CITY's homeownership assistance loan fund.

PROGRAM SERVICES

COMPENSABLE SERVICES: AGENCY will perform the following compensable services as outlined in the City-approved PROGRAM GUIDELINES in implementation of PROGRAM activities.

- 1) Refinement of homeownership assistance program plans, procedures and forms:** subject to review and approval by CITY, AGENCY will establish, or make any necessary revisions to, the homeownership assistance program design and procedures (including but not limited to the priorities among applicants, underwriting criteria, the limits and structure of financial assistance, and the recapture and affordability policies), as well as any other necessary forms, documents or sample contracts.
- 2) Outreach:** AGENCY will conduct sufficient advertisement of the homeownership assistance program and other forms of outreach to ensure that enough eligible applicants participate in the program to meet the homeownership assistance program goals.
- 3) Completion of loan applications; underwriting assessment:** AGENCY will assist homebuyers in completing loan applications, and will perform an assessment of each loan application to determine the HOME eligibility of the loan. Initial eligibility determination of households will be made by the AGENCY on the basis of satisfaction of income requirements, eligibility of the property being purchased, and any other pertinent criteria set forth in the approved program design.

AGENCY will complete all work necessary to determine loan feasibility including obtaining appraisal, estimates of market value, credit reports and title reports, set up of lead risk assessment, if applicable, evaluating the financial condition of the applicant and summarizing any critical issues.

4) Loan Review Committee: CITY will establish and maintain a loan review committee. The loan review committee will review all loan recommendations presented to it by the AGENCY. No loan will be made under the homeownership assistance loan program without the approval of a majority of the members of the loan review committee.

5) Loan closing: With the authorization of the City Loan Review Committee, the AGENCY will execute all necessary documents and will coordinate with CITY the drawdown of funds as necessary to cover the expenses of approved applicants for activities authorized by executed loan agreements. The loan documents executed with applicants will include explicit provisions describing a) the occupancy requirements and other standards to maintain the eligibility of the HOME expenditures, and b) the conditions and procedures under which late payment penalties, default and/or foreclosure will occur.

6) Loan servicing/loan portfolio management: AGENCY will assist CITY in managing the homeownership assistance loan portfolio through the following tasks: reviewing loan status reports provided by CITY to determine loan clients in violation of the terms of their loan, corresponding with loan recipients who are in violation of the terms of their loan, suggesting remedies to both the CITY and loan recipient to correct any violations, and reviewing employment and income status at the request of CITY.

7) Maintenance of case files and other records: for each applicant, AGENCY will maintain case files, including application and documentation of applicant eligibility, property eligibility, the assistance agreement between the homebuyer and CITY (along with repayment provisions, documentation of liens and any other forms of security), and any other required documentation. AGENCY will maintain these and other program and financial records in accordance with the general requirements for record keeping specified in Section 7. of this Agreement.

PROJECT SCHEDULE

Unless amended by mutual written agreement by AGENCY and CITY, AGENCY will perform the described homeownership assistance program tasks in a timely manner.

EXHIBIT "B" – INSURANCE REQUIREMENTS

City of Colusa Housing Rehabilitation Program (PROGRAM)

PROGRAM OPERATOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the PROGRAM OPERATOR, his agents, representatives, or employees. PROGRAM OPERATOR shall maintain limits no less than:

- | | |
|---|---|
| 1. Commercial General Liability, Including: | \$2,000,000 per occurrence and |
| Premises and Operations | \$2,000,000 general aggregate |
| Contractual Liability | |
| Personal Injury Liability | |
| Independent Contractors | |
| Bodily Injury, Property Damage | |
| 2. Automobile Liability: | \$1,000,000 per accident for |
| Owned, Non-Owned, | bodily injury and property |
| and Hired Autos | damage |
| 3. Workers' Compensation: | As required by the State of California |
| 4. Employer's Liability: | \$1,000,000 per accident for bodily injury or |
| | disease |
| 5. Professional Liability: | \$1,000,000 per claim and \$2,000,000 |
| | annual aggregate |

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either: insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the PROGRAM OPERATOR shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the PROGRAM OPERATOR; or automobiles owned, leased, hired or borrowed by the PROGRAM OPERATOR.
2. For any claims related to this project, the PROGRAM OPERATOR's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees or

volunteers shall be excess of the PROGRAM OPERATOR's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) day's prior written notice has been provided to the CITY.

If General Liability and Professional Liability coverages are written on a claims-made form:

1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the PROGRAM OPERATOR must purchase an extended period of coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the PROGRAM OPERATOR for review.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

Verification of Coverage

PROGRAM OPERATOR shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the CITY or on other than the CITY's forms provided those endorsements conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Waiver of Subrogation

PROGRAM OPERATOR hereby agrees to waive subrogation which any insurer of consultant may acquire from vendor by virtue of the payment of any loss. PROGRAM OPERATOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the consultant, its employees, agents and subcontractor.

EXHIBIT "C" – STANDARD AGREEMENT ATTACHED