

**SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT**

This Second Amendment ("Amendment"), dated as of January 13, 2022, is by and between the County of Sonoma, a political subdivision of the State of California ("County"), and Rincon Consultants, Inc., hereinafter referred to as ("Consultant").

RECITALS

WHEREAS, County and Consultant entered into that certain Agreement, dated January 14, 2020, for an environmental impact report for rezoning sites for housing; and

WHEREAS, County and Consultant desired to amend the Agreement on March 1, 2021 to provide additional services and to increase the amount not to exceed of the agreement to a total not to exceed amount of \$430,082 for additional tasks added to the scope of work including draft EIR revisions and public workshops; and

WHEREAS, County and Consultant desire to amend the Agreement a second time to provide additional services, lengthen the term of the agreement, and to increase the amount not to exceed of the agreement by \$458,366 for additional tasks added to the scope of work.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Agreement Section 2. Payment, first paragraph is deleted and replaced with the following:

2. Payment. For all services and incidental costs required hereunder, Consultant shall be paid on a time and material/expense basis in accordance with the budget set forth in Exhibit B, provided, however, that total payments to Consultant shall not exceed \$888,447.90, without the prior written approval of County. Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed.

2. Agreement Section 3. Term of Agreement, is deleted and replaced with the following:

3. Term of Agreement. The term of this Agreement shall be from January 14, 2020, to December 1, 2023 unless terminated earlier in accordance with the provisions of Article 4 below.

3. Section 14. Grant Agreement Terms, is added to Agreement. The terms of this section are effective as of the date of the Second Amendment to this Agreement. The terms of this Section shall bind the Scope of Work, Section II, Tasks To Be Performed in Second Amendment to Agreement.

14. Grant Agreement Terms. Consultant shall comply with all terms of the grant documents described in Exhibit D attached hereto and incorporated herein by this reference. In the event of a conflict between the body of this Agreement and Exhibit D, the provisions in Exhibit D shall control.

4. Exhibit A is deleted in its entirety and replaced with the attached Exhibit A

5. Exhibit B is deleted in its entirety and replaced with the attached Exhibit B.

6. Exhibit C: is deleted in its entirety and replaced with the attached Exhibit C.

7. Exhibit D is the attached Regional Early Action Planning Grant (REAP) award from the Department of Housing and Community Development, Association of Bay Area Governments, Standard Agreement 213.

8. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with exhibits is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to modify, invalidate or otherwise affect any provision of the Agreement or any right of County arising thereunder.

9. This Amendment shall be governed by and construed under the internal laws of the state of California, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

COUNTY AND CONSULTANT HAVE CAREFULLY READ AND REVIEWED THIS AMENDMENT AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS AMENDMENT, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the effective date.

CONSULTANT:

Rincon Consultants, Inc.

By: Darcy Kremin

Name: Darcy Kremin

Title: Director

Date: January 21, 2022

By: Richard Daulton

Name: Richard Daulton

Title: Vice President

Date: January 21, 2022

COUNTY OF SONOMA:

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR COUNTY:

By: _____
Department Head

Date: _____

APPROVED AS TO FORM FOR
COUNTY:

By: _____
County Counsel

Date: _____

By: _____
Director, Permit Sonoma

Date: _____

EXHIBIT A: SCOPE OF WORK

Work Completed Prior to Second Amendment of the Contract

Work Rincon has completed to date includes the following tasks for the Rezoning Sites for Housing EIR:

- Task 1: Project Kickoff, including:
 - Memorandum of Data Sources
 - Annotated ADEIR Outline
- Task 2: Scoping, including:
 - Preliminary Project Description
 - Notice of Preparation
 - Virtual public scoping meeting
 - Developing a website application to show sites for public review and comment
- Task 3: Administrative Draft EIR, including
 - Tribal consultation and attendance at meetings
 - Alternatives selection and analysis
 - Appendices/technical reports
 - Attendance at Sonoma Planning Commission meeting – May 20, 2020
 - Subconsultant Management and work completed by subconsultants (Fehr & Peers, Wood-Rodger)
- Task 4: Screencheck Draft EIR
- Task 5: Public Draft EIR, including:
 - List of comment letters
 - Compilation of comments received
- Task 6 Administrative Draft Response to Comments
- Task 7: Final EIR Presentation (not completed)
- Task 8: Project Management
- Task 9: Public Meeting Attendance¹

¹ Some of the public meetings were billed under Task 8 as they occurred before Task 9 was authorized.

- Sonoma Valley Citizens Advisory Commission – December 2, 2020
- Lower Russian River Municipal Advisory Council – December 17, 2020
- Mark West Citizens Advisory Council – January 13, 2021
- Geyserville Planning Committee – March 23, 2021

Cost of work completed and billed to date: \$430,081.90 (see cost spreadsheet)

Scope of Work

The Rincon team will help prepare the County's Housing Element Update pursuant to State law, and its associated CEQA document. The CEQA analysis will be based on the Rezoning Sites for Housing programmatic Draft EIR and any updates related to the Housing Element. Rincon will revise the previously prepared CEQA analyses with new or updated analysis as it relates to the Housing Element Update. The EIR will, to the extent possible, rely on existing environmental documentation and technical studies prepared for the project area, including the Rezoning Sites for Housing EIR, and the technical studies completed for that project. This work program outlines the steps that would be needed to adhere to state housing law (in accordance with HCD recommendations and environmental documentation requirements. As noted by County staff, this Scope does not include Public Outreach as that is being performed under separate contract. The Rincon Team is available to assist at time with public outreach where noted below.

Task 1. Project Management & Coordination

Kickoff Meeting

The Rincon team will schedule a kick-off meeting with staff to discuss project expectations regarding coordination, reporting, deliverables, and all other relevant project information.

Project Schedule

The team will work with county staff to finalize a project schedule within two weeks of the kick-off meeting that includes tasks and milestones for certification of the Housing Element and by HCD by January 30, 2023. The schedule will include project completion milestones and timelines for staff and HCD review. The schedule will be compressed due to time constraints and multiple tasks will be performed simultaneously when possible.

Project Coordination

This task includes communication and coordination between the Rincon team and County staff, including both zoom and in-person meetings, phone calls and conferences, emails, and other communications that are necessary to ensure timely delivery and adoption of the tasks for which the Rincon team are engaged. This task also covers regular and ongoing communications with California Department of Housing & Community Development (HCD) staff, both to facilitate the drafting of the

housing element and to assist HCD in its timely review of the public review draft and final, adopted housing element.

The Project Manager and Assistant Project Manager will lead regular 30 minute check-in meetings with County staff to be scheduled every two weeks to ensure that project tasks are on track and any updates are shared. Other Rincon team members will join as needed pertaining to particular topics.

Task 2. Data Collection and Assessment

General Plan Consistency Review

The Rincon team will review and evaluate existing General Plan Elements to determine any changes that may need to be made to provide consistency with the draft Housing Element and compliance with state law. Areas where additional data and input are needed will be highlighted, with links to other documents and data sources as necessary. Please note, this scope does not include an update of any other General Plan Element, but the Rincon team will work with staff to ensure that all necessary changes have been identified and that resources are provided wherever possible

Deliverables:

1. Existing GP Chapters with highlighted sections, as needed, along with links to relevant information and data as necessary.
2. Deliverable: Electronic copies in Microsoft Word format.

Review & Revise

The Rincon team will review and evaluate the current Housing Element to help identify changes that must be made to comply with current state law and HCD requirements. Throughout preparation of the Housing Element, the Rincon team will communicate with HCD to ensure that proposed policies and actions will lead to an Element that meets state requirements and can be certified. Using Annual Reports and working with staff, the Rincon team will prepare the analysis of the County's progress towards meeting the identified goals, policies, and programs in the existing housing element.

Deliverables:

1. Track changes document with recommended revisions and deletions; table of implementation progress and disposition of existing policies and programs.

Affirmatively Furthering Fair Housing(AFFH) Data Collection

Data collection for the Fair Housing Analysis required under AB 686 includes all of the above information, data from the Regional FHA currently underway, and local knowledge related to Code Enforcement, areas of concentration, and local input from hard-to-reach populations. Coordination with the cities of Santa Rosa and Rohnert Park will be required to address the shared disadvantaged census tract (generally) in the Roseland Area and south.

Task 3. Housing Inventory and Policy Analysis

Housing Needs Assessment

ABAG's Regional Housing Technical Assistance Program (TA Program) will provide jurisdiction-specific data, graphs, and write-ups for much of the information required under Government Code Section 65583, including population, demographic, housing, and regional market conditions. After receiving demographic, economic and housing data from ABAG, and after initial community outreach to identify housing issues and needs, the Rincon team will complete the housing assessment and needs analysis for the new draft housing element. The Rincon team will augment local mobile home parks, and an estimate of the number of units in unincorporated county in need of rehabilitation or replacement.

Deliverable:

1. Housing Needs Assessment

Sites Inventory

Working with County staff, the Rincon team will identify the housing resources available in and to the County. This work will include a review of existing County ABAG's RHNA Allocation for the unincorporated county is 3,881 units.

The Rincon team will work with staff to identify opportunities for housing and analyze the appropriateness and suitability of the Sites Inventory. A large percentage of our 6th cycle Housing Element update clients have seen a significant increase in the analysis required for the identification of suitable and available sites. Therefore, for purposes of this proposal and budget, we have assumed a more significant level of effort to address the sites inventory. It will be imperative to take into consideration the following adequate site requirements under new Housing Element laws:

- 1) No net loss of capacity when sites are developed
- 2) Continued ability to meet the RHNA by income group
- 3) Stringent standards for assessing feasibility when reusing vacant and underutilized sites that have previously been included in the 5th cycle Housing Element
- 4) Reliance on mixed use for only a portion of lower income housing need
- 5) Ratio of vacant vs underutilized sites (greater analysis required if less than 50% vacant)
- 6) Demonstrated trends of development and as-built densities

A parcel-specific sites inventory will be developed and opportunities for lot consolidation will be identified. We will prepare an "adequate sites analysis" showing the relationship between the County's RHNA and the dwelling unit capacity, availability of potential housing sites based on zoning, infrastructure, and General Plan policies, requirements, and limitations.

AB 1397 (Adequate Sites) and SB 166 (No Net Loss) impose stringent requirements on the sites inventory for RHNA. Given the County's development pattern, it is anticipated that some of the sites

may have been used in 5th cycle Housing Element. To include these sites in the sites inventory, additional justification is required to demonstrate that these sites are suitable and available, and may need to include:

- 1) Lot consolidation potential
- 2) Feasibility of development on smaller sites
- 3) Impediments for residential development on non-vacant sites
- 4) Recent development on similar sites
- 5) Substantial evidence the existing use is likely to be discontinued within the planning period

Following the analysis of available sites, the Rincon team will prepare a sites inventory using HCD's current inventory worksheet format and template. The Rincon team will work closely with staff and HCD to provide an expanded analysis of the sites inventory. We assume one round of review on the report. Maps will be provided in the Housing Element itself and are not required as part of the sites inventory worksheet.

Deliverables:

1. Draft Sites Inventory and Review of Sites for Suitability/Adequacy for RHNA
2. Sites Inventory Justification Documentation

Draft Housing Strategy

Working with County staff, the team will identify the housing resources available in and to the County. The Rincon team will also identify governmental and nongovernmental constraints to the production of housing production. This work will include a review of existing County regulations, codes, design and development standards, impact fees, review processes and timelines related to housing. Strategies to reduce constraints identified through this review process, as well as those identified through community outreach and interviews with stakeholders, will be included in the Draft Housing Strategy. The Draft Housing Strategy is a compilation of the housing, economic and demographic data collected to date; the specific housing needs, opportunities, constraints identified in Sonoma County; and the draft goals, policies and objectives to achieve the goal of providing safe, decent housing for all residents. Following review by the County, the Draft Housing Strategy will form the policy basis for the Housing Element and will be provided by the public for review and comments prior to the preparation and release of the Draft Housing Element.

Deliverable:

1. Draft Housing Strategy

AFFH Analysis and Programs

The team will ensure that the new Draft Housing Element meets the requirements of AB 686 (Affirmatively Furthering Fair Housing) and with HCD's most recent guidance on AFFH within Housing Elements. The Rincon team will work with the Lawyer's Committee for Fair Housing, and well as ABAG and HCD staff, while forming the Draft Housing Element to ensure state requirements are met and that

the Element can be certified. The Rincon team will also coordinate with the County's outreach team to ensure that diligent efforts are made to involve all economic segments of the community in the AFFH assessment.

Deliverable:

1. Draft Fair Housing Assessment in Microsoft Word

Maps and Figures

The team will provide or revise maps and figures in the Housing Element. To accomplish this Task, the County will make available to the team all applicable mapping data and GIS shape files.

Task 4. Draft Housing Element

Ongoing Staff Review of Draft Sections

As work on the Housing Element progresses, the Rincon team will work closely with staff to facilitate timely review and incorporation of comments. Because of the short time frame for Housing Element preparation and review, ongoing check-in meetings and communication between staff and the Rincon team will be essential, as will the County's and team's commitments to short turn-around times. The work scope assumes that each of the following documents will have a single round of non-conflicting comments from the County with a turn-around time of not more than 1 week, except that the review time for the Draft Housing Strategy will be 2 weeks and review time for the CEQA document is expected to be 3 weeks: Draft Housing Strategy; Public/HCD Review Draft Housing Element; Planning Commission Review Draft Housing Element (with HCD requested changes); County Council Review of Draft Housing Element for Adoption.

Deliverable:

1. Electronic copies in Microsoft Word; shared screens in biweekly zoom meetings to discuss comments and changes.

Initial Administrative Draft Housing Element

This task consists of preparing the administrative draft housing element following the preparation and review of the Draft Housing Strategy, Housing Sites Analysis and Needs Analysis. The Rincon team will lead the preparation of the administrative draft and assist County staff as needed.

The Rincon team will prepare and submit an administrative draft housing element for staff review. Staff will provide a single, non-conflicting set of changes.

Deliverable:

1. Administrative draft housing element (Microsoft Word)

Draft Housing Element & 90 Day HCD Review

The team will work with County staff throughout the process to review comments and suggestions, as noted above. The Rincon team will incorporate revisions and prepare the Draft Housing Element using Microsoft Word, in the established County format, for public review and comment and will submit draft to HCD as required for review. The Rincon team will facilitate ongoing consultations with HCD staff to ensure compliance with applicable state guidelines and requirements.

Deliverable:

1. Electronic copies in both PDF and Microsoft Word; 1 hard copy as required by HCD.

Public Review Draft

The Rincon team will assist staff in the development of the public review draft housing element, as needed, to incorporate the comments received on the Administrative Draft. Following HCD's review and receipt of its formal review letter, the Rincon team will work with staff to incorporate necessary changes into the Planning Commission draft housing element. Pursuant to AB 215, there is a mandatory 30 day review period and 10 day edit period before submitting to HCD for draft review.

Deliverable:

1. Public review draft incorporating HCD comments (Microsoft Word, PDF)

HCD Review of Draft Housing Element

Following release of the draft housing element for public review, The Rincon team will prepare it for submittal to HCD for their mandatory 60-day review. We will prepare the necessary review documentation to direct our HCD reviewer to where all required components are in the draft housing element, and will be available for consultation via phone calls, emails and zoom. We will work closely with HCD and jurisdiction staff to respond to any comments and produce a final draft housing element for adoption.

Deliverable:

1. Draft housing element submitted to HCD for review (Microsoft Word, PDF)

Final Housing Element

Following the public review and comment period and the preparation of the Draft EIR (as described in Task 6), the Rincon team will prepare the final Housing Element in response to comments from HCD, responsible agencies, County staff, the Planning Commission, County Counsel, and the public.

Deliverable:

1. Electronic copies in both PDF and Microsoft Word.

Task 5. Adoption & Certification

County Adoption and State Certification

The Rincon team has excellent relationships with HCD staff and will facilitate state certification of the Housing Element. Upon adoption of the updated Housing Element by the Board of Supervisors, the Rincon team will prepare a final version of the documents for inclusion in the General Plan document.

Deliverable:

1. One (1) hard copy and electronic copies of all required submittal materials in both PDF and Microsoft Word

Public Noticing

In coordination with the Rincon team, county staff will prepare and carry out the appropriate public noticing and required consultations and notifications per local and state regulations.

Study Session

With the significant changes in State Housing Element law and the size of the County's RHNA, the Housing Element will be a considerable topic during all engagement workshops. On behalf of the Napa-Sonoma subregional housing collaborative, the Rincon team will conduct one study session with the Planning Commission to brief them on the Housing Element process, including local demographic data that will help to determine policy. The Rincon team will prepare the staff report to accompany the presentation and submit it to staff 3 weeks prior to the Planning Commission meeting; staff will be responsible for preparing and distributing the meeting notice.

Deliverable:

1. Assistance with staff report and presentation to Planning Commission

Public Hearings

The Rincon team agrees to attend, present, and provide support for two (2) public hearings following HCD review of the Draft Housing Element, including one Planning Commission hearing to review and recommend adoption of the Element and one Board of Supervisors hearing for adoption of the Housing Element. Additional hearing or meetings, if required and permitted by the tight project schedule, would be available at normal hourly rates.

Deliverable:

1. Assistance with staff report and presentation to Planning Commission

Transmittal to HCD for Certification

The Rincon team will prepare the final housing element, including any changes from the public hearings, and submit to HCD for final certification, and to the California Office of Planning and Research (OPR). At this point, the Rincon team's work is complete and any additional comments or questions by HCD we assume will be minimal and handled by County staff. If desired, the Rincon team can be available on a time and materials basis to address comments.

Deliverable:

1. Final Housing Element submitted to HCD for certification and to OPR

Task 6. CEQA Compliance

Project Description and Notice of Preparation

The project description will be based on additional information to be provided by the County and project team. Rincon will gather any additional materials available for the Housing Element Update, including relevant planning documents, any technical analyses prepared by the County, and recent environmental documentation prepared for projects in or near the project area. Rincon will then prepare a detailed project description based on work already completed for the Rezoning Sites for Housing EIR, including tabular and graphic information, for review by the County and project team. The project description will include:

- *A thorough explanation of proposed changes to the Housing Element*
- *A discussion of planned development characteristics at buildout*
- *Features that have been incorporated into the project to minimize potential environmental or land use conflicts, if any*
- *Tables illustrating project characteristics and the degree of change from existing conditions and currently-adopted Zoning Code and land use designations*
- *Supporting graphics*

Rincon assumes one round of County edits to the draft project description. Upon County approval of the draft project description, Rincon will begin preparing the Draft EIR.

Deliverable

1. Draft Project Description section of Draft EIR, approved by County

Notice of Preparation (NOP) & Scoping Meeting

After incorporating County review comments on the preliminary Project Description, Rincon will draft an NOP in consultation with County staff. The NOP will consist of a form letter with a brief description of the scope of the project, a map of the County's planning area based on County-provided data regarding the relevant sites, and instructions for submitting comments. The NOP will clarify that the Housing Element EIR was previously circulated in a different form as the Rezoning Sites for Housing EIR.

Rincon will file the NOP with the State Clearinghouse. During the 30-day public review period for the NOP, Rincon will conduct a single virtual Public Scoping Meeting for the EIR to introduce the EIR process and obtain input on the EIR scope.

The County assumes responsibility for conducting appropriate notification to all responsible agencies and to the public. Rincon will review the County's distribution list and make suggestions regarding the list.

Deliverables

1. Notice of Preparation (NOP) (digital versions [Microsoft Word and accessible Adobe PDFs])
2. NOP filed with the State Clearinghouse/Office of Planning and Research

3. Virtual Public Scoping Meeting presentation and facilitation

Tribal Consultation Support

The County assumes responsibility for initiating consultation with Native American tribes and managing the process. Should consultation be requested, Rincon will support the County in meetings with tribes requesting consultation, providing meeting notes to County staff for the project file, and responding to questions or concerns as needed. Support may be provided on an hourly, as-needed basis up to the total not-to-exceed amount of the contract.

Deliverables

1. Attendance at meetings with tribes
2. Meeting notes for the project file
3. Assistance responding to requests, questions, or concerns from tribal representatives

Administrative Draft Environmental Impact Report

This task includes all of the steps necessary to complete an Administrative Draft EIR for the proposed Housing Element Update. The EIR would contain all sections required pursuant to CEQA. To the extent possible, Rincon will incorporate information from existing environmental and planning documents that are applicable to the project area and project, including portions of the Rezoning Sites for Housing EIR prepared by Rincon.

Rincon's subconsultant, Wood Rodgers, will update the Water and Sewer Study. Specifically:

1. Correct factual errors identified by County staff
2. Incorporate Sonoma Water's most recent Urban Water Management Plan (UWMP) and additional information and/or UWMPs from other service providers

Rincon will submit electronic copies of the Administrative Draft EIR (in Microsoft Word and Adobe Acrobat), along with associated appendices, to the County and project team for review and comment. Rincon will then prepare a Screencheck Draft EIR for the County's approval prior to publication. This task includes one round of review and revisions on the Administrative Draft EIR.

Assumptions

Rincon assumes the following:

1. No major new updates to modeling or quantitative analyses, particularly transportation, will be needed for the EIR
2. No additional sites being considered for rezoning beyond those previously analyzed will be included in the Housing Element EIR. However, we do note that there may be some sites that do not require zone or land use designation changes that may need to be considered as part of the Housing Element EIR. We anticipate analysis for these additional sites that don't require zoning changes to be primarily qualitative in nature

Deliverables

1. Revised Water and Sewer Study
2. Administrative Draft EIR (digital versions [Microsoft Word]), along with associated appendices
3. Electronic copies of the Screencheck Draft EIR, incorporating County's comments

Public Draft EIR

Upon receiving one consolidated set of County comments on the Screencheck Draft EIR, Rincon will prepare a Public Review Draft EIR for the mandatory 45-day public review. The Public Review Draft EIR will comply with the County's and the Americans with Disabilities (ADA) requirements for accessibility. Rincon will prepare all required notices for the EIR, including the Notice of Completion (NOC), and will file the NOC with the State Clearinghouse.

The County assumes responsibility for:

1. Notification to responsible agencies and the public
2. Filing the NOC with the County Clerk
3. Publishing the NOC in a newspaper
4. Sending the documents to relevant agencies and interested citizens

Deliverables

1. Public Review Draft EIR, electronic (Microsoft Word) versions
2. Public Review Draft EIR, Adobe Acrobat version (ADA-accessible) for uploading to the County's website
3. Public Review Draft EIR, up to 15 hard copies
4. Administrative Record
5. Notice of Completion, filed with the State Clearinghouse

Response to Comments/Final EIR

The final stages of the EIR process involve responding to comments, preparing the Administrative Final EIR and Final EIR, and holding public hearings and final editorial tasks.

Response to Comments/Administrative Final EIR

Rincon staff, in coordination with County staff, will respond to public and agency review comments on the Draft EIR in accordance with CEQA Guidelines Section 15088. The Final EIR will consist of the body of the Draft EIR, as revised based on comments received, and an additional section including all comments and responses. Rincon staff will respond to and incorporate one round of County staff comments on the Response to Comments and Administrative Final EIR.

Deliverable

1. Administrative Draft Final EIR document (digital versions [Microsoft Word and accessible Adobe PDFs])

Final Mitigation Monitoring and Reporting Program (MMRP)

Concurrent with delivery of the Final EIR, and in accordance with Public Resources Code Section 21081.6, Rincon will prepare an MMRP (if needed) in a format that complies with County requirements, consistent with CEQA Guidelines requirements. The MMRP will include a table that lists each mitigation measure, the agency responsible for each measure, when monitoring must occur, the frequency of monitoring, and criteria to determine compliance with the condition. For some issues that may depend on the details of future design, mitigation measures will identify specific performance standards to be achieved, typical approaches to meeting the applicable criteria, and the point in time when documentation must be provided to and approved by the County. Where necessary, the MMRP will include post-construction monitoring to confirm the effectiveness of the proposed measures. If necessary, we assume one round of review of County staff comments on the MMRP.

Deliverable

1. Final Mitigation Monitoring and Reporting Program (digital versions [Microsoft Word and accessible Adobe PDFs] and up to 15 hard copies)

Publish Final EIR

Rincon will respond to one round of County staff comments on the Administrative Final EIR. Rincon will provide appendices as a CD or thumb drive. The County assumes responsibility for filing the NOD with the County Clerk's office and payment of associated fees.

Deliverable

1. Final EIR (five bound hardcopies, digital version [Microsoft Word and accessible PDF version])

CEQA Findings and Statement of Overriding Considerations

Rincon will prepare the CEQA Findings and Statement of Overriding Considerations for the project based on the impact conclusions of the EIR, if necessary. The Draft CEQA Findings will be submitted alongside the Final EIR, and will contain a discussion of alternatives, including the rationale for rejecting any of the analyzed project alternatives, using in part the project objectives. A County-produced partial draft of the CEQA Findings and Statement of Overriding Considerations has been provided to Rincon.

This scope of work assumes that if alternatives are determined to be infeasible due to financial considerations, or that the Statement of Overriding Considerations relies on specific economic or financial factors, corresponding financial data to support these conclusions will be provided by the County. This task will comply with CEQA Guidelines Sections 15091 and 15093.

Deliverables

1. CEQA findings (digital version [Microsoft Word])
2. Statement of Overriding Considerations (digital version [Microsoft Word])

Exhibit B: Payments and Budget

Work Completed to Date (Rezoning Sites to Housing EIR)	Amount Billed
Task 1. Project Kick Off	\$4,340.00
Task 2. Scoping	\$22,344.50
Task 3. Administrative Draft EIR	\$176,606.25
Task 4. Screencheck Draft EIR	\$5,103.75
Task 5. Public Draft EIR	\$31,741.50
Task 6. Final EIR (Responses to Public Comments on Draft EIR)	\$13,140.50
Task 7. Final EIR Presentation	\$0.00
Task 8. Project Management	\$39,034.10
Task 9. Public Meeting Attendance	\$220.00
Direct Costs (Fehr & Peers, Wood Rodgers)	\$137,551.30
Total for work completed prior to second amendment	\$430,081.90
New Work to Be Completed (Housing Element EIR)	
Task 1. Project Management & Coordination	\$58,211.00
Task 2. Data Collection and Assessment	\$52,810.00
Task 3. Analysis & Assessment	\$108,720.00
Task 4. Draft Housing Element	\$78,907.00
Task 5. Adoption & Certification	\$20,545.00
Task 6. CEQA Compliance	\$139,174.00
Total for Housing Element EIR	\$458,366.00
Overall Contract Cost	\$888,447.90

Exhibit C: Insurance

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover Consultant's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Consultant authorizes to work under this Agreement (hereinafter referred to as "Agents.") Consultant shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

Consultant is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, Consultant shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Consultant's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event Consultant or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Consultant's insurance be primary without right of contribution from ABAG and/or County. Prior to beginning work under this contract, Consultant shall provide ABAG and County with satisfactory evidence of compliance with the insurance requirements of this section.

The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to ABAG and County. If the Consultant maintains broader coverage and/or higher limits than the minimum limits shown hereunder, ABAG and/or County shall be entitled to the broader coverage and/or higher limits maintained by the Consultant.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of Consultant's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of ABAG and County. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Consultant is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of Consultant and Consultant's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation or "Waiver of Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of ABAG and County.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

ABAG, County, and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by Consultant and Consultant's officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of \$2,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to ABAG and/or and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of ABAG's and/or County's personally identifiable information or confidential information. [If cyber risk coverages are included, the limit should match the limit for Errors and Omissions Professional Liability.]

The policy shall provide coverage for all work performed by Consultant and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Consultant. No contract or agreement between Consultant and any subcontractor/consultant shall relieve

Consultant of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by Consultant and any subcontractor/consultant working on behalf of Consultant on the project.

B. Acceptable Insurers. All policies will be issued by insurers, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

C. Self-Insurance. Consultant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to ABAG and County.

D. Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from ABAG or County. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that ABAG and/or County seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or selfinsured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Consultant shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant's personnel, subconsultants, subcontractors, and equipment have been removed from ABAG's property, and the work or services have been formally accepted. Consultant must notify ABAG

and County if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, Consultant shall deliver to Ebix, ABAG's authorized insurance consultant and County, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

CONSULTANT shall submit certificates of insurance to:

Associate of Bay Area Government Insurance Compliance P.O. Box 100085-M8 Duluth, GA 30096
or

Email: MTC@Ebix.com or

Fax: 1-888-617-2309

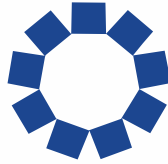
ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

2. NOT USED

3. ADDITIONAL INSUREDS

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as ABAG Indemnified Parties, pursuant to Article 914 of the Agreement.

- Metropolitan Transportation Commission (MTC)
- County of Sonoma, its officers, agents, and employees
Attn: Permit Sonoma
2550 Ventura Ave
Santa Rosa, CA 95403



ASSOCIATION
OF BAY AREA
GOVERNMENTS

Exhibit D
Bay Area Metro Center
375 Beale Street, Suite 700
San Francisco, CA 94105
415.820.7900
www.abag.ca.gov

September 16, 2021

Jesse Arreguin, President
Mayor, City of Berkeley

Belia Ramos, Vice President
Supervisor, Napa County

David Rabbit
Immediate Past President
Supervisor, Sonoma County

Karen Mitchoff
Chair, Regional
Planning Committee
Supervisor, Contra Costa County

Jesse Arreguin
Chair, Legislation Committee
Mayor, City of Berkeley

Karen Mitchoff
Chair, Finance Committee
Supervisor, Contra Costa County

Tennis Wick
Director, Permit & Resource Management Department
County of Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

RE: REGIONAL EARLY ACTION PLANNING (REAP) GRANT SUBALLOCATION AGREEMENT, COUNTY OF SONOMA

Dear Mr. Wick:

This letter, effective as of August 16, 2021 (“Effective Date”) is the agreement between the County of Sonoma (“Recipient”) and the Association of Bay Area Governments (“ABAG”) to support the performance of public outreach, research, analysis, environmental review, and development of goals, objectives, policies, and programs relating to the County’s Housing Element update (“the Agreement”).

WHEREAS, ABAG has received funds from grant funds awarded to ABAG by the State of California Department of Housing and Community Development (HCD) Grant Agreement No. 19-REAP-13915 (“REAP Grant Agreement”), attached hereto and incorporated herein by this reference as Attachment B, pursuant to the Notice of Funding Availability – REAP (“REAP NOFA”), attached hereto and incorporated herein by this reference as Attachment C. Accordingly, any applicable clauses in Attachments B and C are hereby imposed upon Recipient; and

WHEREAS, ABAG has obtained funds from the California Department of Housing and Community Development (“HCD”), the state-required clauses in Attachment D, State-Required Clauses, are attached hereto and incorporated herein; and

WHEREAS, ABAG has suballocated forty-seven thousand five hundred eighty-eight dollars and zero cents (\$47,588.00) of REAP funding to support the Project (“Maximum Payment”).

1. It is agreed that Recipient either has or will perform all the services specified in Attachment A-1, Scope of Work, according to the schedule in Attachment A-2, Project Payment Schedule, both attached hereto and incorporated herein by this reference, and in compliance with the requirements of all other attachments to this Agreement, which are also incorporated herein by this reference.
2. Work will be reviewed by Heather Peters or a designated representative (herein “ABAG Project Manager”) for compliance with the terms of this agreement including the terms of Attachments B and C hereto. Eligible activities must be related to housing planning and facilitate the streamlining and acceleration of housing production. Ineligible activities include:
 - a) RHNA appeals;
 - b) Activities unrelated to accelerating housing production;
 - c) Activities unrelated to preparation and adoption of planning documents, and process improvements to accelerate housing production;
 - d) Activities that obstruct or hinder housing production, e.g., moratoriums, downzoning, planning documents with conditional use permits that significantly impact approval certainty and timing, planned development, or other similarly constraining processes;
 - e) Capital financing, operation or funding related to programs of individual housing development projects; and
 - f) Administrative costs of persons employed by the grantee for activities not directly related to the preparation and adoption of the proposed Activity or Activities.
3. ABAG has developed a project management platform with City Innovate, Inc. (City Innovate) to assist in the procurement, contracting, and invoicing process. The Terms & Conditions of use for the City Innovate platform are attached hereto and incorporated as Attachment F-1 and the Software as a Service Agreement by City Innovate and ABAG dated April 15, 2021 is attached hereto and incorporated as Attachment F-2. Accordingly, Recipient shall comply with any and all applicable clauses in Attachment F-1 and Attachment F-2.
4. Recipient will be compensated for the work in accordance with Attachment A-2, Project Payment Schedule, attached hereto and incorporated herein by this reference. Expenses shall not exceed the Maximum Payment set forth above. ABAG shall make payments to Recipient in accordance with the provisions described in Attachment A-2.

Contingent upon Recipient’s satisfactory completion of work products or milestones, as applicable, required under Attachment A-1, Recipient shall submit invoices to ABAG for reimbursement of that portion of the funds available to Recipient that have been expended. This invoice will be in the format and provided no more frequently than prescribed by ABAG in Attachment A-2. In addition, all supporting documentation must accompany expenditures included on Recipient invoices. Payment shall be made by ABAG within thirty (30) days of receipt of an acceptable invoice, which shall be subject to

the review and approval of ABAG's Project Manager or a designated representative. Approval of an invoice shall not be unreasonably withheld. Recipient should submit invoices electronically via email to ABAG at HousingTA@bayareametro.gov or as directed by the ABAG Project Manager

5. To the extent requested by the ABAG Project Manager, Recipient, or consultant procured by ABAG on behalf of Recipient (if any), shall submit communications, progress reports no more frequently than quarterly and required documentation, including but not limited to invoices, requests for agreement modifications, and information on payments received and made to subrecipients, subrecipient utilization, and if applicable, certified payrolls, to the ABAG Project Manager or their designee via one or more web-based systems designated by ABAG to which ABAG will provide Recipient with system access. ABAG may withhold payment of invoices and/or require consultant procured by ABAG on behalf of Recipient to cease or suspend work pending receipt of such communications, progress reports and required documentation via the applicable web-based system.

6. Recipient acknowledges that a goal of ABAG's Regional Housing Technical Assistance Program is to share work product funded in whole or in part by REAP widely to achieve economies of scale and to avoid inefficient duplication of effort. To further this goal, Recipient shall provide a copy of the final work product described in Attachment A-1 to ABAG via email to HousingTA@BayAreaMetro.gov within 10 days of completion. If completion of a task contained in Attachment A-1 does not result in the production of a document, then Recipient shall submit a short summary of the work completed to the reasonable satisfaction of ABAG, including lessons learned, to MTC/ABAG via email to HousingTA@BayAreaMetro.gov within 10 days of completion. Additionally, Recipient acknowledges that all Work Product created pursuant to this Agreement is subject to the joint ownership requirements of Section 12, State-Owned Data, of Exhibit D, REAP Terms and Conditions, of Attachment B, REAP Grant Agreement, as Work Product is defined therein and Recipient shall take a necessary actions to comply and have its subcontractors and/or subconsultants comply with such requirements.

7. All work product described in Attachment A-1 shall comply with federal accessibility requirements, as specified in Section 508 of the Rehabilitation Act (29 U.S.C. § 798 SECTION 508"). Compliance encompasses both website structure (design, layout, function), and website content (text, images, documents). ABAG shall provide training to Recipient or its subconsultants on Section 508.

8. Recipient acknowledges that a goal of ABAG's Regional Housing Technical Assistance Program is to facilitate statewide, regional and subregional collaboration on housing planning. To further this goal, at all times through the term of this Agreement, Recipient shall designate at least one person who is currently responsible for providing housing planning services to it to receive communications from ABAG, HCD and subregional Planning Collaboratives and their representatives regarding available technical assistance at the state, regional and subregional levels. Recipient designates the following person(s) to receive these communications and shall notify ABAG via email at

HousingTA@BayAreaMetro.gov of a replacement designee in the event of a change in personnel within 10 days:

Nina Bellucci, Planner III

Nina.Bellucci@sonoma-county.org

(707) 565-1236

Brian Oh, Comprehensive Planning Manager

Brian.Oh@sonoma-county.org

(707) 565-1931

9. The term of the Agreement shall begin on the Effective Date and conclude on December 31, 2023, unless ABAG terminates this agreement earlier as provided below.
10. If Recipient fails to perform as specified in the Agreement, or if HCD terminates REAP funding to ABAG due to failure of the California Legislature to appropriate sufficient funds for the REAP program, ABAG may terminate the Agreement for cause by advance 10-day written notice, providing Recipient with the opportunity to cure the default or present an acceptable plan for cure within the 10-day period. At the end of the 10-day period, if the default has not been cured or an acceptable plan of cure presented, ABAG may issue a notice of termination for default, effective immediately, and Recipient will be entitled only to costs incurred for acceptable work performed in accordance with the Agreement, not to exceed the maximum amount payable under the Agreement for such work.
11. Recipient agrees to obtain and maintain at its own expense for the duration of the Agreement the types of insurance listed in Attachment E, Insurance Provisions.
12. Except for invoices and any communications required to be submitted by Recipient via web-based system, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, or emailed to such party at their respective addresses as follows:

To ABAG:

Attention: Heather Peters
Association of Bay Area Governments
375 Beale Street, Suite 800
San Francisco, CA 94105
Email: hpeters@bayareametro.gov

To RECIPIENT:

Attention: Tennis Wick
Director, Permit & Resource Management Department
County of Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403
Email: Tennis.Wick@sonoma-county.org

13. In performing work under the Agreement, Recipient will be acting as an independent contractor and not as an agent or employee of ABAG. Recipient will have no authority to contract in the name of ABAG, and Recipient will be responsible for its own acts and those of its agents and employees.
14. Recipient shall indemnify, defend, and hold harmless ABAG, its board members, representatives, agents and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of Recipient, its officers, employees or agents, or subconsultants or any of them in connection with this Agreement.
15. Recipient agrees to establish and maintain an accounting system conforming to generally accepted accounting principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. Recipient further agrees to keep all records pertaining to the Project(s) being funded for audit purposes for a minimum of: (a) three (3) years following final payment to Recipient, (b) four (4) years following the fiscal year of last expenditure under the Agreement; or (c) until completion of any litigation, claim or audit, whichever is longest; and ABAG may inspect and audit such records during that period of time.
16. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between ABAG and Recipient that cannot be resolved through the informal, good faith efforts of the parties may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. Recipient must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action. The prevailing party in any dispute shall be entitled to payment of its attorneys' fees and costs. This section shall survive the termination or expiration of the Agreement.
17. All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.
18. Recipient may subcontract to consultants or contractors for performance of portions of the work required under this Agreement, without the prior written consent of ABAG, provided Recipient complies with any other applicable requirements of this Agreement and the applicable Attachments hereto, and applicable federal and state requirements.
19. For purposes of this Agreement, "subconsultant" shall mean any consultant or contractor under contract with the Recipient to perform Project work. Any subconsultants must be engaged under written

contract with Recipient with provisions allowing Recipient to comply with all requirements of this Agreement. Failure of a subconsultant to provide any insurance required under this Agreement shall be at the risk of Recipient. ABAG's Project Manager shall be notified in writing of any substitution or addition of subconsultants.

20. Nothing contained in this Agreement or otherwise, shall create any contractual relation between ABAG and any subconsultants, and no subcontract shall relieve Recipient of his/her responsibilities and obligations hereunder. Recipient agrees to be as fully responsible to ABAG for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Recipient. Recipient's obligation to pay its subconsultants is an independent obligation from ABAG's obligation to make payments to Recipient.

21. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement entered into under of this Agreement. If the Recipient already has a subconsultant in place performing applicable work, then Recipient is responsible for communicating to their subconsultant of all applicable provisions of this Agreement.

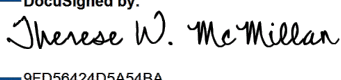
22. This Agreement constitutes the complete agreement between the parties and supersedes any prior written or oral communications. Any changes to this agreement may only be amended by mutual agreement of ABAG and Recipient at any time during the term of the Agreement. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the authorized Executive or a designated representative of ABAG and Recipient and specifically identified as amendments to the Agreement. The ABAG Project Manager is not a designated representative, for purposes of executing an amendment.

23. If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

24. This Agreement is not for the benefit of any person or entity other than the parties.

If you agree, please sign this letter in the space provided below.

Very truly yours,

DocuSigned by:

9FD56424D5A54BA...
Therese W. McMillan
Executive Director

Accepted and Agreed to this:

9/20/2021

Date: _____

DocuSigned by:

Tennis Wick

AE16B00E5BC047C...

Tennis Wick
Director, Permit & Resource
Management Department
County of Sonoma

ATTACHMENT A-1

SCOPE OF WORK FOR COUNTY OF SONOMA (“RECIPIENT”)

All work will support the overarching goals of the REAP program to support planning activities that (1) accelerate housing production or (2) facilitate compliance in implementing the sixth cycle of the RHNA.

Funds will only be used for planning activities and will not be used to support RHNA appeals or the development of specific housing projects, including capital financing, building operation costs, or resident services.

Task 1. Data Collection

ABAG has provided pre-certified datasets. This data packet will be augmented to include locally available and statutorily required data including local data on homelessness, specific affordable properties at risk of conversion, local data on substandard housing and rehabilitation needs, and the County’s projected extremely low-income households.

Timeline: September 2021 – February 2022
 Estimated Cost: \$6,680
 Deliverable: Complete data sets

Task 2. Assessment of Current Housing Element

This task will include review the current housing element and identify the County’s success in accomplishing/implementing the identified goals, policies, and programs. Assess effectiveness of current policies and programs; evaluate progress; review compliance with State laws; identify potential revisions to existing programs; review for consistency with General Plan.

Timeline: September 2021 – January 2022
 Estimated Cost: \$6,800
 Deliverable: Assessment of Current Housing Element to insert into Housing Element

Task 3. Housing Needs Assessment

As noted in the RFP, ABAG’s Regional Housing Technical Assistance Program (TA Program) will provide jurisdiction-specific data, graphs, and write-ups for much of the information required under Government Code Section 65583, including population, demographic, housing, and regional market conditions. 4LEAF will augment the data with information about local market conditions, rental and vacancy trends, conditions within local mobile home parks, and an estimate of the number of units in unincorporated county in need of rehabilitation or replacement.

Timeline: September 2021 – March 2022
 Estimated Cost: \$5,200
 Deliverable: Housing Needs Assessment (Gov. Code Sec 65583(a))

Task 4. Sites Inventory & Analysis

Identify opportunities for housing and analyze the appropriateness and suitability of the Sites Inventory. Perform the required GIS-based AFFH analysis and will create a GIS-based sites suitability tool for the required sites analysis that includes physical and regulatory constraints, disadvantaged communities, fire hazard and geologic hazard areas, flood areas, and socioeconomic outcome scores.

Timeline: August 2021 – March 2022
 Estimated Cost: \$8,040
 Deliverable: Completed Site Inventory form

Task 5. Housing Constraints Analysis

This task examines and analyzes potential and actual governmental and nongovernmental constraints for the preservation, protection, and production of housing across income levels within the unincorporated County. While the ABAG Technical Assistance Program will provide regional information about non-governmental constraints and market conditions, local data must still be collected and analyzed including land use control, permitting and processing procedures and times, building and code enforcement standards and practices, fees and more. Costs here can be reduced with additional input from staff.

Timeline: November 2021 – February 2022
 Estimated Cost: \$6,120
 Deliverable: Narrative sections to insert into Housing Element

Task 6. Draft Housing Strategy

The Draft Housing Strategy will contain the County’s Housing Goals, Policies, Programs, and Quantified Objectives. This document will be drafted following the collection of public input, review of community survey results, and analysis of data and constraints. The Strategy will build on the County’s existing housing element goals and adjust objectives, policies, and programs to meet changing demographics and statutory requirements.

Timeline: December 2021 – February 2022
 Estimated Cost: \$6,520
 Deliverable: Goals, Policies, Programs, and Quantified Objectives

Task 7. Disadvantaged Unincorporated Communities Analysis

A number of sources will be utilized to determine and recommend areas that should be designated or treated as disadvantaged communities, including State LAFCO, the Portrait of Sonoma, the County’s pending Assessment of Fair Housing, interviews with housing and service providers, public outreach, census data, and mapping data from TCAC and HCD’s AFFH mapping site.

Timeline: September – December 2021
 Estimated Cost: \$6,620
 Deliverable: List of disadvantaged unincorporated communities and supporting analysis; narrative sections to insert into Housing Element

Task 8. Public Review Draft

Following the preparation and review of the Draft Housing Strategy, Housing Sites Analysis, and Needs Analysis, prepare public review draft housing element to incorporate the comments received on the Administrative Draft.

Timeline: May – June 2022
 Estimated Cost: \$1,608
 Deliverable: Public review draft housing element (Microsoft Word, PDF)

ATTACHMENT A-2

PROJECT PAYMENT SCHEDULE FOR COUNTY OF SONOMA
("RECIPIENT")

ABAG will reimburse Recipient for all expenses deemed reasonable and necessary by ABAG incurred by Recipient in the performance of this Agreement. Recipient shall submit invoices for:

DELIVERABLE	DUE DATE	AMOUNT
Task 1. Data Collection		
Complete data sets	February 2022	\$6,680
Task 2. Assessment of Current Housing Element		
Assessment of Current Housing Element to insert into Housing Element	January 2022	\$6,800
Task 3. Housing Needs Assessment		
Housing Needs Assessment (Gov. Code Sec 65583(a))	March 2022	\$5,200
Task 4. Sites Inventory & Analysis		
Completed Site Inventory form	March 2022	\$8,040
Task 5. Housing Constraints Analysis		
Narrative sections to insert into Housing Element	February 2022	\$6,120
Task 6. Draft Housing Strategy		
Goals, Policies, Programs, and Quantified Objectives	February 2022	\$6,520
Task 7. Disadvantaged Unincorporated Communities Analysis		
List of disadvantaged unincorporated communities and supporting analysis; narrative sections to insert into Housing Element	December 2021	\$6,620
Task 8. Public Review Draft Housing Element		
Public review draft housing element (Microsoft Word, PDF)	June 2022	\$1,608

ATTACHMENT B

**STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT GRANT AGREEMENT NO. 19-REAP-13915 (INCLUDES
AMENDMENTS)**

ATTACHMENT C

NOTICE OF FUNDING AVAILABILITY – REAP

ATTACHMENT D
STATE REQUIRED CLAUSES

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of the applicable Supplement, Recipient shall not discriminate against any employee for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), age (over 40), marital status, and denial of family care leave. Recipient shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Recipient shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. Recipient, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into the applicable Supplement by reference and made a part hereof as if set forth in full. Each of the Recipient's contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. Recipient shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under the applicable Supplement.

4. Recipient shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of the applicable Supplement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Recipient was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Recipient has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate the applicable Supplement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to Recipient, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure Recipient's breach of the applicable Supplement.

ATTACHMENT E-1

INSURANCE PROVISION

Recipient shall, at its own expense, obtain and maintain (and/or cause its subconsultant(s) to obtain and maintain, as applicable) the types of insurance and financial security relevant to the project, against any and all claims, damages, and losses due to injuries to persons or damages to property or other losses that may arise in connection with the performance of work under this agreement. All policies will be issued by insurers acceptable to ABAG, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better, or as otherwise specified in the applicable Supplement. Notwithstanding anything to the contrary, Recipient may satisfy the insurance requirements herein utilizing self-insurance providing equivalent coverage.

ATTACHMENT E-2

INSURANCE PROVISION

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover Recipient's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Recipient authorizes to work under this Agreement (hereinafter referred to as "Agents.") Recipient shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

Recipient is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, Recipient shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Recipient's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event Recipient or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Recipient's insurance be primary without right of contribution from ABAG. Prior to beginning work under this contract, Recipient shall provide ABAG with satisfactory evidence of compliance with the insurance requirements of this section.

The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to ABAG. If the Recipient maintains broader coverage and/or higher limits than the minimum limits shown hereunder, ABAG shall be entitled to the broader coverage and/or higher limits maintained by the Recipient.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of Recipient's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of ABAG. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Recipient is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of Recipient and Recipient's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation or "Waiver of Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of ABAG.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

ABAG and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Recipient's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by Recipient and Recipient's officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of \$2,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to ABAG and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of ABAG's personally identifiable information or confidential information. [If cyber risk coverages are included, the limit should match the limit for Errors and Omissions Professional Liability.]

The policy shall provide coverage for all work performed by Recipient and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Recipient. No contract or agreement between Recipient and any subcontractor/consultant shall relieve Recipient of

the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by Recipient and any subcontractor/consultant working on behalf of Recipient on the project.

B. Acceptable Insurers. All policies will be issued by insurers, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

C. Self-Insurance. Recipient's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to ABAG.

D. Deductibles and Retentions. Recipient shall be responsible for payment of any deductible or retention on Recipient's policies without right of contribution from ABAG. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that ABAG seeks coverage as an additional insured under any Recipient insurance policy that contains a deductible or self-insured retention, Recipient shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Recipient, subconsultant, subcontractor, or any of their employees, officers or directors, even if Recipient or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Recipient shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Recipient shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Recipient's personnel, subconsultants, subcontractors, and equipment have been removed from ABAG's property, and the work or services have been formally accepted. Recipient must notify ABAG if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, Recipient shall deliver to Ebix, ABAG's authorized insurance consultant, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and

endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

CONSULTANT shall submit certificates of insurance to:

Associate of Bay Area Government

Insurance Compliance

P.O. Box 100085-M8

Duluth, GA 30096

or

Email: MTC@Ebix.com

or

Fax: 1-888-617-2309

ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

2. NOT USED

3. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as ABAG Indemnified Parties, pursuant to Article 914 of the Agreement.

Metropolitan Transportation Commission (MTC)

ATTACHMENT F-1

TERMS & CONDITIONS OF USE FOR CITY INNOVATE PLATFORM

The Association of Bay Area Governments (“ABAG”) has entered into a Software as a Service Agreement with City Innovate, Inc. dated April 15, 2021 (the “ABAG Agreement” which is attached to this Agreement as Attachment F-2), to provide access to a proprietary online platform (the “Platform”) that is intended to allow government agencies to:

- Search profiles of consultants that have been pre-approved to sit on the Regional Planning Consulting Bench, review their pricing, experience, work samples and DBE/SBE status.
- Streamline the informal vendor bidding process when local rules allow, including functionality allowing for drafting and submitting requests for bids and addendums.
- Track progress on project milestones; and
- Route invoices for approval.

During the term of the ABAG Agreement, ABAG will provide Recipient with one (1) set of log in credentials for the Platform free of charge to utilize the features of the Platform listed above subject to the terms and conditions set forth in this Attachment. Recipient acknowledges that use of the Platform is provided only for Recipient’s own use and agrees not to use the Platform for the benefit of any third party.

Use of the Platform by Recipient will be subject to the terms and conditions of the ABAG Agreement which is incorporated herein by this reference.

ABAG makes no express or implied warranty regarding the Platform. Recipient assumes all risk of using the Platform and shall indemnify, hold harmless and defend ABAG against any claims made related to Recipient’s use of the Platform that was not required by ABAG.

ABAG reserves the right to require Recipient, through written notice of no less than 30 days, to utilize the Platform to track the project milestones and submit invoices related to this Agreement as set forth in Attachments A-1 and A-2 and to assist in the procurement of consultants to perform said services if Recipient elects to have ABAG administer that amount on behalf of Recipient to deliver the work outlined in Attachment A-1 in the timeframes outlined in Attachment A-2. Said notice, if given, shall include information on how Recipient can obtain training in the use of the Platform and contact information for Recipient to request assistance with any questions about use of the Platform. If at any time the Platform is unavailable through no fault of Recipient, then Recipient may submit any progress reports on project milestones and invoices required by this Agreement that are due during the time of said unavailability of the Platform via email to HousingTA@BayAreaMetro.gov.

Recipient is responsible for enforcing its own procurement rules when directly procuring consultants using the Platform. ABAG makes no representation of the legality of procurements issued by Recipient using the Platform. ABAG’s procurement rules shall apply to all procurements by made by ABAG to perform

services if Recipient elects to have ABAG administer that amount on behalf of Recipient to deliver the work outlined in Attachment A-1 in the timeframes outlined in Attachment A-2.

Recipient acknowledges that the Platform is not intended for the storage of Sensitive Data, and Recipient agrees not to solicit or encourage the submission of Sensitive Data or itself submit Sensitive Data in connection with the Platform. "Sensitive Data" means: (i) Social Security or other tax identification numbers; (ii) account, credit or debit card numbers, with or without any required security code, access code, PIN or password that would permit access to an individual's financial account, and account information, including balances and transaction data; (iii) user names, passwords or other credentials for accessing any accounts on any third party systems or platforms; (iv) any personally-identifiable information or PII as defined by applicable law; and (v) any other information with respect to which the unauthorized use or disclosure thereof would be reasonably likely to cause material loss or damage to any third party.

The Platform is not intended to be a data repository or archiving tool. Recipient is solely responsible for maintaining records of its direct procurements on the Platform and is required to comply with the California Public Records Act (Government Code §6250 *et seq.*).

ATTACHMENT F-2

**SOFTWARE AS A SERVICE AGREEMENT BY AND BETWEEN CITY
INNOVATE, INC. AND THE ASSOCIATION OF BAY AREA GOVERNMENTS
DATED APRIL 15, 2021**

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM, Governor

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
ADMINISTRATION AND MANAGEMENT DIVISION
Business and Contract Services Branch****Contracts Office**

2020 W. El Camino Avenue, Suite 130, 95833
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 263-6928 / FAX (916) 263-6917
www.hcd.ca.gov



Therese McMillan
Executive Director
Association of Bay Area Governments
375 Beale Street, Suite 800
San Francisco, California 94015-2066

JUN 04 2020

RE: Grant 19-13915

Dear Therese McMillan:

Congratulations on your Regional Early Action Planning Grant (REAP) award. Attached is an electronic copy of the Standard Agreement ("Agreement") with Exhibits A through E:

A. Standard Agreement Contents (STD 213 and Exhibits A through E)**STD 213 - Cover page****Exhibit A - Authority, Purpose and Scope of Work****Exhibit B - Budget Detail and Payment Provisions****Exhibit C* - State of California General Terms and Conditions - GTC 04/2017**

**Exhibit C is now incorporated by reference; please see the STD 213 for additional information.*

Exhibit D – REAP Terms and Conditions**Exhibit E - Special Conditions****B. For expeditious handling of the contract, the Department offers two options for returning signed STD 213; please complete the following:**

1. Review the entire Agreement thoroughly and, if necessary, discuss the requirements with your legal and financial advisors.
2. The person or persons authorized by the Resolution(s), must provide an **original signature, printed name, title and date, must use blue ink**, on the lower left-hand section entitled "Contractor" on the STD 213 and/or on page 2 of the STD 213, if applicable.
3. **Option One:** For electronic signature processing, reply to this Standard Agreement email notification with the attached, fully signed STD 213 page(s). All signatures

Association of Bay Area Governments

19-REAP-13915

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must be original and in **blue ink**. All signers must be included in the reply email and confirm acceptance of e-signing the Agreement.

4. **Option Two:** Print five copies of the Standard Agreement, STD 213. Do not send photocopies of the signed STD 213 page(s). All five copies must be an original signature with **wet, blue ink**; do not return the Exhibits to HCD.
5. **Note:** If the resolution did not authorize a designated official to sign the STD 213 and amendments thereto, your governing body **must** adopt a resolution authorizing a designated official(s) to sign the STD 213 and any subsequent amendments. If the authorized designee as reflected in the resolution, the awarded NOFA amount or your entity status has changed, you are required to provide, to the Department, a new resolution consistent with the terms of the NOFA award and adopted by your Board.
6. Return the e-signed copy or the five signed copies of the STD 213; and, if applicable, the certified resolution within 30 days from the date of this letter to the following address:

**Department of Housing and Community Development
Business & Contract Services Branch
Contracts Office, Attn. Kelvin Singh
2020 West El Camino Avenue, Suite 130
Sacramento, CA 95833**
7. Maintain a complete electronic version of the contract Agreement, STD 213 and Exhibits, for your pending file. **Note: The contract is not effective until it is signed by the Awardee's designated official and the Department.**

The Department reserves the right to cancel any pending Standard Agreement in its entirety if not returned within the required 30-day period.

Please contact Planning Grants Program Manager, Nurulain Kausar, at nurulain.kausar@hcd.ca.gov, if you have any questions regarding the Standard Agreement or the provisions therein.

Sincerely,



Kelvin Singh
Contract Analyst

Attachment

cc: Regional Early Action Planning Grant Program, Paul McDougall

STANDARD AGREEMENT
STD 213 (Rev. 03/2019)

AGREEMENT NUMBER
19-REAP-13915

PURCHASING AUTHORITY NUMBER ^{Exhibit D}
(if applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below.

CONTRACTING AGENCY NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
Association of Bay Area Governments

2. The term of this Agreement is:

START DATE
Upon HCD Approval

THROUGH END DATE
12/31/2024

3. The maximum amount of this Agreement is:
\$5,900,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	3
Exhibit B	Budget Detail and Payment Provisions	4
Exhibit C*	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D	REAP General Terms and Conditions	9
Exhibit E	Special Conditions	0
TOTAL NUMBER OF PAGES ATTACHED		16

Items shown with an asterisk (), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>*

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Association of Bay Area Governments

CONTRACTOR BUSINESS ADDRESS
375 Beale Street, Suite 800

CITY
San Francisco

STATE
CA

ZIP
94105

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS
2020 W. El Camino Ave., Suite 130

CITY
Sacramento

STATE
CA

ZIP
95833

PRINTED NAME OF PERSON SIGNING
Synthia Rhinehart

TITLE
Contracts Manager,
Business & Contract Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

California Department of General Services Approval (or exemption, if applicable)

Exempt per: SCM Vol. 1 4.04.A.3 (DGS memo dated 6/12/1981)

EXHIBIT A**AUTHORITY, PURPOSE AND SCOPE OF WORK****1. Authority**

The Local Government Planning Support Grants Program is established for the purpose of providing regions and jurisdictions with one-time funding, including grants for planning activities to enable jurisdictions to meet the sixth cycle of the regional housing needs assessment. Up to two hundred fifty million dollars (\$250,000,000) shall be distributed under the program in accordance with Health and Safety Code sections 50515.02 and 50515.03. Of this amount, approximately one hundred twenty-five million dollars (\$125,000,000) is available to councils of governments and other regional entities. The Department of Housing and Community Development (Department or HCD) shall administer the Program (referred to herein as the Regional Early Action Planning Grant Program, or "REAP") to councils of governments and other regional entities in accordance with the Notice of Funding Availability ("NOFA") pursuant to Health and Safety Code section 50515.04, subdivision (f).

Pursuant to Health and Safety Code section 50515.02, subdivision (d)(3), a council of governments or a fiscal agent of a multiagency working group, as defined in section 50515.02, may request up to 25 percent of its available funding in advance. This Standard Agreement authorizes the encumbrance of full funds available to the applicant pursuant to the NOFA, subject to all statutory requirements and all applicable provisions including the NOFA, initial application and award for advance payment, subsequent advance payment application and award, application and award for the full remaining fund amount and amendment to this agreement.

The Grantee shall consult with the Department on any amendment or other provision related to the implementation of the Program. The Department decisions related to the administration of the Program shall be final pursuant to Health and Safety Code section 50515.04, subdivision (g).

2. Purpose

In accordance with the authority cited above, the Grantee has been awarded financial assistance in the form of a grant from the Program. The Department has agreed to make the grant for planning activities pursuant to the NOFA and this Agreement. By entering into this Agreement and thereby accepting the award of the Program funds, the Grantee agrees to comply with the terms and conditions of the NOFA, this Agreement, subsequent amendments to this Agreement, the

Regional Early Action Planning Grant Program (REAP)

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Prep. Date: March 31, 2020

EXHIBIT A

representations contained in the initial advance payment and subsequent full application(s), and the requirements of the authority cited above. Based on all representations made by the Grantee, the Department shall encumber the full amount pursuant the NOFA and provide advance payment and subsequent payments in accordance with Exhibit B. All terms, conditions and other relevant provisions will be subject to amendments as a result of subsequent applications and awards for remaining funds after the initial application up to 25 percent of the full amount described in Exhibit B.

3. **Definitions**

Terms herein shall have the same meaning as defined by the NOFA.

4. **Scope of Work**

Grantee shall use the awarded funds in accordance with the approved Scope of Work as contained in the timeline and budget and related information outlined in the application for 25 percent advance payment and any subsequent applications for partial or full funding. The Scope of Work may be amended in compliance with statutory requirements subject to approval by the Department.

5. **Monitoring**

- A. The Grantee shall maintain books, records, documents, and other evidence that demonstrates the funding was used for the appropriate purposes, as described in the Scope of Work, approved application, subsequent approved applications and all other pertinent documents. These books, records, documents and other evidence shall be made available for audit and inspection by the Department at any point during the term of the agreement and subject to any amendments to this agreement.
- B. The Department may request additional information, as needed, to meet the statutory requirements of the Program and facilitate amendments to this agreement, including but not limited to reporting or audit requirements, progress in implementing advance payment(s), or award of the full amount available to the Grantee.
- C. The Department may monitor expenditures and activities of an applicant, as the Department deems necessary, to ensure compliance with statutory or Department requirements.

EXHIBIT A

- D. The Department may, as it deems appropriate or necessary, request the repayment of funds from an applicant, or pursue any other remedies available to it by law for failure to comply with statutory or Department requirements.
- E. The Department's decision to approve or deny an application or request for funding pursuant to the Program, and its determination of the amount of funding to be provided, shall be final.
- F. Monitoring provisions may be amended and are subject to additional provisions in accordance with this agreement or subsequent amendments.

6. Department Contract Coordinator

The Contract Coordinator of this Agreement for the Department is the Housing Policy Development Manager, or the Manager's designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class mail to the Department Contract Coordinator at the following address:

Department of Housing and Community Development
Housing Policy Development Division
Land Use Planning Unit
Attention: REAP Program Manager
2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833
P. O. Box 952050
Sacramento, CA 94252-2050

EXHIBIT B**BUDGET DETAIL AND PAYMENT PROVISIONS****1. Application for Funds**

- A. The Department is entering into this Agreement on the basis of, and in reliance on facts, information, assertions and representations contained in any application and award and any subsequent modifications or additions thereto approved by the Department. All awarded applications for funding and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. The Grantee warrants that all information, facts, assertions and representations contained in any approved application and approved modifications and additions thereto are true, correct, and complete to the best of the Grantee's knowledge. In the event that any part of an application and any approved modification and addition thereto is untrue, incorrect, incomplete, or misleading in such a manner that would substantially affect the Department's approval, disbursement, or monitoring of the funding and the grant or activities governed by this Agreement, the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

2. Grant and Reimbursement Limit

- A. The maximum total amount encumbered to the Grantee pursuant to this Agreement shall not exceed \$5,900,000.00.
- B. This Agreement authorizes an initial advance payment(s) up to 25% Award for eligible activities as described in the 25 percent application.
- C. This Agreement authorizes subsequent award amounts or advance payment up to the total award amount as described in Section 2A, of this Exhibit, and subject to Department approval.
- D. The Grantee shall submit and follow a schedule for the expenditure of the 25 percent advance payment, any subsequent payment and the total

Regional Early Action Planning Grants (REAP)

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EXHIBIT B

amount prior to disbursement of funds. The schedule is subject to Department approval and may be revised as the Department deems necessary.

3. Grant Timelines

- A. This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213, (the "Effective Date").
- B. All Grant funds must be expended by December 31, 2023 pursuant to Health and Safety Code section 50515.04(c)(1).
- C. The Grantee shall deliver to the Department all final invoices for reimbursement on or before November 1, 2023, to ensure the Department meets the December 31, 2023 expenditure deadline. Under special circumstances, approved by the Department, the Department may provide exception, including, but not limited to, advance payment to carry out the terms of this agreement.
- D. It is the responsibility of the Grantee to monitor the project and timeliness of draws within the specified dates.

4. Allowable Uses of Grant Funds

- A. The Department shall not award or disburse funds unless it determines that the grant funds shall be expended in compliance with the terms and provisions of the NOFA which includes associated forms and guidelines and this Agreement.
- B. Grant funds shall only be used by the Grantee for project activities approved by the State that involve planning activities in accordance with the NOFA.
- C. Grant funds may not be used for administrative costs of persons employed by the Grantee for activities not directly related to eligible activities.
- D. The Grantee shall use no more than 5 percent of the total grant amount for costs related to administration of the project.

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EXHIBIT B

- E. A Grantee that receives funds under this Program may use a subcontractor and Grantee shall be accountable to the Department to ensure subcontractor's performance. The subcontract shall provide for compliance with all the requirements of the Program. The subcontract shall not relieve the Grantee of its responsibilities under the Program.
- F. After the contract has been executed by the Department and all parties, approved and eligible costs for eligible activities may be reimbursed for the project(s) upon completion of deliverables or paid in advance in accordance with the scope of work and subject to the terms and conditions of this Agreement.
- G. Only approved and eligible costs incurred for work after October 1, 2019, continued past the date of execution and acceptance of the Standard Agreement and completed during the grant term will be reimbursable.

5. **Performance**

The Grantee will be subject to amendments to this section as a result of future applications and awards.

6. **Fiscal Administration**

- A. The Grantee will be subject to amendments to this section as a result of subsequent applications and awards.
- B. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be terminated by the State by providing Contractor written notice of not less than thirty (30) days prior to the effective date of the termination. In the event of termination by the State due to lack of Budget appropriation, the State and Contractor shall be relieved of any and all obligations under this Grant Agreement on the effective date of termination.
- C. Subject to Section 6.B. above, if funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall

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have the sole discretion to cancel this Agreement without cause, no liability occurring to the State, or amend the current Grant Agreement and amount allocated to Contractor.

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EXHIBIT D**REAP TERMS AND CONDITIONS****1. Reporting**

- A. During the term of the Standard Agreement the Grantee shall submit, upon request of the Department, a performance report that demonstrates satisfaction of all requirements identified in this Standard Agreement.
- B. The Grantee will be subject to amendments to this section as a result of subsequent applications and awards.

2. Accounting Records

- A. The Grantee, its staff, contractors and subcontractors shall establish and maintain an accounting system and reports that properly accumulate incurred project costs by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- B. The Grantee shall establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the scope of work, project timeline and budget. Separate bank accounts are not required.
- C. The Grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with GAAP.
- D. The Grantee agrees that the State or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement.
- E. Subcontractors employed by the Grantee and paid with moneys under the terms of this Standard Agreement shall be responsible for maintaining accounting records as specified above.

3. Audits

- A. At any time during the term of the Standard Agreement, the Department may
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Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT D

- perform or cause to be performed a financial audit of any and all phases of the award. At the Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during and over the project life.
- 1) The Grantee agrees that the Department or the Department's designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement.
 - 2) The Grantee agrees to provide the Department or the Department's designee, with any relevant information requested.
 - 3) The Grantee agrees to permit the Department or the Department's designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with statutes, Program guidelines, and this Agreement.
- B. If a financial audit is required by the Department, the audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in Exhibit D, Section 8 subsection A. of this Standard Agreement.
- 1) The Grantee shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by the Department to the independent auditor's working papers.
 - 2) The Grantee is responsible for the completion of audits and all costs of preparing audits.
 - 3) If there are audit findings, the Grantee shall submit a detailed response acceptable to the Department for each audit finding within 90 days from the date of the audit finding report.
- C. The Grantee agrees to maintain such records for possible audit after final payment pursuant to Exhibit D, Section 3, subsection E. below, unless a longer period of records retention is stipulated.

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Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT D

- 1) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained by the Grantee, contractors and sub-contractors until completion of the action and resolution of all issues which arise from it. The Grantee shall include in any contract that it enters into in an amount exceeding \$10,000.00, the Department's right to audit the contractor's records and interview their employees.
 - 2) The Grantee shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Contracts Code section 10115.10.
- D. The determination by the Department of the eligibility of any expenditure shall be final.
- E. The Grantee shall retain all books and records relevant to this Agreement for a minimum of (3) three years after the end of the term of this Agreement. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five years after the conclusion or resolution of the matter.

4. Remedies of Non-performance

- A. Any dispute concerning a question of fact arising under this Standard Agreement that is not disposed of by agreement shall be decided by the Department's Housing Policy Development Manager, or the Manager's designee, who may consider any written or verbal evidence submitted by the Grantee. The decision of the Department's Housing Policy Development Manager or Designee shall be the Department's final decision regarding the dispute, not subject to appeal.
- B. Neither the pendency of a dispute nor its consideration by the Department will excuse the Grantee from full and timely performance in accordance with the terms of this Standard Agreement.
- C. In the event that it is determined, at the sole discretion of the Department, that the Grantee is not meeting the terms and conditions of the Standard Agreement, immediately upon receiving a written notice from the Department to stop work, the Grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine that the Grantee meets the terms and conditions after a stop work order, and to deliver a written notice to the grantee to resume work under the Standard Agreement.

Regional Early Action Planning Grants (REAP)

NOFA Date: October 10, 2019

Approved Date: March 30, 2020

Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT D

- D. Both the Grantee and the Department have the right to terminate the Standard Agreement at any time upon 30 days written notice. The notice shall specify the reason for early termination and may permit the Grantee or the Department to rectify any deficiency(ies) prior to the early termination date. The Grantee shall submit any requested documents to the Department within 30 days of the early termination notice.
- E. A strong implementation component for the funded activity through this Program is required, including, where appropriate, agreement by Grantee and its subcontractors to formally adopt or complete a planning or other activity consistent with the NOFA. The Grantee must carry out provisions to ensure the adoption or completion of activities in accordance with the NOFA, including activities subcontracted to localities. Grantee may be subject to repayment of the grant should the Grantee or any of its subcontractors under this agreement fail to adopt or complete activities set forth in its application, this Agreement or any amendments to this Agreement.
- F. The following shall each constitute a breach of this Agreement:
- 1) Grantee's failure to comply with any term or condition of this Agreement.
 - 2) Use of, or permitting the use of, grant funds provided under this Agreement for any ineligible costs or for any activity not specified and approved under this Agreement.
 - 3) Any failure to comply with the deadlines set forth in this Agreement unless approved by the Program Manager in writing.
- G. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department may at its discretion, exercise a variety of remedies, including but not limited to:
- 1) Revoke existing REAP award(s) to the Grantee;
 - 2) Require the return of unexpended REAP funds disbursed under this Agreement;
 - 3) Require repayment of REAP Funds disbursed and expended under this agreement;
 - 4) Seek a court order for specific performance of the obligation defaulted upon, or the appointment of a receiver to complete the obligations in accordance

Regional Early Action Planning Grants (REAP)

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EXHIBIT D

with the REAP Program requirements; and

- 5) Other remedies available at law, by and through this agreement. All remedies available to the Department are cumulative and not exclusive.
 - 6) The Department may give written notice to the Grantee to cure the breach or violation within a period of not less than 15 days.
- H. The Grantee may be subject to amendment of this section as a result of subsequent applications and awards.

5. Indemnification

Neither the Department nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents, its contractors, its sub-recipients or its subcontractors under or in connection with any work, authority or jurisdiction conferred upon the Grantee under this Standard Agreement. It is understood and agreed that the Grantee shall fully defend, indemnify and save harmless the Department and all of the Department's staff from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents contractors, sub-recipients, or subcontractors under this Standard Agreement.

6. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time, performance by the Grantee of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

7. Relationship of Parties

It is expressly understood that this Standard Agreement is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

8. Third-Party Contracts

Regional Early Action Planning Grants (REAP)

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Approved Date: March 30, 2020

Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT D

- A. All state-government funded procurements must be conducted using a fair and competitive procurement process. The Grantee may use its own procurement procedures as long as the procedures comply with all City/County laws, rules and ordinances governing procurement, and all applicable provisions of California state law.
- B. Any contract entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement and shall be applicable to the Grantee's sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contractors, and subcontractors shall be submitted to the Department's program manager.
- C. The Department does not have a contractual relationship with the Grantee's sub-recipients, contractors, or subcontractors, and the Grantee shall be fully responsible for monitoring and enforcement of those agreements and all work performed thereunder.

9. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

- A. The Grantee agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the grant, the Grantee, its contractors or subcontractors, and any other grant activity.
- B. During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, genetic information, age, disability, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.
- C. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements that each of them in turn include the nondiscrimination and compliance provisions of this

Regional Early Action Planning Grants (REAP)

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Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT D

clause in all contracts and subcontracts they enter into to perform work under REAP.

- D. The Grantee shall, in the course of performing project work, fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- E. The Grantee shall adopt and implement affirmative processes and procedures that provide information, outreach and promotion of opportunities in the REAP project to encourage participation of all persons regardless of race, color, national origin, sex, religion, familial status, or disability. This includes, but is not limited to, a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, as required by 24 CFR 92.351.

10. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action consistent with the terms of this Agreement and the interests of the Department.

11. Changes in Terms/Amendments

- A. The Grantee may be subject to amendments to this section as a result of subsequent applications and awards.
- B. This Agreement may only be amended or modified by mutual written agreement of both parties.

12. State-Owned Data

- A. Definitions

Regional Early Action Planning Grants (REAP)

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Prep. Date: (date inserted by Contract Manager when each SA is created)

EXHIBIT D

1) Work:

The work to be directly or indirectly produced by the Grantee, its employees, or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement.

2) Work Product:

All deliverables created or produced from Work under this Agreement including, but not limited to, all Work and Deliverables conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. Work Product includes all deliverables, inventions, innovations, improvements, or other works of authorship Grantee and/or Grantee's contractor subcontractor and/or sub-recipient may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

3) Inventions:

Any ideas, methodologies, designs, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Grantee or jointly with the Grantee's contractor, subcontractor and/or sub-recipient and/or Grantee's contractor, subcontractor, and/or sub-recipient's employees with one or more employees of the Department during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

B. Ownership of Work Product and Rights

1) All Work Products derived by the Work performed by the Grantee, its employees or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement, shall be owned jointly by the Department, Grantee, and any of Grantee's sub-recipients ("joint owners"), and shall be considered to be works made for hire by the Grantee and the Grantee's contractor, subcontractor and/or subrecipient for the Department for the benefit of the joint owners. The joint owners shall jointly own all copyrights in the work product.

2) Grantee, its employees and all of Grantee's contractor's, subcontractor's and sub-recipient's employees agree to perpetually assign, and upon

Regional Early Action Planning Grants (REAP)

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EXHIBIT D

creation of each Work Product automatically assign, to the joint owners, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Grantee's contractor, subcontractor and/or subrecipient from the Department. From time to time upon a joint owner's request, the Grantee's contractor, subcontractor and/or subrecipients, and/or its employees, shall confirm such assignments by execution and delivery of such assignment, confirmations or assignment or other written instruments as the Department may request. Grantee hereby waives all rights relating to identification of authorship restriction or limitation on use or subsequent modification of the Work.

3) Grantee, its employees and all Grantee's contractors, subcontractors and sub-recipients hereby agree to assign to the Department joint ownership of all Inventions. The Grantee, its employees and Grantee's contractor, subcontractor and /or subrecipient shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically noting features or concepts that the Grantee, its employees and/or Grantee's contractor, subcontractor and/or subrecipient believes to be new or different.

4) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications and estimates, produced as part of this Agreement shall automatically vest in the joint owners and no further agreement will be necessary to transfer ownership to the joint owners.

13. Special Conditions

The State reserves the right to add any special conditions to this Agreement it deems necessary to assure that the policy and goals of the Program are achieved.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
ADMINISTRATION AND MANAGEMENT DIVISION
Business and Contract Services Branch
Contracts Office**



2020 W. El Camino Avenue, Suite 130, 95833
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 263-6928 / FAX (916) 263-6917
www.hcd.ca.gov

APR 28 2021

Therese McMillan
Executive Director
Association of Bay Area Governments
375 Beale Street, Suite 800
San Francisco, California 94015-2066

RE: Grant 19-13915

Dear Therese McMillan:

RE: Grant 19-REAP-13915 AM.1

Congratulations on your Regional Early Action Planning Grant (REAP) award. Attached is an electronic copy of the Standard Agreement ("Agreement") with Exhibits A through E:

A. Standard Agreement Contents (STD 213A and Exhibits B)

STD 213A:

Exhibit B, Section 2

Addition of 18,066,861.00 of remaining funding

Expenditure Period 10/1/2019-12/31/2023

B. For expeditious handling of the contract, the Department offers two options for returning signed STD 213A; please complete the following:

1. Review the entire Agreement thoroughly and, if necessary, discuss the requirements with your legal and financial advisors.
2. The person or persons authorized by the Resolution(s), must provide an **original signature, printed name, title and date, must use blue ink**, on the lower left-hand section entitled "Contractor" on the STD 213A and/or on page 2 of the STD 213A, if applicable.
3. **Option One:** For electronic signature processing, reply to this Standard Agreement email notification with the attached, fully signed STD 213A page(s). All signatures

Association of Bay Area Governments
19-REAP-13915
Page 2 of 2

must be original and in **blue ink**. All signers must be included in the reply email and confirm acceptance of e-signing the Agreement.

4. **Option Two:** Print a copy of the Standard Agreement, STD 213A. Do not send photocopies of the signed STD 213A page(s). This copy must be an original signature with **wet, blue ink**; do not return the Exhibits to HCD.
5. **Note:** If the resolution did not authorize a designated official to sign the STD 213A and amendments thereto, your governing body must adopt a resolution authorizing a designated official(s) to sign the STD 213A and any subsequent amendments. If the authorized designee as reflected in the resolution, the awarded NOFA amount or your entity status has changed, you are required to provide, to the Department, a new resolution consistent with the terms of the NOFA award and adopted by your Board.
6. Return the e-signed copy or the copy of the STD 213A; and, if applicable, the certified resolution within 30 days from the date of this letter to the following address:

**Department of Housing and Community Development
Business & Contract Services Branch
Contracts Office, Attn. Kelvin Singh
2020 West El Camino Avenue, Suite 130
Sacramento, CA 95833**
7. Maintain a complete electronic version of the contract Agreement, STD 213A and Exhibits, for your pending file. **Note: The contract is not effective until it is signed by the Awardee's designated official and the Department.**

The Department reserves the right to cancel any pending Standard Agreement in its entirety if not returned within the required 30-day period.

Please contact Planning Grants Program Manager, Nurulain Kausar, at nurulain.kausar@hcd.ca.gov, if you have any questions regarding the Standard Agreement or the provisions therein.

Sincerely,



Kelvin Singh
Contract Analyst

Attachment

cc: Regional Early Action Planning Grant Program, Paul McDougall

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev 04/2020)

AGREEMENT NUMBER	AMENDMENT NUMBER	Purchasing Authority Number
19-REAP-13915	1	

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 3 PAGES

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

Association of Bay Area Governments

2. The term of this Agreement is:

START DATE

06/11/2020

THROUGH END DATE

12/31/2024

3. The maximum amount of this Agreement after this Amendment is:

\$23,966,861.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibit B Budget Detail and Payment Provisions is being replaced with a new Exhibit B Budget Detail and Payment Provisions

(revised 4/6/2021)

TOTAL NUMBER OF PAGES ATTACHED 3*All other terms and conditions shall remain the same.**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.***CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Association of Bay Area Governments

CONTRACTOR BUSINESS ADDRESS 375 Beale Street, Suite 800	CITY San Francisco	STATE CA	ZIP 94105
PRINTED NAME OF PERSON SIGNING	TITLE		
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED		

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS 2020 W. El Camino Ave., Suite 130	CITY Sacramento	STATE CA	ZIP 95833
PRINTED NAME OF PERSON SIGNING Shaun Singh	TITLE Contracts Manager, Business & Contract Services Branch		
CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED		

CALIFORNIA DEPARTMENT OF GENERAL SERVICE APPROVAL

EXEMPTION (If Applicable)

Exempt per SCM Vol. 1. 4.04 A .3 (DGS memo dated 6/12/1981)

EXHIBIT B**BUDGET DETAIL AND PAYMENT PROVISIONS****1. Application for Funds**

- A. The Department is entering into this Agreement on the basis of, and in reliance on facts, information, assertions and representations contained in any application and award and any subsequent modifications or additions thereto approved by the Department. All awarded applications for funding and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. The Grantee warrants that all information, facts, assertions and representations contained in any approved application and approved modifications and additions thereto are true, correct, and complete to the best of the Grantee's knowledge. In the event that any part of an application and any approved modification and addition thereto is untrue, incorrect, incomplete, or misleading in such a manner that would substantially affect the Department's approval, disbursement, or monitoring of the funding and the grant or activities governed by this Agreement, the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

2. Grant and Reimbursement Limit

- A. The maximum total amount encumbered to the Grantee pursuant to this Agreement shall not exceed \$23,966,861.00.
- B. This Agreement authorizes an initial advance payment(s) up to 25% Award for eligible activities as described in the 25 percent application.
- C. This Agreement authorizes subsequent award amounts or advance payment up to the total award amount as described in Section 2A, of this Exhibit, and subject to Department approval.
- D. The Grantee shall submit and follow a schedule for the expenditure of the 25 percent advance payment, any subsequent payment and the total amount prior to disbursement of funds. The schedule is subject to

Regional Early Action Planning Grants (REAP)

NOFA Date: October 10, 2019

Approved Date: March 3, 2021

Prep. Date: April 5, 2021

EXHIBIT B

Department approval and may be revised as the Department deems necessary.

3. Grant Timelines

- A. This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213, (the "Effective Date").
- B. All Grant funds must be expended by December 31, 2023 pursuant to Health and Safety Code section 50515.04(c)(1).
- C. The Grantee shall deliver to the Department all final invoices for reimbursement on or before November 1, 2023, to ensure the Department meets the December 31, 2023 expenditure deadline. Under special circumstances, approved by the Department, the Department may provide exception, including, but not limited to, advance payment to carry out the terms of this agreement.
- D. It is the responsibility of the Grantee to monitor the project and timeliness of draws within the specified dates.

4. Allowable Uses of Grant Funds

- A. The Department shall not award or disburse funds unless it determines that the grant funds shall be expended in compliance with the terms and provisions of the NOFA which includes associated forms and guidelines and this Agreement.
- B. Grant funds shall only be used by the Grantee for project activities approved by the State that involve planning activities in accordance with the NOFA.
- C. Grant funds may not be used for administrative costs of persons employed by the Grantee for activities not directly related to eligible activities.
- D. The Grantee shall use no more than 5 percent of the total grant amount for costs related to administration of the project.

Regional Early Action Planning Grants (REAP)

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Approved Date: March 3, 2021

Prep. Date: April 5, 2021

EXHIBIT B

- E. A Grantee that receives funds under this Program may use a subcontractor and Grantee shall be accountable to the Department to ensure subcontractor's performance. The subcontract shall provide for compliance with all the requirements of the Program. The subcontract shall not relieve the Grantee of its responsibilities under the Program.
- F. After the contract has been executed by the Department and all parties, approved and eligible costs for eligible activities may be reimbursed for the project(s) upon completion of deliverables or paid in advance in accordance with the scope of work and subject to the terms and conditions of this Agreement.
- G. Only approved and eligible costs incurred for work after October 1, 2019, continued past the date of execution and acceptance of the Standard Agreement and completed during the grant term will be reimbursable.

5. Performance

The Grantee will be subject to amendments to this section as a result of future applications and awards.

6. Fiscal Administration

- A. The Grantee will be subject to amendments to this section as a result of subsequent applications and awards.
- B. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall immediately terminate and be of no further force and effect. In this event, the State and Contractor shall be relieved of any and all obligations under this Grant Agreement.
- C. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the sole discretion to cancel this Agreement without cause, no liability occurring to the State, or amend the current Grant Agreement and amount allocated to Contractor.

Regional Early Action Planning Grants (REAP)

NOFA Date: October 10, 2019

Approved Date: March 3, 2021

Prep. Date: April 5, 2021

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500, 95833
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 263-2771 / FAX (916) 263-2763
www.hcd.ca.gov



February 27, 2020

MEMORANDUM FOR: All Potential Applicants

FROM: Zachary Olmstead, Deputy Director
Division of Housing Policy Development

SUBJECT: **2020 Notice of Funding Availability -
Regional Early Action Planning Grant Program (REAP)**

The California Department of Housing and Community Development (Department) is pleased to release this Notice of Funding Availability (NOFA) for approximately \$118,750,000 for the Regional Early Action Planning Grant Program (REAP). This NOFA is made available as a portion of the Local Government Planning Support Grants Program pursuant to Chapter 3.1 of Health and Safety Code (Sections 50515 to 50515.05) (Chapter 159, Statutes of 2019). The principal goal of this program is to make funding available to councils of governments and other regional entities for the preparation, adoption, and implementation of plans and processes that accelerate housing production and facilitate compliance in implementing the sixth cycle of the regional housing needs allocation (RHNA).

In order to be eligible for grant funding, an applicant must submit both a complete, signed original application and an electronic copy on CD or USB flash drive. In addition, the applicant may submit a copy by email to EarlyActionPlanning@hcd.ca.gov to expedite the review process. Applications will be accepted on an Over-the-Counter (OTC) basis as of the date of this NOFA through January 31, 2021. The Department encourages early applications and will accept applications postmarked by the January 31, 2021 deadline. Applicants may utilize various carrier services, such as the U.S. Postal Service, UPS, FedEx, or other carrier services. All applications must be submitted to the Department at the following address:

**California Department of Housing and Community Development
Division of Housing Policy Development
2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833**

Program applications, forms, and instructions are available on the Department's website on the [REAP webpage](#). If you have questions regarding this NOFA, please email the Department at EarlyActionPlanning@hcd.ca.gov.

Attachment

Regional Early Action Planning Grant Program (REAP) 2020 Notice of Funding Availability



**Gavin Newsom, Governor
State of California**

**Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency**

**Douglas R. McCauley, Acting Director
California Department of Housing and Community Development**

**Zachary Olmstead, Deputy Director
California Department of Housing and Community Development
Division of Housing Policy Development**

2020 W. El Camino Avenue, Suite 500, Sacramento, CA 95833
(916) 263-2771

[REAP Webpage](#)

REAP Email: EarlyActionPlanning@hcd.ca.gov

February 27, 2020

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A. Introduction

The California Department of Housing and Community Development (Department) is pleased to announce the release of this Notice of Funding Availability (NOFA) for \$118,750,000 for the Regional Early Action Planning Grant Program (REAP). REAP provides grants to councils of governments (COGs) and other regional entities for technical assistance, preparation, and adoption of planning documents and process improvements to accelerate housing production and facilitate compliance in implementing the sixth cycle of the RHNA.

B. Authority and Scope

This NOFA is authorized pursuant to Chapter 3.1 of Health and Safety Code sections 50515 to 50515.05 and implements, interprets, and makes statute specific for purposes of implementing REAP. This NOFA establishes terms, conditions, forms, procedures and other mechanisms as the Department deems necessary to exercise the powers and perform the duties conferred by Chapter 3.1.

The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below:

Quasi-legislative regulations ... have the dignity of statutes ... [and]...
delegation of legislative authority includes the power to elaborate the meaning
of key statutory terms...

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 800 (1999).

Further, the Department may implement REAP through the issuance of forms, guidelines, and one or more NOFAs, as the Department deems necessary, to exercise the powers and perform the duties conferred on it by this Chapter 3.1 of Health and Safety Code. Any forms, guidelines, and NOFAs adopted pursuant to this section 50515.04 are specifically exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Gov. Code). (Health and Safety Code section 50515.04(f).)

The Department reserves the right, at its sole discretion, to suspend or amend the provisions of this NOFA, including, but not limited to, grant award amounts.

C. Program Summary

REAP is part of the broader Local Government Planning Support Grants Program, which was established as part of the 2019-20 Budget Act. In response to the state's housing crisis, the overarching goals of the program are to (1) accelerate housing production and (2) facilitate compliance in implementing the sixth cycle of the RHNA. The 2019-20 Budget Act provides a spectrum of support, incentives, resources, and accountability to meet California's housing goals. Some specific elements include:

- Local and regional planning grants (LEAP and REAP)
- Prohousing preference on funding applications
- Additional funding resources
- Accountability (penalties for noncompliant housing plans)
- Reform (collaborative processes to reform regional housing needs)

D. Program Timeline

Grants will be available to eligible applicants on a noncompetitive, Over-the-Counter (OTC) basis. Applications will be accepted from the date of the release of this NOFA and up until January 31, 2021. See below for the anticipated timeline for awards for the OTC period.

NOFA Release	February 26, 2020
NOFA Webinar	March 2020
NOFA Application Workshops	March 2020
Final Due Date for OTC Applications	January 31, 2021
Technical Assistance	February 2020 through December 31, 2023
Deadline for Submission of Final Invoices	August 31, 2023
HCD Expenditure Deadline	December 31, 2023

The Department will:

1. Begin review of applications on a rolling basis within 30 days of receipt;
2. Preliminarily approve applications within 2-4 weeks of initial compliance determination;
3. Make award determinations on applications within 2-4 weeks of approval; and
4. Provide a Standard Agreement within 60 days of award.

The Department will hold workshops and a webinar to review the REAP NOFA and application and will provide technical assistance to aid applicants throughout the OTC application period and implementation of the grant. For a list of dates, times, and locations for the workshops, as well as information on technical assistance, please visit the [Department's website](#).

E. Eligible Applicants

Eligible applicants for the REAP are councils of governments and other regional entities, as follows:

1. Councils of Governments:

- The Association of Bay Area Governments, representing the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.
- The Sacramento Area Council of Governments, representing the Counties of El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba.
- The San Diego Association of Governments, representing the County of San Diego.
- The Southern California Association of Governments, representing the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura.
- Councils of governments for the Counties of Butte, Humboldt, Lake, and Mendocino. The councils of governments described in this paragraph may apply directly to the Department for funds pursuant to the program.

2. Multiagency Working Groups:

- A central coast multiagency working group consisting of the Association of Monterey Bay Area Governments, the San Luis Obispo Council of Governments, the Council of San Benito County Governments, and the Santa Barbara County Association of Governments, representing the Counties of Monterey, San Benito, San Luis Obispo, Santa Barbara, and Santa Cruz.
- A San Joaquin Valley multiagency working group consisting of the Fresno Council of Governments, the Kern Council of Governments, the Kings County Association of Governments, the Madera County Transportation Commission, the Merced County Association of Governments, the San Joaquin Council of Governments, the Stanislaus Council of Governments, and the Tulare County Association of Governments, representing the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

3. The Counties of Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Inyo, Lassen, Mariposa, Modoc, Mono, Nevada, Plumas, Shasta, Sierra, Siskiyou, Tehama, Tuolumne, and Trinity. The counties described in this paragraph may apply directly to the Department for funds pursuant to the program. The Department may approve a fiscal agent to receive funds on behalf of a county or consortium of counties listed in this paragraph.

F. Award Amounts

1. The REAP Program makes available \$118,750,000 to applicants. Maximum award amounts are based on population estimates posted on the Department of Finance website as of January 1, 2019 and are aggregated by council of government, county, or regional entity according to maximum amounts by jurisdiction size consistent with subdivision (a) of Health and Safety Code section 50515.02.¹
2. In recognition of the unique challenges in developing a process through a multiagency working group, the Department shall allocate \$8 million (\$8,000,000) to the multiagency working groups referred to in section E.2 above as follows:
 - 25 percent (\$2 million) of the amount shall be allocated to the central coast multiagency working group.
 - 75 percent of the amount (\$6 million) shall be allocated to the San Joaquin Valley multiagency working group.
3. See Attachment 1 for available award amounts based on the noted calculations above for each eligible applicant.

G. Multiagency Working Groups

1. Multiagency working groups shall have been formed before November 30, 2019.
2. Each working group shall consist of the following members:
 - One representative from each county.
 - Two city representatives from each county, one representing a larger city within the county and one representing a smaller city within the county.
3. Of the three representatives from each county serving on the multiagency working group, at least one of the representatives shall also be a member of the governing body of the applicable council of governments representing the county.
4. City representatives shall be appointed by a city selection committee for that county. Either the working group or each county through its council of government representative may define “larger” or “smaller” city based on population to maximize representation for the county. However, a smaller city shall not be larger than 100,000 in population.
5. A representative may be an elected or appointed official, past elected official, city staff (e.g., city manager, planning director) or other person that represents the interests of the jurisdiction and is enabled to act in a decision-making capacity.

¹ Population estimates are based on the Department of Finance E-1 report posted to their website on January 1, 2019.

6. The multiagency working group shall select a council of governments to serve as the fiscal agent of the multiagency working group and identify staff to assist the work of the group. If the multiagency working group fails to agree to the selection of a council of governments to serve as fiscal agent within a reasonable time period, the Department shall select a fiscal agent based on factors such as capacity and experience in administering grant programs.
7. The multiagency working groups shall establish by-laws, a charter, or other decision-making structure, and may determine reasonable parameters of decision-making.
8. For resolutions, the representatives in working groups should approve a resolution by voting on it as a group, but the fiscal agent will be the authorized signer. The attesting officer must be a different person than the fiscal agent. See the sample resolution in the application materials for more information.
9. Upon its formation, the multiagency working group shall notify each city and county that is a member of a council of governments of its purpose.
10. If utilizing funds pursuant to Health and Safety Code section 50515.02(c)(2), multiagency working groups shall develop and carry out a collaborative process-- memorialized in a formal document that reflects the unique challenges of each county, cities, and broader region within the working group. The collaborative process must develop cohesive goals, priorities and activities, including intra-regional programs or efforts. If the working group creates a Suballocation program, that program must be consistent with group goals and priorities. The multiagency working group must consult with the Department throughout the preparation and implementation of the collaborative process and may determine format in consultation with the Department.

H. Requests for an Advance of Up to 25 Percent

1. On or after October 1, 2019, a council of governments or a fiscal agent of a multiagency working group may request up to 25 percent of funding available to it in advance of their full application. Individual counties are not eligible to request funding in advance of their full application.
2. A funding request may include, but is not limited to, education and outreach strategies related to the sixth cycle RHNA and may include other eligible activities, as defined below, to facilitate housing planning and accelerate housing production.
3. The Department shall award requested funds within 30 days of receiving that request.
4. To receive this advance, applicants must submit an application, resolution, and invoice. See early application forms for the application and a template of the required resolution.
5. Applicants may submit a request for an advance under this section at any time during the application period ending January 31, 2021, prior to a full application. However, a full application must be received by January 31, 2021.
6. Applicants who received an advance must demonstrate progress in carrying out advance activities according to an agreed upon timetable prior to submitting a full

- application. While this progress is required to be demonstrated prior to application for the balance of fund, the advanced funds do not need to be completely expended prior to applying for and being award the remainder of the REAP funds.
7. Multiagency group applicants must identify planned activities on a county-by-county basis.
 8. Recipients will enter into a state Standard Agreement for their 25 percent advance, if applicable, and for their total allocation amount. The state Standard Agreement may be amended.

I. Eligible Activities

1. Each council of government or other regional entity may, in consultation with the Department and consistent with statutory requirements, determine the appropriate use of funds or Suballocations within its boundaries to appropriately address its unique housing planning priorities.
2. Funds must be used for housing planning activities.
3. A council of governments, other regional entity, or county that receives an allocation of funds shall establish priorities for the use of funds, as noted above and consistent with the categories of activities set out below and use those moneys consistent with priorities.
4. Activities must demonstrate a nexus to increasing housing and accelerating housing production.
5. In consultation with the Department, applicants may select one or more of the following categories of activities to fund:
 - a. Developing an improved methodology for the distribution of the sixth cycle RHNA to further the objectives described in subdivision (d) of section 65584 of the Government Code (RHNA Objectives – See Definitions).
 - I. Activities under this category must demonstrate a nexus to an improved methodology that furthers the RHNA Objectives.
 - II. Activities under this category may include implementation measures associated with an improved methodology that furthers RHNA Objectives. See Best Practices document.
 - b. Suballocation of moneys directly and equitably to jurisdictions or other subregional entities in the form of grants for planning that will accommodate the development of housing and infrastructure that will accelerate housing production in a way that aligns with state planning priorities, housing, transportation, equity, and climate goals.
 - I. In consultation with the Department, applicants may use a variety of measures to directly and equitably suballocate funds such as geographic distribution criteria, jurisdiction size set-a-sides, degree of housing needs, magnitude of benefit on state planning priorities (e.g., reduction in

- vehicle miles traveled), or comprehensive marketing and technical assistance.
- II. Suballocation programs may use different methods such as OTC, competitive or modification of existing programs and strategies, as long as they are related to housing planning and accelerating housing production.
 - III. Eligible activities under Suballocations may include sustainable communities strategies implementation related to housing planning and accelerating housing production.
 - IV. Eligible activities under Suballocations may be coordinated or combined with LEAP pursuant to Health and Safety Code section 50515.03
 - V. Eligible activities under Suballocations may be used to establish Prohousing Policies pursuant to Government Code section 65589.9. See Definitions.
 - VI. Suballocation for housing-related planning activities shall include but are not limited to:
 - Technical assistance in improving housing permitting processes, tracking systems, and planning tools,
 - Establishing regional or countywide housing trust funds for affordable housing (e.g. planning activities and processes, guidelines, charters),
 - Performing infrastructure planning, including sewers, water systems, transit, roads, or other public facilities necessary to support new housing and new residents,
 - Performing feasibility studies to determine the most efficient locations to site housing consistent with Government Code sections 65040.1 (State Planning Priorities) and 65080 (regional transportation plans), and
 - Covering the costs of temporary staffing or consultant needs associated with eligible activities.
- c. Providing jurisdictions and other local agencies with technical assistance, planning, temporary staffing, or consultant needs associated with updating local planning and zoning documents, expediting application processing, and other actions to accelerate additional housing production.
 - d. Covering the costs of administering any programs described in Health and Safety Code section 50515.02.
 - I. Recipients shall use no more than 5 percent of the allocation(s) for costs related to the administration of the activity(ies) for which the allocation(s) were made. Staff and overhead costs directly related to carrying out the eligible activities are “activity costs” and not “administrative costs.” See Best Practices document for examples.
 - e. Outreach, education, priority setting, and other related activities in consultation with the Department to carry out the overall program consistent with statutory objectives.

J. Ineligible Activities

1. Activities unrelated to accelerating housing production;
2. Activities unrelated to preparation and adoption of planning documents, and process improvements to accelerate housing production (The Department may consider proposals that include activities under (1) and (2) if a significant housing component is also present and the net effect on accelerating housing production is positive. For example, an applicant may propose combining an open-space designation, downzoning, preservation or anti-displacement measures with by-right upzoning that has a significant net gain in housing capacity);
3. Activities that obstruct or hinder housing production, e.g., moratoriums, downzoning, planning documents with conditional use permits that significantly impact approval certainty and timing, planned development, or other similarly constraining processes;
4. Capital financing, operation or funding related to programs of individual housing development projects; and
5. Administrative costs of persons employed by the grantee for activities not directly related to the preparation and adoption of the proposed Activity or Activities;

K. Eligible Uses

1. Grant funds may be used to cover the costs of temporary staffing or consultant needs associated with eligible activities.
2. Grant funds shall be used for the costs of preparing and adopting the proposed Eligible Activity or Activities.
3. A jurisdiction that receives funds under REAP may use a subcontractor. The subcontract shall provide for compliance with all the requirements of the program. The subcontract shall not relieve the jurisdiction of its responsibilities under the program.
4. Eligible expenditures may be incurred and expended for the Activity or Activities subject to the terms and conditions of the Standard Agreement.
5. Except as provided in this paragraph, costs incurred prior to the NOFA date are ineligible. Approved and eligible costs incurred for work after October 1, 2019 pursuant to the Health and Safety Code section 50515.02(d)(3), continued past the date of the Standard Agreement, and completed during the grant term, will be reimbursable.
6. For applicants matching federal or state transportation planning funds administered by the California Department of Transportation (Caltrans) through the Overall Work Program (OWP) with REAP:
 - a. Confirm activities are eligible in both programs; and
 - b. Clearly identify source of funds on those projects in the application.
 - c. If matching funds are not used, these funds and activities are not required as part of the OWP.

L. Application Requirements

1. Until January 31, 2021, an applicant may request an allocation of funds by submitting an application, in the form and manner prescribed by the Department, that includes the following information:
 - a. An allocation budget, including timelines, deliverables (implementation), sub-steps, and completion dates.
 - b. The amounts retained by the council of governments, regional entity, or county, and any Suballocations to jurisdictions.
 - c. An explanation of how proposed uses will increase housing planning and accelerate housing production.
 - d. Identification of current best practices at the regional and statewide level that promote a sufficient supply of decent housing to meet the needs of all Californians, and a strategy for increasing adoption of these practices at the regional level, where viable.
 - e. An education and outreach strategy to inform local agencies of the need and benefits of taking early action related to the sixth cycle RHNA.
2. Applicants must propose and document plans or processes that increase housing planning and facilitate accelerating local housing production. The application must demonstrate a significant positive effect on accelerating housing production through forms provided by the Department. An application must include an explanation and documentation of the nexus plans or processes impact on accelerating housing production based on a reasonable and verifiable methodology and must utilize the Department's form (see the Department's application).

M. Application Submission Process

In order to be eligible for grant funding, an applicant must submit a complete, signed original application and an electronic copy on CD or USB flash drive. In addition, an applicant may submit a copy by email to EarlyActionPlanning@hcd.ca.gov to expedite the review process. Applications will be accepted on an Over-the-Counter (OTC) basis as of the date of this NOFA through January 31, 2021. The Department encourages early applications and will accept applications postmarked by the January 31, 2021 deadline. Applicants may utilize various carrier services, such as the U.S. Postal Service, UPS, FedEx, or other carrier services. All applications must be submitted to the Department at the following address:

**California Department of Housing and Community Development
Regional Early Action Grant Program/REAP
Division of Housing Policy Development
2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833**

Applications must be on Department forms and cannot be altered or modified by the applicant. Program applications and forms are available on the [Department's website](#).

N. Application Review Process

1. The program will not utilize a competitive process to award funds.
2. Funds will be available to eligible applicants on a rolling OTC basis that begins as of the date of this NOFA and ends January 31, 2021.
3. An application form will be available upon release of the NOFA and will include forms to demonstrate eligibility requirements are met such as, among other forms, a resolution, a proposed budget and timeline table and self-certified attachments demonstrating a nexus to housing production;
4. Applications will first be reviewed for, among other things, completeness, eligibility requirements, and accuracy;
5. In order to be considered complete, an application must contain requested information and supporting documentation where appropriate;
6. All applications must meet the eligibility requirements as specified in this NOFA;
7. If the application is ineligible, it will not be considered for funding, but may be amended and resubmitted;
8. The Department may request additional information to complete and approve the application for funding;
9. Applications recommended for funding are subject to conditions specified by the Department;
10. Applications will be reviewed within 30 days from the date the Department receives the application; and
11. All applicants not meeting the eligibility requirements will be informed within 30 days from the date the Department receives the application.

O. Award Letter and Standard Agreement

Successful applicants will receive an Award Letter from the Department and will be awarded funds. Applicants will enter into a state Standard Agreement (Standard Agreement) for distribution of funds. The Standard Agreement process will specify, among other things, the amount of funds granted, timeline for expenditure of funds, and the approved use of funds. Expenditure report dates and other requirements will also be identified in the Standard Agreement.

P. Appeals

1. Basis of Appeals:
 - a. Upon receipt of the Department's notice deeming an application incomplete or ineligible, applicants under this NOFA may appeal such decision(s) to the Department Director.
 - b. No applicant shall have the right to appeal a decision of the Department relating to another applicant's eligibility, award, denial of award, or any other related matter.

2. Appeals Process and Deadlines:

- a. Process. In order to lodge an appeal, applicants must submit to the Director by the deadline set forth in subsection (b) below, a written appeal which states all relevant facts, arguments, and evidence upon which the appeal is based. No new or additional information will be accepted. Once the written appeal is submitted to the Director, no further information or materials is required to be accepted or considered thereafter. Appeals are to be submitted to the Director at the following address:

California Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, California 95833
EarlyActionPlanning@hcd.ca.gov

The Director will accept appeals delivered through a carrier service such as the U.S. Postal Service, UPS, Fed Ex, or other carrier services that provide date stamp verification of delivery. Deliveries must be received during the Department's weekday (non-state holiday) business hours of 9:00 a.m. to 5:00 p.m. Pacific Standard Time. Additionally, emails to the email address listed above will be accepted if the email time stamp is prior to the appeal deadline.

- b. Filing Deadline. Appeals must be received by the Director no later than ten (10) business days from the date of the Department's determination.
3. Decision: Any request to amend the Department's decision shall be reviewed for compliance with this NOFA and its application. The Director shall render his/her decision in writing within fifteen (15) business days of receipt of the applicant's written appeal. The decision of the Director shall be the Department's final decision and shall not be appealable to any court or tribunal.

Q. Performance, Monitoring and Enforcement

1. Grant Execution and Term
 - a. The Department will notify the grantee if they have been selected for a grant award;
 - b. After the Standard Agreement has been sent electronically, the grantee will be provided instructions for signing all required documents. The grantee must submit all supporting materials and a signed Standard Agreement within the timeline provided in the instructions or risk forfeiting the grant award;
 - c. The grant term begins on the day the Department and the grantee have fully executed the Standard Agreement. The Department will notify the grantee and partners when work may proceed under the agreement. However, eligible activities that are approved by the Department may be retroactively reimbursed to October 1, 2019; and

- d. Each recipient of funds under REAP shall expend those funds no later than December 31, 2023, as described on Health and Safety Code 50515.04 (c)(1). Deadline for tasks and submission of reimbursements is August 31, 2023).
2. Invoicing and Accounting of Grant Funds
 - a. Grant funds cannot be disbursed until the Standard Agreement has been fully executed;
 - b. The grantee will be responsible for compiling and submitting all invoices and reporting documents.
 - c. The grantee must bill the state based on clear deliverables outlined in the Standard Agreement or budget timeline. Only approved and eligible costs incurred for work after October 1, 2019 and completed during the grant term will be reimbursable. Approved and eligible costs incurred prior to October 1, 2019 are ineligible;
 - d. Applicants with 25 percent advance
 - i. Applicants who received advance funds shall expend all such funds or show substantial progress prior to a full application by submitting an updated project timeline and budget for their eligible projects from the application and any supporting documentation.
 - e. Project invoices may be submitted to the Department by the grantee on a quarterly basis or upon completion of a deliverable, subject to the Department's approval;
 - f. The Department may consider advance payments or alternative arrangements to reimbursement and payment methods based on demonstrated need. The Department may consider factors such as available funds for eligible activities, Suballocations to jurisdictions, need to request funds in increments, schedule for advance payments, and reporting progress in implementing activities according to a timetable;
 - g. Supporting documentation may include, but is not limited to, purchase orders, receipts, progress payments, subcontractor invoices, timecards, reports or any other documentation as deemed necessary by the Department to support the reimbursement to the grantee for expenditures incurred.
 - h. Invoices must be accompanied by supporting documentation where appropriate. Invoices without supporting documentation will not be paid. The Department may withhold 10 percent of the grant until grant terms have been fulfilled.
3. Accounting Records and Audits
 - a. The grantee must establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the budget and timeline. Separate bank accounts are not required;
 - b. The grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with generally accepted accounting principles;

- c. The grantee agrees that the state or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement;
- d. The grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated;
- e. Subcontractors employed by the grantee and paid with moneys under the terms of this Standard Agreement shall be responsible for maintaining accounting records as specified above;
- f. At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the award. At the Department's request, the awardee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during project implementation and over the project life;
- g. The Department may request additional information, as needed, to meet other applicable audit requirements;
- h. The Department may monitor expenditures and activities of an applicant, as the Department deems necessary, to ensure compliance with REAP requirements; and
- i. Applicants using federal or state transportation planning funds administered through the OWP shall clearly identify the source of funds.

4. Remedies of Nonperformance

- a. In the event that it is determined, at the sole discretion of the state, that the grantee is not meeting the terms and conditions of the Standard Agreement, immediately upon receiving a written notice from the Department to stop work, the grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine that the grantee meets the terms and conditions after a stop work order, and to deliver a written notice to the grantee to resume work under the Standard Agreement;
- b. Both the grantee and the Department have the right to terminate the Standard Agreement at any time upon 30 days written notice. The notice shall specify the reason for early termination and may permit the grantee or the Department to rectify any deficiency(ies) prior to the early termination date. The grantee will submit any requested documents to the Department within 30 days of the early termination notice;
- c. There must be a strong implementation component for the funded activity through REAP, including, where appropriate, agreement by the Locality to formally adopt the completed planning document. Localities that do not formally adopt the funded activity could be subject to repayment of the grant; and
- d. The Department may, as it deems appropriate or necessary, request the repayment of funds from an applicant, or pursue any other remedies available to it by law for failure to comply with program requirements.

5. Reporting

- a. At any time during the term of the Standard Agreement, the Department may request a performance report that demonstrates satisfaction of all requirements identified in the Standard Agreement with emphasis on eligible activities, eligible uses, ineligible uses and expenditures according to timelines and budgets referenced in the Standard Agreement;
- b. Awardees shall submit a report, in the form and manner prescribed by the Department, to be made publicly available on its internet website, by April 1 of the year following the receipt of those funds, and annually thereafter until those funds are expended, that contains the following information:
 - The status of the proposed uses listed in the entity's application for funding and the corresponding impact on housing within the region or jurisdiction categorized by eligible uses specified in the application; and
 - A summary of building permits, certificates of occupancy, or other completed entitlements issued by entities within the region or by the jurisdiction, as applicable.
- c. The Department may request additional information, as needed, to meet other applicable reporting requirements;
- d. Upon completion of all deliverables within the Standard Agreement, the awardee shall submit a close out report. See Close Out Report Form.
 - Applicant may include a line item for advance payment or reimbursement, as part of its administrative costs, for its final report that is due by December 31, 2024. Funding requests for final reports must be submitted no later than August 31, 2023.

R. Right to Modify or Suspend NOFA and Final Decision-making

The Department reserves the right, at its sole discretion, to suspend, amend, or modify the provisions of this NOFA at any time, including, without limitation, the amount of funds available hereunder. If such an action occurs, the Department will notify all interested parties and will post the revisions to the Department's website. You may subscribe to the [Department's email](#).

The Department's decision to approve or deny an application or request for funding pursuant to the program, and its determination of the amount of funding to be provided, shall be final.

S. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meanings of terms described in Health and Safety Code section 50470.

1. "Accelerating housing production" means improving the timing, cost, feasibility, approval and amount of development through various mechanisms such as zoning incentives (e.g., increased density and heights, reduced parking requirements), upzoning, zoning amendments to permit residential in

non-residential nonhazardous zones, corridor planning, development standards modifications, nondiscretionary review, financing strategies, sliding scale fee modifications, facilitating adequate infrastructure to support development, approval streamlining that addresses quickness and ease of entitlements, and other mechanisms that promote production or remove or mitigate regulatory barriers. This may also include anti-displacement policies when coupled with activities that have a significant net increase in housing production.

2. Pursuant to Government Code section 65584(e), “affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
3. “Affordability” means a housing unit that satisfies at least one of the following criteria:
 - a. It is available at an “affordable rent,” as that term is used and defined in section 50053 of the Health and Safety Code;
 - b. It is offered at an “affordable housing cost,” as that term is used and defined in section 50052.5 of the Health and Safety Code; or
 - c. It is available at an “affordable rent” or an “affordable housing cost,” according to the alternative percentages of income for agency-assisted rental and cooperative housing developments pursuant to Department regulations adopted under Health and Safety Code section 50462(f).
4. “Annual Progress Report” (APR) means the Housing Element annual report required to be submitted to the Department pursuant to paragraph (2) of subdivision (a) of section 65400 of the Government Code.
5. “Completed entitlement” means a housing development project that has received all the required land use approvals or entitlements necessary for the issuance of a building permit and for which no additional action, including environmental review or appeals, is required to be eligible to apply for and obtain a building permit.
6. “Council of Governments” or “COG” means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with section 6500) of Division 7 of Title 1 of the Government Code that is responsible for allocating regional housing needs pursuant to sections 65584, 65584.04, and 65584.05 of the Government Code.
7. “Department” means the California Department of Housing and Community Development.

8. "Housing" means any development that satisfies both of the following criteria:
- a. At least two-thirds of the square footage of the development must be designated for residential use; and
 - b. Includes a house, an apartment, a mobile home, manufactured home, or trailer, a group of rooms, or a single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and which have a direct access from the outside of the building or through a common hall.

Note: accessory dwelling units (ADU) and junior accessory dwelling units (JADU) pursuant to Government Code sections 65852.2 and 65852.22 meet the definition above.

9. "Housing Element" or "element" means the Housing Element of a community's General Plan, as required pursuant to subdivision (c) of section 65302 of the Government Code and prepared in accordance with Article 10.6 (commencing with section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.
10. "Jurisdiction" means any city, including a charter city, county, including a charter county, or city and county, including a charter city and county.
11. "Local government" or "Locality" means any city, including a charter city, county, including a charter county, or city and county, including a charter city and county.
12. "Low- and Moderate-income households" means household income not exceeding 120 percent of area median income (AMI), adjusted for household size and other factors. Included are households at the following income levels:
- a. Extremely low income: 0-30 percent of AMI
 - b. Very low income: 30-50 percent of AMI
 - c. Lower income: 50-80 percent of AMI; or 0-80 percent of AMI
 - d. Moderate income: 80-120 percent of AMI
13. "Objective zoning standard", "objective subdivision standard", and "objective design review standard" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. "Objective design review standards" means only objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, which are broadly applicable to development within the jurisdiction.
14. "Other Planning Priorities" means planning, policies, programs or investments

to promote housing choices and affordability to lower and moderate income households, the encouragement of conservation of the existing affordable housing stock, and efforts to take into account current and future impacts of climate change, including hazard mitigation.

15. Pursuant to Government Code section 65589.9(f)(2), “Prohousing Policies” ... mean policies that facilitate the planning, approval, or construction of housing. These policies may include, but are not limited to, the following:

- a. Planning for local financial incentives for housing, including, but not limited to, establishing a local housing trust fund;
- b. Reducing parking requirements for sites that are zoned for residential development;
- c. Adoption of zoning allowing for use by right for residential and mixed-use development;
- d. Zoning more sites for residential development or zoning sites at higher densities than is required to accommodate the minimum existing RHNA for the current Housing Element cycle;
- e. Adoption of accessory dwelling unit ordinances or other mechanisms that reduce barriers for property owners to create accessory dwelling units beyond the requirements outlined in Government Code section 65852.2, as determined by the Department;
- f. Process improvements that reduce permit processing time;
- g. Creation of objective development standards;
- h. Studies and implementing actions that reduce development impact fees; and
- i. Establishing a Workforce Housing Opportunity Zone, as defined in Government Code section 65620, or a housing sustainability district, as defined in Government Code section 66200.

16. “Regional housing needs allocation” means the existing and projected need for housing for each region, as determined by the Department pursuant to section 65584.01 of the Government Code.

17. “RHNA Objectives” means

- a. Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low-income households.
- b. Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region’s greenhouse gas reductions targets provided by the California Air Resources Board pursuant to Government Code section 65080.
- c. Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.

- d. Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent American Community Survey.
 - e. Affirmatively furthering fair housing as defined by Government Code section 66854(e).
18. "State Planning Priorities" means priorities that are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities pursuant to Government Code section 65041.1.
19. "Streamlined Housing Production" means improving the entitlement process through actions such as removing, mitigating, or minimizing local regulatory requirements, reforming the local approval process to reduce processing times, reducing the number of local discretionary approvals and permits needed for projects, improving approval certainty, establishing non-discretionary processes, modifying development standards such as reducing parking requirements, and increasing height limits or other efforts such as taking the fullest advantage of existing streamlining mechanisms provided in state law.

Attachment 1: Award Amounts by Eligible Applicant

The REAP Program makes available \$118,750,000 to applicants. Maximum award amounts are based on population estimates posted on the Department of Finance website as of January 1, 2019, and are aggregated by council of government, county, or regional entity according to maximum amounts by jurisdiction size consistent with subdivision (a) of Health and Safety Code section 50515.02.

Eligible Applicants	Maximum Award Amount
Councils of Governments	
Association of Bay Area Governments	\$23,966,861
Sacramento Area Council of Governments	\$6,762,880
San Diego Association of Governments	\$6,851,680
Southern California Association of Governments	\$47,471,023
Butte County COG	\$883,334
Humboldt County Association of Governments	\$785,186
Lake County COG	\$261,729
Mendocino County Association of Governments	\$383,245
Multi-agency Working Groups	
Central Coast Multiagency Working Group, consisting of the Association of Monterey Bay Area Governments, the San Luis Obispo COG, the Council of San Benito County Governments, and the Santa Barbara County Association of Governments	\$7,931,311
San Joaquin Valley Multiagency Working Group, consisting of Fresno COG, Kern COG, Kings County Association of Governments, Madera County Transportation Commission, Merced County Association of Governments, San Joaquin COG, Stanislaus COG, and Tulare County Association of Governments	\$18,975,323
Counties	
Alpine	\$60,758
Amador	\$444,004
Calaveras	\$200,970
Colusa	\$182,275
Del Norte	\$200,970
Glenn	\$182,275
Inyo	\$121,517
Lassen	\$121,517
Mariposa	\$60,758
Modoc	\$121,517
Mono	\$121,517
Nevada	\$462,699
Plumas	\$121,517
Shasta	\$682,364
Sierra	\$121,517
Siskiyou	\$687,038
Tehama	\$322,487
Trinity	\$60,758
Tuolumne	\$200,970

SOFTWARE AS A SERVICE AGREEMENT

between

ASSOCIATION OF BAY AREA GOVERNMENTS FINANCE

and

CITY INNOVATE INC.

for

Bench Management Software Services

FISCAL YEARS 2020-2021 to 2022-2023

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SOFTWARE AS A SERVICE AGREEMENT
Between
ASSOCIATION OF BAY AREA GOVERNMENTS
And
CITY INNOVATE INC.
For
Bench Management Software Services

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of April 15, 2021 (“Effective Date”), by and between the Association of Bay Area Governments (herein called “ABAG”) and City Innovate Inc., providing Software as a Service (SaaS), (herein called “PROVIDER”) a corporation organized under the laws of the State of California.

RECITALS

WHEREAS, ABAG intends to retain PROVIDER to provide an enterprise solution to create an interactive, dynamic, and collaborative space to streamline the procurement and oversight of the state-funded Regional Early Action Planning Grant Program (REAP), the federally-funded Priority Development Areas (PDA) Planning, Technical Assistance, and Staffing Programs for ABAG, MTC and the 109 local Bay Area jurisdictions (herein called the “Project”); and

WHEREAS, ABAG has obtained funds from the California Department of Housing and Community Development (“HCD”) to assist in financing the Project, and the state-required clauses in Attachment D, State-Required Clauses, attached hereto and incorporated herein, apply to the Project; and

WHEREAS, ABAG and the State of California Department of Housing and Community Development have entered into Grant Agreement No. 19-REAP-13915 (Grant Agreement), attached hereto and incorporated herein by this reference as Attachment G;

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of ABAG; and

WHEREAS, ABAG and the Metropolitan Transportation Commission (“ABAG”) entered into a Contract for Services under which ABAG provides administrative and program services to ABAG. Effective July 1, 2017, the staffs of ABAG and ABAG were consolidated. ABAG staff now serve both the Association of Bay Area Governments and the Metropolitan Transportation Commission. As such, all interactions between ABAG and PROVIDER contained within this Agreement, shall be conducted by ABAG staff on behalf of ABAG;

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which PROVIDER will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

PROVIDER's services are described in Attachment A, Scope of Work and Project Schedule, and PROVIDER's service levels are described in Attachment E, City Innovate Software Support and Maintenance Policies, attached hereto and incorporated herein by this reference. PROVIDER agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Heather Peters, (herein called "ABAG Project Manager"). The ABAG Project Manager is responsible for communication with PROVIDER and the administration of this Agreement. ABAG's Executive Director or designated representative may substitute a new ABAG Project Manager by written notice to PROVIDER.

PROVIDER's point of contact and the individual authorized to communicate to ABAG on behalf of PROVIDER is Kamran Saddique ("PROVIDER Project Manager"). A change in the PROVIDER Project Manager requires ABAG's prior written approval.

In the performance of its services, PROVIDER represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of PROVIDERS with special expertise in providing such services, and PROVIDER represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

1.1 PROGRESS REPORTS

PROVIDER shall provide ABAG with monthly progress reports according to the schedule and form approved by the ABAG Project Manager.

1.2 SUBMISSION OF CONTRACT DOCUMENTS

To the extent requested by the ABAG Project Manager, PROVIDER shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments to the ABAG PROJECT MANAGER or their designee via one or more web-based systems designated by ABAG to which ABAG will provide PROVIDER with system access. ABAG may withhold payment of invoices pending receipt of such communications and required documentation via the applicable web-based system.

2. PERIOD OF PERFORMANCE

PROVIDER's services hereunder shall commence on or after April 15, 2021, and shall be completed no later than April 14, 2023, unless extended by a duly executed amendment or earlier terminated, as hereinafter provided. PROVIDER's services shall be performed in accordance with the schedule included in Attachment A, Scope of Work and Project Schedule, attached hereto and incorporated herein by this reference.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, ABAG will pay PROVIDER for its services as described in Attachment A, Scope of Work and Project Schedule, a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed **one hundred seventy thousand three hundred thirty six dollars** (\$170,336) ("Maximum Payment"). ABAG shall make payments to PROVIDER in accordance with the provisions described in Attachment B, Project Pricing and Payment Schedule, attached hereto and incorporated herein by this reference.

All invoices shall be submitted electronically via email to ABAG at acctpay@bayareametro.gov or in writing to:

Attention: Accounting Section
Association of Bay Area Governments
Bay Area Metro Center, Suite 800
375 Beale Street
San Francisco, CA 94105

Payment shall be made by ABAG within thirty (30) days of receipt of an acceptable invoice, approved by the ABAG Project Manager or a designated representative.

4. KEY PERSONNEL

The key personnel assigned to this work by PROVIDER are Jay Nath, Co CEO, Kamran Saddique, Co CEO and Madeleine Chone, Product/Pipeline Manager; and any substitution of any of the personnel named herein requires the prior written approval of the ABAG Project Manager or a designee. PROVIDER shall maintain records documenting compliance with this Article, and such records shall be subject to the audit requirements of Article 15. PROVIDER agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. ABAG reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

ABAG reserves the right to request changes in the services to be performed by PROVIDER. All such changes shall be incorporated in written amendments that specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and PROVIDER and specifically identified as amendments to the Agreement. The ABAG Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

A. Termination for Convenience. ABAG may terminate this Agreement for convenience, in whole or in part, at any time by written notice to PROVIDER. Upon receipt of notice of termination, PROVIDER shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to ABAG. PROVIDER shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed 3%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. If PROVIDER has any property in its possession belonging to ABAG, PROVIDER will account for the same, and dispose of it in the manner ABAG directs. Except as provided above, ABAG shall not in any manner be liable for PROVIDER's actual or projected lost profits had PROVIDER completed the services required by this Agreement.

B. Termination for Default. If PROVIDER does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if PROVIDER fails to comply with any other material provision of the Agreement, ABAG may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on PROVIDER, setting forth the manner in which PROVIDER is in default. If PROVIDER does not cure the breach or describe to ABAG's satisfaction a plan for curing the breach within the fifteen (15) day period, ABAG may terminate the Agreement for default. In the event of such termination for default, PROVIDER will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: PROVIDER shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. Such reimbursement will be offset by any costs incurred by ABAG to complete work required under the Agreement. In no event shall ABAG be required to reimburse PROVIDER for any costs incurred for work causing or contributing to the default. If PROVIDER has any property in its possession belonging to ABAG, PROVIDER will account for the same, and dispose of it in the manner ABAG directs. ABAG shall not in any manner be

liable for PROVIDER's actual or projected lost profits had PROVIDER completed the services required by this Agreement.

C. If it is determined by ABAG that PROVIDER's failure to perform resulted from unforeseeable causes beyond the control of PROVIDER, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of PROVIDER, ABAG, after setting up a new delivery or performance schedule, may allow PROVIDER to continue work, or treat the termination as a termination for convenience.

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

PROVIDER shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security listed in Attachment C, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All policies will be issued by insurers acceptable to ABAG, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

8. INDEPENDENT CONTRACTOR

PROVIDER is an independent contractor and not an employee or agent of ABAG and has no authority to contract or enter into any agreement in the name of ABAG. PROVIDER has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by PROVIDER who are assisting in the performance of services under this Agreement. PROVIDER shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. PROVIDER shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. NOT USED

10. DATA TO BE FURNISHED BY ABAG

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("ABAG Data") made available to PROVIDER by ABAG for use by PROVIDER in the performance of its services under this Agreement shall remain the property of ABAG and shall be returned to ABAG at the completion or termination of this Agreement. No license to such ABAG Data, outside of the Scope of Work

of the Project, is conferred or implied by PROVIDER's use or possession of such ABAG Data. Any updates, revisions, additions or enhancements to such ABAG Data made by PROVIDER in the context of the Project shall be the property of ABAG and subject to the provisions of Article 11.

10.1 NOT USED

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

The parties may be required to make available to each other certain confidential, non-public or proprietary information ("Confidential Information") for purposes of carrying out the Project. Confidential Information shared by one party (the "Disclosing Party" to the other party (the "Receiving Party") may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as "Confidential" or with a similar notice. As between ABAG and PROVIDER, Confidential Information shall remain the sole and exclusive property of the Disclosing Party, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of the Receiving Party; b) the Receiving Party can demonstrate to have had rightfully in its possession prior to disclosure by the Disclosing Party or its contractors, vendors or licensors; c) the Receiving Party rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

The Receiving Party agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by the Disclosing Party. The Receiving Party further agrees to disclose Confidential Information only to its directors, officers, employees and providers who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of the Disclosing Party, at any time and for any reason, the Receiving Party shall destroy or return to the Disclosing Party, at the Disclosing Party's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by the Disclosing Party.

11. NOT USED**12. SUBCONTRACTS**

A. No subproviders, subconsultants or subcontractors are currently approved by ABAG for work under this Agreement. In advance of the assignment of any work to a subproviders, subconsultants or subcontractors, such subproviders, subconsultants or subcontractors must be approved in writing by the ABAG Project Manager and engaged under written contract with PROVIDER with provisions allowing subproviders, subconsultants or subcontractors to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subproviders, subconsultants or subcontractors to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of PROVIDER.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between ABAG and any subproviders, subconsultants or subcontractors, and no subcontract shall relieve PROVIDER of its responsibilities and obligations hereunder. PROVIDER agrees to be as fully responsible to ABAG for the acts and omissions of its subproviders, subconsultants or subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by PROVIDER. PROVIDER's obligation to pay its subproviders, subconsultants or subcontractors is an independent obligation from ABAG's obligation to make payments to PROVIDER.

C. Applicable provisions of this Agreement shall be included in any subcontract or subproviders, subconsultants or subcontractors agreement in excess of \$25,000 entered into under of this Agreement.

D. Substitution of listed subproviders, subconsultants or subcontractors shall generally be made in accordance with Public Contracts Code Section 4107.

13. ASSIGNMENT OF AGREEMENT

PROVIDER shall not assign this Agreement, or any part hereof without prior express written consent of ABAG and any attempt thereat shall be void and unenforceable.

14. RECORDS

PROVIDER agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. PROVIDER further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years

following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

Any conflicting language regarding retention of records contained in Attachment D, State-Required Clauses, shall supersede this Article.

15. AUDITS

PROVIDER shall permit ABAG and ABAG's authorized representatives to have access to PROVIDER's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. PROVIDER shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

Any conflicting language regarding audits contained in Attachment D, State-Required Clauses, shall supersede this Article.

16. NOTICES

Except for invoices submitted by PROVIDER pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To ABAG:	Attention: Heather Peters Association of Bay Area Governments 375 Beale Street, Suite 800 San Francisco, CA 94105 Email: hpeters@bayareametro.gov
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To PROVIDER:	Attention: Kamran Saddique City Innovate Inc. Co CEO 44 Montgomery Street, Office 02-148 San Francisco, CA 94104 Email: kamran@cityinnovate.com
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17. SOLICITATION OF CONTRACT

PROVIDER warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for PROVIDER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for PROVIDER, any fee, commission, percentage, brokerage fee, gift, or any

other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, ABAG shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from PROVIDER's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

PROVIDER covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to ABAG. PROVIDER further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of ABAG, during their tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, PROVIDER further covenants that it has made a complete disclosure to ABAG of all facts of which PROVIDER is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of ABAG (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by ABAG.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

PROVIDER shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to ABAG; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

PROVIDER shall not engage the services of any subprovider, subconsultant, subcontractor or independent contractor on any work related to this Agreement if the subprovider, subconsultant, subcontractor or independent contractor, or any employee of the

subprovider, subconsultant, subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement PROVIDER becomes aware of an organizational conflict of interest in connection with the work performed hereunder, PROVIDER shall immediately provide ABAG with written notice of the facts and circumstances giving rise to this organizational conflict of interest. PROVIDER's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, ABAG becomes aware of an organizational conflict of interest in connection with PROVIDER's performance of the work hereunder, ABAG shall similarly notify PROVIDER. In the event a conflict is presented, whether disclosed by PROVIDER or discovered by ABAG, ABAG will consider the conflict presented and any alternatives proposed and meet with PROVIDER to determine an appropriate course of action. ABAG's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject PROVIDER to damages incurred by ABAG in addressing organizational conflicts that arise out of work performed by PROVIDER, or to termination of this Agreement for breach.

19. LAWS AND REGULATIONS

PROVIDER shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of any such government, including but not limited to ABAG, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on ABAG as a recipient of federal or state funds are hereby in turn imposed on PROVIDER.

Attachment D, State-Required Clauses, and its parts are attached hereto and incorporated herein by this reference.

20. CLAIMS OR DISPUTES

PROVIDER shall be solely responsible for providing timely written notice to ABAG of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is ABAG's intent to investigate and attempt to resolve any PROVIDER claims before PROVIDER has performed any disputed work. Therefore, PROVIDER's failure to provide timely notice shall constitute a waiver of PROVIDER's claims for additional compensation and/or time.

PROVIDER shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by ABAG, or the failure or refusal to issue a

modification, or the happening of any event, thing, or occurrence, unless it has given ABAG due written notice of a potential claim. The potential claim shall set forth the reasons for which PROVIDER believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to ABAG prior to the time that PROVIDER has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, PROVIDER shall continue to work during the dispute resolution process in a diligent and timely manner as directed by ABAG and shall be governed by all applicable provisions of the Agreement. PROVIDER shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves PROVIDER's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to PROVIDER's claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or ABAG may terminate the Agreement.

21. REMEDIES FOR BREACH

In the event PROVIDER fails to comply with the requirements of the Agreement in any way, ABAG reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by ABAG or PROVIDER shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. TEMPORARY SUSPENSION OF WORK

ABAG, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as ABAG may deem necessary. The suspension may be due to the failure on the part of PROVIDER to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of PROVIDER. PROVIDER shall comply immediately with the written order of ABAG to suspend the work wholly or in part. The suspended work shall be resumed when PROVIDER is provided with written direction from ABAG to resume the work.

If the suspension is due to PROVIDER's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of PROVIDER, all costs shall be at PROVIDER's expense and no schedule extensions will be provided by ABAG.

In the event of a suspension of the work, PROVIDER shall not be relieved of PROVIDER's responsibilities under this Agreement, except the obligations to perform the work that ABAG has specifically directed PROVIDER to suspend under this section.

If the suspension is not the responsibility of PROVIDER, suspension of all or any portion of the work under this Section may entitle PROVIDER to compensation and/or schedule extensions subject to the Agreement requirements.

23.

NOT USED

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. PROVIDER and ABAG shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that ABAG provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, the ABAG Project Manager shall provide a written determination as to the dispute, including the basis for their decision. Upon PROVIDER's written acceptance of the ABAG Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, ABAG may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the ABAG Project Manager's determination.

If the ABAG Project Manager's determination is not accepted by PROVIDER, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) calendar days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between ABAG and PROVIDER that cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. PROVIDER must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. PROVIDER shall continue to work during the dispute resolution process in a diligent and timely manner as directed by ABAG, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

25. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

26. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

27. PARTIAL INVALIDITY

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

28. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

29. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. PROVIDER represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both PROVIDER and ABAG. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail, except that in the event of a conflict between the terms and conditions of this Agreement and Attachment D, State Required Clauses, Attachment D, State Required Clauses will prevail. For Attachment F, General Provisions – Information Technology, references to “State” shall deemed references to “ABAG.”

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

DocuSigned by:
Therese W. McMillan
9FD56424D5A54BA...

Therese W. McMillan, Metropolitan
Transportation Commission Executive Director
Acting pursuant to the Contract for Services dated
May 30, 2017

DocuSigned by:
Kamran Saddique
5EEC84F7EEDC487...

Kamran Saddique, Co CEO

ATTACHMENT A

SCOPE OF WORK AND PROJECT SCHEDULE

1. BACKGROUND

MTC and ABAG (“Agencies”) are committed to advancing the Bay Area through collaborative partnerships that result in world-class plans, programs and policies. To further this mission, the Agencies provide technical assistance and grant funding to local jurisdictions.

The Agencies will offer Bay Area jurisdictions access to a pool of planning technical assistance consultants, yielding the following benefits:

- Streamlined access to qualified and diverse technical assistance
- Increase impact by eliminating manual and duplicative work
- Ensure compliance through open and competitive pricing
- Foster transparency and accountability

To manage the complexity and scale of hundreds of projects and thousands of transactions, for the Agencies consultant will provide an enterprise solution to create an interactive, dynamic, and collaborative space to streamline the procurement and oversight of planning technical assistance for the Agencies and 109 local Bay Area jurisdictions. Digital transactions managed by consultant will include: drafting and submitting requests for bids, addendums, bid review and award, project scoping, payment milestones, invoice submission and approvals, and running compliance reports.

2. OBJECTIVES

- Provide oversight and monitoring of consulting procurements and projects
- Reduce or eliminate manual processes and paperwork
- Improve consultant diversity and equity
- Scalable solution that can support similar grant programs in the future

3. SERVICES

Consultant will provide the following services:

Phase 1 - Configure Vendor Manager:

1. Dedicated project manager to execute all activities
2. Develop and manage detailed project charter and schedule
3. Facilitate workshops to review and accept Vendor Manager configuration
 1. Vendor profile
 2. Vendor categories
 3. Project details
 4. Bid details
 5. Up to 10 Email templates and triggers
 6. Project oversight
 7. Invoice approval workflow

8. Up to 10 Reports and dashboards
4. Design, develop, maintain and operate Invoice Management Module
 1. Design workshops
 2. Development
 3. User acceptance testing
 4. Maintenance and operation
5. Design and develop integration DocuSign

The following deliverables will be accepted upon approval by the designated MTC Project Manager:

1. Project charter
2. Project schedule
3. Design documents for Vendor Manager
4. User Acceptance Testing (UAT) for Vendor Manager configuration
5. Design documents for Invoice management module
6. UAT for Invoice management module

Phase 2 - Training and Onboarding:

1. Develop training plan and schedule
2. Develop training and knowledge base articles
3. Develop train-the-trainer materials (optional)
4. Conduct one end-user training for each user group:
 1. MTC/ABAG
 2. Bay Area jurisdictions
 3. Consultants
5. Conduct one admin training for MTC/ABAG staff
6. Conduct train-the-trainer (optional)

The following deliverables will be accepted upon approval by the designated MTC/ABAG Project Manager:

1. Training plan and schedule
2. Training materials
3. Knowledge base articles
4. End-user training
5. Admin training

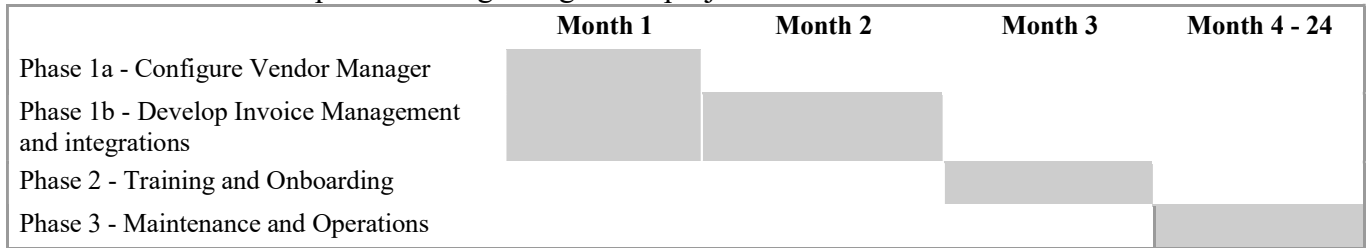
Phase 3 - Maintenance and Operations

1. Provide release notes on new features
2. Provide training for new users or features
3. Conduct account management meetings

4. Provide end-user and admin support
 1. Real-time
 2. Email
 3. Phone
 4. Self-service
5. Additional reports or integrations (optional)

4. SCHEDULE

Below is a high-level schedule. A detailed schedule with activities, durations, dependencies and resources will be developed at the beginning of the project.



5. BENEFITS & FEATURES

Request for Bid (RFB)	
REAP Portal Website	✓
Invitation based user accounts	✓
Vendor and Organization profile management	✓
User onboarding and profile management	✓
Develop RFB details	✓
Filter and search for vendors	✓
Invite vendors to bid	✓
RFB read receipt	✓
Track bid status	✓
Submit RFB addendum	✓
Vendor drafts and submits bid	✓
Review and award bid	✓
Automated system emails	✓
Configure email templates and triggers	✓
Configure vendor categories	✓
Configure Bay Area jurisdictions	✓

Manage users	<input checked="" type="checkbox"/>
Reporting	<input checked="" type="checkbox"/>
Project Oversight	
Collaborative project scope development	<input checked="" type="checkbox"/>
Manage milestones	<input checked="" type="checkbox"/>
Milestone audit trail	<input checked="" type="checkbox"/>
Weekly red-yellow-green status reports	<input checked="" type="checkbox"/>
Dashboard and reporting	<input checked="" type="checkbox"/>
Invoice Management	
Upload invoice and deliverable	<input checked="" type="checkbox"/>
Approval process	<input checked="" type="checkbox"/>
User notifications	<input checked="" type="checkbox"/>
Reports	<input checked="" type="checkbox"/>
Support	
Phone	<input checked="" type="checkbox"/>
Email	<input checked="" type="checkbox"/>
Knowledge Base	<input checked="" type="checkbox"/>
Account management	<input checked="" type="checkbox"/>
Real-time chat	<input checked="" type="checkbox"/>

ATTACHMENT B

Project Pricing and Payment Schedule

Payment for Consultant's services shall be due in the firm fixed amounts indicated below, upon acceptance by Project Manager of the following milestones, described in detail in Attachment A, Scope of Work and Project Schedule:

1. PRICING

Description	Pricing (Monthly)	Estimated Users	Total Annual Price	Discount	2021	2022
Vendor Manager - MTC staff (Super Users)	\$1,350	1-10	\$16,200	33%	\$10,854	\$10,854
Vendor Manager - Cities, Counties, Vendors (End Users)	\$5,355	Unlimited	\$64,260	75%	\$16,065	\$16,065
Reporting and Analytics Module	\$2,268	1-10	\$27,216	33%	\$18,235	\$18,235
Project Oversight Module	\$5,355	Unlimited	\$64,260	75%	\$16,065	\$16,065
SaaS Support Addon includes Onboarding and Training			\$66,825.00	50%	\$33,413	\$33,413
Develop Invoice Management Module	\$24,300	2 Weeks	\$12,150.00	100%	\$0	\$0
Develop Integration with DocuSign	\$24,300	2 Weeks	\$12,150.00	100%	\$0	\$0
Annual Total			\$263,061	64%	\$94,631	\$94,631
Discounted for 2-year contract term with optional 1 year				10%	\$85,168	\$85,168

2. PAYMENT SCHEDULE

Due after design acceptance	\$	21,292
Due after user acceptance test	\$	21,292
Due after launch	\$	42,584
Due 1 year after contract date	\$	85,168

ATTACHMENT C

Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover PROVIDER's own liability and the liability arising out of work or services performed under this Agreement by any subproviders, subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that PROVIDER authorizes to work under this Agreement (hereinafter referred to as "Agents.") PROVIDER shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

PROVIDER is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, PROVIDER shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling PROVIDER's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event PROVIDER or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that PROVIDER's insurance be primary without right of contribution from ABAG. Prior to beginning work under this contract, PROVIDER shall provide ABAG with satisfactory evidence of compliance with the insurance requirements of this section.

The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to ABAG. If the PROVIDER maintains broader coverage and/or higher limits than the minimum limits shown hereunder, ABAG shall be entitled to the broader coverage and/or higher limits maintained by the PROVIDER.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of PROVIDER's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of ABAG. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as

PROVIDER is a sole proprietor or a corporation with stock 100% owned by officers with no employees

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of PROVIDER and PROVIDER's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 per occurrence with a general aggregate liability of not less than \$1,000,000, a products/completed operations aggregate liability limit of not less than \$1,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation or "Waiver of Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of ABAG.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

ABAG and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from PROVIDER's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by PROVIDER and PROVIDER's officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to ABAG and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of ABAG's personally identifiable information or confidential information.

The policy shall provide coverage for all work performed by PROVIDER and any work performed or conducted by any subcontractor/PROVIDER working for or performing services on behalf of PROVIDER. No contract or agreement between PROVIDER and any

subcontractor/PROVIDER shall relieve PROVIDER of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by PROVIDER and any subcontractor/PROVIDER working on behalf of PROVIDER on the project.

B. Acceptable Insurers. All policies will be issued by insurers, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service..

C. Self-Insurance. PROVIDER's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to ABAG.

D. Deductibles and Retentions. PROVIDER shall be responsible for payment of any deductible or retention on PROVIDER's policies without right of contribution from ABAG. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that ABAG seeks coverage as an additional insured under any PROVIDER insurance policy that contains a deductible or self-insured retention, PROVIDER shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of PROVIDER, subprovider, subcontractor, or any of their employees, officers or directors, even if PROVIDER or subprovider is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, PROVIDER shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, PROVIDER shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of PROVIDER's personnel, subproviders, subcontractors, and equipment have been removed from ABAG's

property, and the work or services have been formally accepted. PROVIDER must notify ABAG if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, PROVIDER shall deliver to Ebix, ABAG's authorized insurance PROVIDER, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

PROVIDER shall submit certificates of insurance to:

**Metropolitan Transportation Commission
Insurance Compliance
P.O. Box 100085-M8
Duluth, GA 30096
or
Email to MTC@Ebix.com
or
Fax to 1-888-617-2309**

ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

2. FINANCIAL SECURITY (BONDS) -- Not Used

3. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as ABAG Indemnified Parties, pursuant to Article 9 of the Agreement.

Association of Bay Area Governments (ABAG)
Metropolitan Transportation Commission (MTC)

ATTACHMENT D

State Required Clauses

ATTACHMENT D-1

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, PROVIDER shall not discriminate against any employee for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), age (over 40), marital status, and denial of family care leave. PROVIDER shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability (including HIV and AIDS), medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. PROVIDER shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. PROVIDER, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of the PROVIDER'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. PROVIDER shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. PROVIDER shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which PROVIDER was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that PROVIDER has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate funding for this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by PROVIDER and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to PROVIDER, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure PROVIDER's breach of this Agreement.

ATTACHMENT D-2
NONDISCRIMINATION ASSURANCES

PROVIDER HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which PROVIDER receives federal financial assistance from the Federal Department of Transportation. PROVIDER HEREBY GIVES ASSURANCE THAT PROVIDER shall promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, PROVIDER hereby gives the following specific assurances with respect to its federal-aid Program:

1. That PROVIDER agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.
2. That PROVIDER shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements: PROVIDER hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.
3. That PROVIDER shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.
4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where PROVIDER receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where PROVIDER receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That PROVIDER shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the PROVIDER with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates PROVIDER for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates PROVIDER or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which PROVIDER retains ownership or possession of the property.

9. That PROVIDER shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that PROVIDER, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That PROVIDER agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. PROVIDER shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. PROVIDER shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is

incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to PROVIDER by STATE, acting for the U.S. Department of Transportation, and is binding on PROVIDER, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT D-2

During the performance of this Agreement, PROVIDER, for itself, its assignees and successors in interest (hereinafter collectively referred to as PROVIDER) agrees as follows:

(1) Compliance with Regulations: PROVIDER shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: PROVIDER, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. PROVIDER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by PROVIDER for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by PROVIDER of the PROVIDER's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: PROVIDER shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to PROVIDER's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of PROVIDER is in the exclusive possession of another who fails or refuses to furnish this information, PROVIDER shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts PROVIDER has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of PROVIDER's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to PROVIDER under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: PROVIDER shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

PROVIDER shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event PROVIDER becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, PROVIDER may request STATE enter into such litigation to protect the interests of STATE, and, in addition, PROVIDER may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO ATTACHMENT D-2

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that PROVIDER shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto PROVIDER all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto PROVIDER and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on PROVIDER, its successors and assigns.

PROVIDER, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that PROVIDER shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO ATTACHMENT D-2

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by PROVIDER, pursuant to the provisions of Assurance 7(a) of Attachment D-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add ‘as covenant running with the land’) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, PROVIDER shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, PROVIDER shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of PROVIDER and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO ATTACHMENT D-2

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by PROVIDER, pursuant to the provisions of Assurance 7 (b) of Attachment D-2 .

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, PROVIDER shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, PROVIDER shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of PROVIDER, and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

ATTACHMENT E

CITY INNOVATE SOFTWARE SUPPORT AND MAINTENANCE POLICIES

This document describes the policies that govern City Innovate's software maintenance services and service level agreement

SOFTWARE MAINTENANCE

1. Product Enhancements

1.1. CI makes it a priority to consistently update our product to ensure it is functioning as optimally as possible. We operate on an "agile" development protocol which allows us to consistently and flexibly identify, improve and implement new product features on a regular basis. This results in providing the Customer with a superior product experience that is as up to date as possible with developments in technology.

2. Planned Maintenance

- 2.1. CI strives to maintain the highest levels of availability for our Customer's sites. However, some maintenance may require us to bring our platform down for short periods of time in order to perform upgrades or network changes. This is a standard policy for "Software as a Service" (SaaS) and gives CI the chance to fix bugs, improve security and add the capability for exciting new features while minimizing disruption to our Customer base.
- 2.2. Maintenance updates are scheduled second and fourth Sundays during off-business hours. The only times we make an exception to that is to deliver "hot fixes" for critical service issues. The aim is to have maintenance activities performed without causing any downtime. For scheduled maintenance requiring downtime, those times will be posted at our website.
- 2.3. Scheduled maintenance notifications will be sent to system administrators at least 48 hours before the beginning of the maintenance window.
- 2.4. The maintenance window schedule is subject to change. CI will provide a window maintenance schedule notice upon login for any scheduled maintenance outside of these normally scheduled times.
- 2.5. In-application maintenance notification reminders will be posted at least 48 hours before the beginning of the maintenance window. An alternative status page will be displayed during scheduled maintenance windows.

System Service Level Agreement

1. Service Level Agreement Overview

- 1.1. The following describes the Service Level Agreement (SLA) for the production environment of Solicitation Builder. For purposes of this SLA, business hours are defined as Monday through Friday (8:00 am to 5:00 pm Pacific Time); however, the response times described below are based on a 24/7 clock. That is, if the response time for resolution is 24 hours, the resolution is required by the next day, not in 3 business days.
- 1.2. City Innovate will not be liable for any failure to meet SLAs resulting in whole or in part from events, causes, or responsibilities that are outside of City Innovate's direct control, including, but not limited to a result of events of force majeure.
- 1.3. City Innovate is not accountable for the availability of hardware and software licensed and managed by MTC or MTC authorized vendor staff or other MTC partners
- 1.4. All Service Levels will be suspended on the occurrence of a disaster that requires execution of MTC's Disaster Recovery Plan. Following such a disaster, Service level-based support as described in this section will only be resumed by mutual agreement of MTC and City Innovate.
- 1.5. Recovery Point Objective (RPO). RPO is defined as the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption.
- 1.6. Recovery Time Objective (RTO). RTO is defined as the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. We will ensure that Recovery Point Objective and Recovery Time Objective of environments are 24 hours.
- 1.7. Uptime Service Level. We will use commercially reasonable efforts maintain the online availability of the SaaS Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance scheduled downtime, outages beyond our reasonable control, and outages that result from any issues caused by you, your technology or your suppliers or contractors, Service is not in the production environment, you are in breach of this Agreement, or you have not pre-paid for SaaS Fees for the Software as a Service in the month in which the failure occurred).

Uptime	Penalties
Availability SLA of 99.9% during business hours; Availability SLA of 99% outside of business hours	See 1.8 below

1.8. The penalties will take the form of reduced financial payments (that is, amounts withheld from MTC payments to City Innovate). In any calendar year, for each 30 continuous days of system unavailability, City Innovate shall provide MTC a credit in the amount as described below:

Uptime	Penalty
Monthly Uptime Percentage for any calendar month is between 99.9% and 97.0%	1 week credit
Monthly Uptime Percentage for any calendar month is between 97.0% and 95.0%;	2 week credit
Monthly Uptime Percentage for any calendar month is less than 95.0%.	3 week credit

ATTACHMENT F

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

(State of California, Department of General Services, California Multiple Award Schedule)

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1. Definitions: Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.

a) "Acceptance Tests" means those tests performed during the Performance period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.

b) "Application Program" means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed.

Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.

c) "Attachment" means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by the Contractor.

d) "Business entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.

e) "Buyer" means the State's authorized contracting official.

f) "Commercial Hardware" means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.

g) "Commercial Software" means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or

license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.

h) "Contract" means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.

i) "Custom Software" means Software that does not meet the definition of Commercial Software.

j) "Contractor" means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier," "vendor" or other similar term.

k) "Data Processing Subsystem" means a complement of Contractor furnished individual Machines, including the necessary controlling elements (or the functional equivalent), operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor supplied power and/or signal
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cables, e.g., direct access controller and drives, a cluster of terminals with their controller, etc.

l) "Data Processing System (System)" means the total complement of Contractor furnished Machines, including one or more central processors (or instruction processors),

Operating Software which are acquired to operate as an integrated group.

m) "Deliverables" means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.

n) "Designated CPU(s)" means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and

all CPUs located at the site specified therein.

o) "Documentation" means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder.

Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.

p) "Equipment" is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).

q) "Equipment Failure" is a malfunction in the Equipment, excluding all external factors which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.

r) "Facility Readiness Date" means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.

s) "Goods" means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

t) "Hardware" usually refers to computer Equipment and is contrasted with Software. See also Equipment.

u) "Installation Date" means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.

v) "Information Technology" includes but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between

people and Machines.

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w) “Machine” means an individual unit of Data Processing System or Subsystem separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

x) “Machine Alteration” means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such a change.

y) “Maintenance Diagnostic Routines” means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.

z) “Manufacturing Materials” means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired or rights acquired, specifically to fulfill obligations set forth herein.

aa) “Mean Time Between Failure (MTBF)” means the average expected or observed time between consecutive failures in a System or component.

bb) “Mean Time to Repair (MTTR)” means the average expected or observed time required to repair a System or component and return it to normal operation.

cc) “Operating Software” means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.

dd) “Operational Use Time” means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operation Use Time purposes, that time during which Equipment is in actual operation and is not

synonymous with power on time.

ee) "Period of Maintenance Coverage" means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day and/or increased coverage for weekends and holidays.

ff) "Preventive Maintenance" means that maintenance, performed on a scheduled basis by the Contractor which is designed to keep the Equipment in proper operating condition.

gg) "Principal Period of Maintenance" means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.

hh) "Programming Aids" means contractor supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base
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management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).

ii) "Program Product" means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.

jj) "Remedial Maintenance" means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.

kk) "Software" means an all-inclusive term which refers to any computer programs routines, or subroutines supplied by the Contractor, including Operating Software, Programming

Aids, Application Programs, and Program Products.

ll) "Software Failure" means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.

mm) "State" means the government of the State of California, its employees and authorized representatives, including without limitation any department agency, or other unit of the government of the State of California.

nn) "System" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together and performing in accordance with this Contract.

oo) "U.S. Intellectual Property Rights" means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

2. CONTRACT FORMATION:

a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2(commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.

b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.

c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

3. COMPLETE INTEGRATION: This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or

contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

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4. SEVERABILITY: The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. INDEPENDENT CONTRACTOR: Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

6. APPLICABLE LAW: This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

7. COMPLIANCE WITH STATUTES AND REGULATIONS:

a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractors violation of this provision.

b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise

mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

e) To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.

8. CONTRACTOR'S POWER AND AUTHORITY: The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any DGS PD 401IT (REVISED AND EFFECTIVE 9/5/14)

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arrangement with any third party which might abridge any rights of the State under this Contract.

a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability

on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

9. ASSIGNMENT: This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.

10. WAIVER OF RIGHTS: Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

11. ORDER OF PRECEDENCE: In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: “Unless otherwise specified in the Statement of Work” provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Other Special Provisions;
- d) Statement of Work, including any specifications incorporated by reference herein;
- e) Cost worksheets; and
- f) All other attachments incorporated in the Contract by reference.

12.PACKING AND SHIPMENT:

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a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:

i. Show the number of the container and the total number of containers in the shipment and

ii. The number of the container in which the packing sheet has been enclosed.

b) All shipments by the Contractor or its subcontractors must include packing sheets identifying: the State's Contract number, item number, quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.

c) Shipments must be made as specified in this Contract, as it may be amended or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.

b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.

c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage

claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, the Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14.DELIVERY: The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at the Contractor's expense or utilize any other rights available to the State at law or in equity.

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15.SUBSTITUTIONS: Substitution of Deliverables may not be tendered without advance written consent of the Buyer. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

16.INSPECTION, ACCEPTANCE AND REJECTION: Unless otherwise specified in the Statement of Work:

a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final

payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance System or other similar business practices related to performance of the Contract.

b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.

c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.

d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.

e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a

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single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

17.SAMPLES:

a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.

b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at the Contractor's expense.

18.WARRANTY:

a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter.

The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that it's Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of

the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software

c) Unless otherwise specified in the Statement of Work:

i. The Contractor does not warrant that any Software provided hereunder is errorfree or that it will run without immaterial interruption.

ii. The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the State.

iii. Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so,
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will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.

d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.

e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and the Contractor's sole obligation will be limited to:

i. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or

ii. should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of

any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on the Contractor's liability set forth in the Section entitled "Limitation of Liability."

f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19.SAFETY AND ACCIDENT PREVENTION: In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

20.INSURANCE: The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under the Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.

21.TERMINATION FOR NON-APPROPRIATION OF FUNDS:

a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not

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appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefore.

b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.

c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO THE CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.

b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause.

The Contractor shall:

- i. Stop work as specified in the Notice of Termination.
- ii. Place no further subcontracts for materials, services, or facilities, except as

necessary to complete the continuing portion of the Contract.

iii. Terminate all subcontracts to the extent they relate to the work terminated.

iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;

c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.

d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.

e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will
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pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:

i. The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and

ii. The total of:

A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;

B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and

C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.

f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23.TERMINATION FOR DEFAULT:

a) The State may, subject to the clause titled “Force Majeure” and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:

i. Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;

ii. Make progress, so that the lack of progress endangers performance of this Contract; or

iii. Perform any of the other provisions of this Contract.

b) The State’s right to terminate this Contract under sub-section a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State’s cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.

c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled “Limitation of Liability”). However, the Contractor shall continue the work not terminated.

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d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:

i. completed Deliverables;

ii. partially completed Deliverables, and,

iii. subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

f) If, after termination, it is determined by a final decision that is determined by a final decision that Contractor's negligence or willful misconduct; or (iv) to costs the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.

g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.

h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled

“Limitation of Liability.”

24.FORCE MAJEURE: Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform

25.RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

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- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor’s expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled “Limitation of Liability”).

d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.

26.LIMITATION OF LIABILITY:

a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.

b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations" (ii) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the

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possibility of such damages, except (i) to the extent that the Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Contractor's liability for such damages arises out of sub-section b) (i), b) (ii), or b) (iv) above.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

28. INDEMNIFICATION: The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles

of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount.

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State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. Seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. TAXES: Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

32. NEWLY MANUFACTURED GOODS: All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.

33. CONTRACT MODIFICATION: No amendment or variation of the terms of this Contract shall

be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

34.CONFIDENTIALITY OF DATA: All financial statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the state and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

35.NEWS RELEASES: Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

36.DOCUMENTATION:

a) The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided

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hereunder. The Contractor agrees to provide additional Documentation at prices not in

excess of charges made by the Contractor to its other customers for similar Documentation.

b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

37. RIGHTS IN WORK PRODUCT:

a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the Contractor's exclusive property.

The provisions of this sub-section a) may be revised in a Statement of Work.

b) Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with the Contractor's or its affiliates' ownership of PreExisting Materials.

c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use,

modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

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d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.

e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

38.SOFTWARE LICENSE: Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").

a) The State may use the Software Products in the conduct of its own business, and any division thereof.

b) The license granted above authorizes the State to use the Software Products in machinereadable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to

malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.

c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.

d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

a) The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.

b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. RIGHT TO COPY OR MODIFY:

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a) Any Software Product provided by the Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency

restart purposes, to replace a worn copy, to understand the contents of such machinereadable material, or to modify the Software Product as provided below; provided,

however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any time without prior written consent of the Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.

b) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.

41.FUTURE RELEASES: Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

42.ENCRYPTION/CPU ID AUTHORIZATION CODES:

a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.

b) In case of inoperative CPU, the Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.

c) When changes in designated CPUs occur, the State will notify the Contractor via

telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, the Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

43.PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S.

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Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:

- i. The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- ii. The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate

in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.

b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.

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c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

i. The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor or,

- ii. The operation of the Equipment furnished by the Contractor under the control of any Operating Software; or
- iii. The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder, or
- iv. The combination or utilization of Software furnished hereunder with noncontractor supplied Software.

d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44.DISPUTES:

a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the contracting Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the contracting Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department

Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.

b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's DGS PD 401IT (REVISED AND EFFECTIVE 9/5/14)

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instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.

c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of the Contractor's appeal for a final decision, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the

dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

e) The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

45.STOP WORK:

a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

i. Cancel the Stop Work Order; or

ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall

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make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and

ii. The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Contractor for loss of by California law ("Conflict Laws"). In the event of any profits because of a Stop Work Order issued under this clause.

46. EXAMINATION AND AUDIT: The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.

47. FOLLOW-ON CONTRACTS:

a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:

i. will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and

ii. will not act as consultant to any person or entity that does receive a Contract

described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.

b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:

i. development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;

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ii. development or design of test requirements;

iii. evaluation of test data; (iv) direction of or evaluation of another Contractor;

iv. provision of formal recommendations regarding the acquisition of Information Technology products or services; or

v. provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.

c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:

i. to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or

ii. where the State has entered into a master agreement for Software or services

and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.

d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

48.PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

49.COVENANT AGAINST GRATUITIES: The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

50.NONDISCRIMINATION CLAUSE:

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a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall

insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

52. ASSIGNMENT OF ANTITRUST ACTIONS: Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

b) If the State receives, either through judgment or settlement, a monetary recovery for a

cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

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- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- i. the assignee has not been injured thereby, or
 - ii. the assignee declines to file a court action for the cause of action.

53. DRUG-FREE WORKPLACE CERTIFICATION: The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:

- i. will receive a copy of the company's drug-free policy statement; and,
- ii. will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

54. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

55. SWEATFREE CODE OF CONDUCT:

a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree DGS PD 401IT (REVISED AND EFFECTIVE 9/5/14)

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Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).

56. RECYCLED CONTENT REQUIRMENTS: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the

Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

57. CHILD SUPPORT COMPLIANCE ACT: For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

58. AMERICANS WITH DISABILITIES ACT: The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

59. ELECTRONIC WASTE RECYCLING ACT OF 2003: The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and

documents that evidence compliance.

60. USE TAX COLLECTION: In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code.

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GENERAL PROVISIONS – INFORMATION TECHNOLOGY

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Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

61. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.

62. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.

63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b) If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have

been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

64. LOSS LEADER: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).)

ATTACHMENT G

HCD/ABAG Grant Agreement No. 19-REAP-13915

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM, Governor

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
ADMINISTRATION AND MANAGEMENT DIVISION
Business and Contract Services Branch****Contracts Office**

2020 W. El Camino Avenue, Suite 130, 95833
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 263-6928 / FAX (916) 263-6917
www.hcd.ca.gov



Therese McMillan
Executive Director
Association of Bay Area Governments
375 Beale Street, Suite 800
San Francisco, California 94015-2066

JUN 04 2020

RE: Grant 19-13915

Dear Therese McMillan:

Congratulations on your Regional Early Action Planning Grant (REAP) award. Attached is an electronic copy of the Standard Agreement ("Agreement") with Exhibits A through E:

A. Standard Agreement Contents (STD 213 and Exhibits A through E)**STD 213 - Cover page****Exhibit A - Authority, Purpose and Scope of Work****Exhibit B - Budget Detail and Payment Provisions****Exhibit C* - State of California General Terms and Conditions - GTC 04/2017**

**Exhibit C is now incorporated by reference; please see the STD 213 for additional information.*

Exhibit D – REAP Terms and Conditions**Exhibit E - Special Conditions****B. For expeditious handling of the contract, the Department offers two options for returning signed STD 213; please complete the following:**

1. Review the entire Agreement thoroughly and, if necessary, discuss the requirements with your legal and financial advisors.
2. The person or persons authorized by the Resolution(s), must provide an **original signature, printed name, title and date, must use blue ink**, on the lower left-hand section entitled "Contractor" on the STD 213 and/or on page 2 of the STD 213, if applicable.
3. **Option One:** For electronic signature processing, reply to this Standard Agreement email notification with the attached, fully signed STD 213 page(s). All signatures

Association of Bay Area Governments

19-REAP-13915

Page 2 of 2

must be original and in **blue ink**. All signers must be included in the reply email and confirm acceptance of e-signing the Agreement.

4. **Option Two:** Print five copies of the Standard Agreement, STD 213. Do not send photocopies of the signed STD 213 page(s). All five copies must be an original signature with **wet, blue ink**; do not return the Exhibits to HCD.
5. **Note:** If the resolution did not authorize a designated official to sign the STD 213 and amendments thereto, your governing body **must** adopt a resolution authorizing a designated official(s) to sign the STD 213 and any subsequent amendments. If the authorized designee as reflected in the resolution, the awarded NOFA amount or your entity status has changed, you are required to provide, to the Department, a new resolution consistent with the terms of the NOFA award and adopted by your Board.
6. Return the e-signed copy or the five signed copies of the STD 213; and, if applicable, the certified resolution within 30 days from the date of this letter to the following address:

**Department of Housing and Community Development
Business & Contract Services Branch
Contracts Office, Attn. Kelvin Singh
2020 West El Camino Avenue, Suite 130
Sacramento, CA 95833**
7. Maintain a complete electronic version of the contract Agreement, STD 213 and Exhibits, for your pending file. **Note: The contract is not effective until it is signed by the Awardee's designated official and the Department.**

The Department reserves the right to cancel any pending Standard Agreement in its entirety if not returned within the required 30-day period.

Please contact Planning Grants Program Manager, Nurulain Kausar, at nurulain.kausar@hcd.ca.gov, if you have any questions regarding the Standard Agreement or the provisions therein.

Sincerely,



Kelvin Singh
Contract Analyst

Attachment

cc: Regional Early Action Planning Grant Program, Paul McDougall

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT
STD 213 (Rev. 03/2019)

AGREEMENT NUMBER
19-REAP-13915

PURCHASING AUTHORITY NUMBER ^{Exhibit D}
(if applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below.

CONTRACTING AGENCY NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
Association of Bay Area Governments

2. The term of this Agreement is:

START DATE
Upon HCD Approval

THROUGH END DATE
12/31/2024

3. The maximum amount of this Agreement is:
\$5,900,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	3
Exhibit B	Budget Detail and Payment Provisions	4
Exhibit C*	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D	REAP General Terms and Conditions	9
Exhibit E	Special Conditions	0
TOTAL NUMBER OF PAGES ATTACHED		16

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Association of Bay Area Governments

CONTRACTOR BUSINESS ADDRESS
375 Beale Street, Suite 800

CITY STATE ZIP
San Francisco CA 94105

PRINTED NAME OF PERSON SIGNING
Therese W. Mcmillan

TITLE
Executive Director

CONTRACTOR AUTHORIZED SIGNATURE


DATE SIGNED
June 11, 2020

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS
2020 W. El Camino Ave., Suite 130

CITY STATE ZIP
Sacramento CA 95833

PRINTED NAME OF PERSON SIGNING
Synthia Rhinehart

TITLE
Contracts Manager,
Business & Contract Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE
DATE SIGNED

California Department of General Services Approval (or exemption, if applicable)

Exempt per; SCM Vol. 1 4.04.A.3 (DGS memo dated 6/12/1981)

Association of Bay Area Governments

19-REAP-13915

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(Rev. 5/28/2020)

EXHIBIT A**AUTHORITY, PURPOSE AND SCOPE OF WORK****1. Authority**

The Local Government Planning Support Grants Program is established for the purpose of providing regions and jurisdictions with one-time funding, including grants for planning activities to enable jurisdictions to meet the sixth cycle of the regional housing needs assessment. Up to two hundred fifty million dollars (\$250,000,000) shall be distributed under the program in accordance with Health and Safety Code sections 50515.02 and 50515.03. Of this amount, approximately one hundred twenty-five million dollars (\$125,000,000) is available to councils of governments and other regional entities. The Department of Housing and Community Development (Department or HCD) shall administer the Program (referred to herein as the Regional Early Action Planning Grant Program, or "REAP") to councils of governments and other regional entities in accordance with the Notice of Funding Availability ("NOFA") pursuant to Health and Safety Code section 50515.04, subdivision (f).

Pursuant to Health and Safety Code section 50515.02, subdivision (d)(3), a council of governments or a fiscal agent of a multiagency working group, as defined in section 50515.02, may request up to 25 percent of its available funding in advance. This Standard Agreement authorizes the encumbrance of full funds available to the applicant pursuant to the NOFA, subject to all statutory requirements and all applicable provisions including the NOFA, initial application and award for advance payment, subsequent advance payment application and award, application and award for the full remaining fund amount and amendment to this agreement.

The Grantee shall consult with the Department on any amendment or other provision related to the implementation of the Program. The Department decisions related to the administration of the Program shall be final pursuant to Health and Safety Code section 50515.04, subdivision (g).

2. Purpose

In accordance with the authority cited above, the Grantee has been awarded financial assistance in the form of a grant from the Program. The Department has agreed to make the grant for planning activities pursuant to the NOFA and this Agreement. By entering into this Agreement and thereby accepting the award of the Program funds, the Grantee agrees to comply with the terms and conditions of the NOFA, this Agreement, subsequent amendments to this Agreement, the

Regional Early Action Planning Grant Program (REAP)

NOFA Date: October 10, 2019

Approved Date: March 30, 2020

Prep. Date: March 31, 2020

EXHIBIT A

representations contained in the initial advance payment and subsequent full application(s), and the requirements of the authority cited above. Based on all representations made by the Grantee, the Department shall encumber the full amount pursuant the NOFA and provide advance payment and subsequent payments in accordance with Exhibit B. All terms, conditions and other relevant provisions will be subject to amendments as a result of subsequent applications and awards for remaining funds after the initial application up to 25 percent of the full amount described in Exhibit B.

3. Definitions

Terms herein shall have the same meaning as defined by the NOFA.

4. Scope of Work

Grantee shall use the awarded funds in accordance with the approved Scope of Work as contained in the timeline and budget and related information outlined in the application for 25 percent advance payment and any subsequent applications for partial or full funding. The Scope of Work may be amended in compliance with statutory requirements subject to approval by the Department.

5. Monitoring

- A. The Grantee shall maintain books, records, documents, and other evidence that demonstrates the funding was used for the appropriate purposes, as described in the Scope of Work, approved application, subsequent approved applications and all other pertinent documents. These books, records, documents and other evidence shall be made available for audit and inspection by the Department at any point during the term of the agreement and subject to any amendments to this agreement.
- B. The Department may request additional information, as needed, to meet the statutory requirements of the Program and facilitate amendments to this agreement, including but not limited to reporting or audit requirements, progress in implementing advance payment(s), or award of the full amount available to the Grantee.
- C. The Department may monitor expenditures and activities of an applicant, as the Department deems necessary, to ensure compliance with statutory or Department requirements.

EXHIBIT A

- D. The Department may, as it deems appropriate or necessary, request the repayment of funds from an applicant, or pursue any other remedies available to it by law for failure to comply with statutory or Department requirements.
- E. The Department's decision to approve or deny an application or request for funding pursuant to the Program, and its determination of the amount of funding to be provided, shall be final.
- F. Monitoring provisions may be amended and are subject to additional provisions in accordance with this agreement or subsequent amendments.

6. Department Contract Coordinator

The Contract Coordinator of this Agreement for the Department is the Housing Policy Development Manager, or the Manager's designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class mail to the Department Contract Coordinator at the following address:

Department of Housing and Community Development
Housing Policy Development Division
Land Use Planning Unit
Attention: REAP Program Manager
2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833
P. O. Box 952050
Sacramento, CA 94252-2050

EXHIBIT B**BUDGET DETAIL AND PAYMENT PROVISIONS****1. Application for Funds**

- A. The Department is entering into this Agreement on the basis of, and in reliance on facts, information, assertions and representations contained in any application and award and any subsequent modifications or additions thereto approved by the Department. All awarded applications for funding and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. The Grantee warrants that all information, facts, assertions and representations contained in any approved application and approved modifications and additions thereto are true, correct, and complete to the best of the Grantee's knowledge. In the event that any part of an application and any approved modification and addition thereto is untrue, incorrect, incomplete, or misleading in such a manner that would substantially affect the Department's approval, disbursement, or monitoring of the funding and the grant or activities governed by this Agreement, the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

2. Grant and Reimbursement Limit

- A. The maximum total amount encumbered to the Grantee pursuant to this Agreement shall not exceed \$5,900,000.00.
- B. This Agreement authorizes an initial advance payment(s) up to 25% Award for eligible activities as described in the 25 percent application.
- C. This Agreement authorizes subsequent award amounts or advance payment up to the total award amount as described in Section 2A, of this Exhibit, and subject to Department approval.
- D. The Grantee shall submit and follow a schedule for the expenditure of the 25 percent advance payment, any subsequent payment and the total

Regional Early Action Planning Grants (REAP)

NOFA Date: October 10, 2019

Approved Date: March 30, 2020

Prep. Date: (March 31, 2020)

EXHIBIT B

amount prior to disbursement of funds. The schedule is subject to Department approval and may be revised as the Department deems necessary.

3. Grant Timelines

- A. This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213, (the "Effective Date").
- B. All Grant funds must be expended by December 31, 2023 pursuant to Health and Safety Code section 50515.04(c)(1).
- C. The Grantee shall deliver to the Department all final invoices for reimbursement on or before November 1, 2023, to ensure the Department meets the December 31, 2023 expenditure deadline. Under special circumstances, approved by the Department, the Department may provide exception, including, but not limited to, advance payment to carry out the terms of this agreement.
- D. It is the responsibility of the Grantee to monitor the project and timeliness of draws within the specified dates.

4. Allowable Uses of Grant Funds

- A. The Department shall not award or disburse funds unless it determines that the grant funds shall be expended in compliance with the terms and provisions of the NOFA which includes associated forms and guidelines and this Agreement.
- B. Grant funds shall only be used by the Grantee for project activities approved by the State that involve planning activities in accordance with the NOFA.
- C. Grant funds may not be used for administrative costs of persons employed by the Grantee for activities not directly related to eligible activities.
- D. The Grantee shall use no more than 5 percent of the total grant amount for costs related to administration of the project.

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- E. A Grantee that receives funds under this Program may use a subcontractor and Grantee shall be accountable to the Department to ensure subcontractor's performance. The subcontract shall provide for compliance with all the requirements of the Program. The subcontract shall not relieve the Grantee of its responsibilities under the Program.
- F. After the contract has been executed by the Department and all parties, approved and eligible costs for eligible activities may be reimbursed for the project(s) upon completion of deliverables or paid in advance in accordance with the scope of work and subject to the terms and conditions of this Agreement.
- G. Only approved and eligible costs incurred for work after October 1, 2019, continued past the date of execution and acceptance of the Standard Agreement and completed during the grant term will be reimbursable.

5. Performance

The Grantee will be subject to amendments to this section as a result of future applications and awards.

6. Fiscal Administration

- A. The Grantee will be subject to amendments to this section as a result of subsequent applications and awards.
- B. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be terminated by the State by providing Contractor written notice of not less than thirty (30) days prior to the effective date of the termination. In the event of termination by the State due to lack of Budget appropriation, the State and Contractor shall be relieved of any and all obligations under this Grant Agreement on the effective date of termination.
- C. Subject to Section 6.B. above, if funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall

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have the sole discretion to cancel this Agreement without cause, no liability occurring to the State, or amend the current Grant Agreement and amount allocated to Contractor.

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EXHIBIT D**REAP TERMS AND CONDITIONS****1. Reporting**

- A. During the term of the Standard Agreement the Grantee shall submit, upon request of the Department, a performance report that demonstrates satisfaction of all requirements identified in this Standard Agreement.
- B. The Grantee will be subject to amendments to this section as a result of subsequent applications and awards.

2. Accounting Records

- A. The Grantee, its staff, contractors and subcontractors shall establish and maintain an accounting system and reports that properly accumulate incurred project costs by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- B. The Grantee shall establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the scope of work, project timeline and budget. Separate bank accounts are not required.
- C. The Grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with GAAP.
- D. The Grantee agrees that the State or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement.
- E. Subcontractors employed by the Grantee and paid with moneys under the terms of this Standard Agreement shall be responsible for maintaining accounting records as specified above.

3. Audits

- A. At any time during the term of the Standard Agreement, the Department may
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perform or cause to be performed a financial audit of any and all phases of the award. At the Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during and over the project life.

- 1) The Grantee agrees that the Department or the Department's designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement.
 - 2) The Grantee agrees to provide the Department or the Department's designee, with any relevant information requested.
 - 3) The Grantee agrees to permit the Department or the Department's designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with statutes, Program guidelines, and this Agreement.
- B. If a financial audit is required by the Department, the audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in Exhibit D, Section 8 subsection A. of this Standard Agreement.
- 1) The Grantee shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by the Department to the independent auditor's working papers.
 - 2) The Grantee is responsible for the completion of audits and all costs of preparing audits.
 - 3) If there are audit findings, the Grantee shall submit a detailed response acceptable to the Department for each audit finding within 90 days from the date of the audit finding report.
- C. The Grantee agrees to maintain such records for possible audit after final payment pursuant to Exhibit D, Section 3, subsection E. below, unless a longer period of records retention is stipulated.

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- 1) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained by the Grantee, contractors and sub-contractors until completion of the action and resolution of all issues which arise from it. The Grantee shall include in any contract that it enters into in an amount exceeding \$10,000.00, the Department's right to audit the contractor's records and interview their employees.
 - 2) The Grantee shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Contracts Code section 10115.10.
- D. The determination by the Department of the eligibility of any expenditure shall be final.
- E. The Grantee shall retain all books and records relevant to this Agreement for a minimum of (3) three years after the end of the term of this Agreement. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five years after the conclusion or resolution of the matter.

4. Remedies of Non-performance

- A. Any dispute concerning a question of fact arising under this Standard Agreement that is not disposed of by agreement shall be decided by the Department's Housing Policy Development Manager, or the Manager's designee, who may consider any written or verbal evidence submitted by the Grantee. The decision of the Department's Housing Policy Development Manager or Designee shall be the Department's final decision regarding the dispute, not subject to appeal.
- B. Neither the pendency of a dispute nor its consideration by the Department will excuse the Grantee from full and timely performance in accordance with the terms of this Standard Agreement.
- C. In the event that it is determined, at the sole discretion of the Department, that the Grantee is not meeting the terms and conditions of the Standard Agreement, immediately upon receiving a written notice from the Department to stop work, the Grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine that the Grantee meets the terms and conditions after a stop work order, and to deliver a written notice to the grantee to resume work under the Standard Agreement.

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- D. Both the Grantee and the Department have the right to terminate the Standard Agreement at any time upon 30 days written notice. The notice shall specify the reason for early termination and may permit the Grantee or the Department to rectify any deficiency(ies) prior to the early termination date. The Grantee shall submit any requested documents to the Department within 30 days of the early termination notice.
- E. A strong implementation component for the funded activity through this Program is required, including, where appropriate, agreement by Grantee and its subcontractors to formally adopt or complete a planning or other activity consistent with the NOFA. The Grantee must carry out provisions to ensure the adoption or completion of activities in accordance with the NOFA, including activities subcontracted to localities. Grantee may be subject to repayment of the grant should the Grantee or any of its subcontractors under this agreement fail to adopt or complete activities set forth in its application, this Agreement or any amendments to this Agreement.
- F. The following shall each constitute a breach of this Agreement:
- 1) Grantee's failure to comply with any term or condition of this Agreement.
 - 2) Use of, or permitting the use of, grant funds provided under this Agreement for any ineligible costs or for any activity not specified and approved under this Agreement.
 - 3) Any failure to comply with the deadlines set forth in this Agreement unless approved by the Program Manager in writing.
- G. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department may at its discretion, exercise a variety of remedies, including but not limited to:
- 1) Revoke existing REAP award(s) to the Grantee;
 - 2) Require the return of unexpended REAP funds disbursed under this Agreement;
 - 3) Require repayment of REAP Funds disbursed and expended under this agreement;
 - 4) Seek a court order for specific performance of the obligation defaulted upon, or the appointment of a receiver to complete the obligations in accordance

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with the REAP Program requirements; and

- 5) Other remedies available at law, by and through this agreement. All remedies available to the Department are cumulative and not exclusive.
 - 6) The Department may give written notice to the Grantee to cure the breach or violation within a period of not less than 15 days.
- H. The Grantee may be subject to amendment of this section as a result of subsequent applications and awards.

5. Indemnification

Neither the Department nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents, its contractors, its sub-recipients or its subcontractors under or in connection with any work, authority or jurisdiction conferred upon the Grantee under this Standard Agreement. It is understood and agreed that the Grantee shall fully defend, indemnify and save harmless the Department and all of the Department's staff from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents contractors, sub-recipients, or subcontractors under this Standard Agreement.

6. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time, performance by the Grantee of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

7. Relationship of Parties

It is expressly understood that this Standard Agreement is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

8. Third-Party Contracts

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- A. All state-government funded procurements must be conducted using a fair and competitive procurement process. The Grantee may use its own procurement procedures as long as the procedures comply with all City/County laws, rules and ordinances governing procurement, and all applicable provisions of California state law.
- B. Any contract entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement and shall be applicable to the Grantee's sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contractors, and subcontractors shall be submitted to the Department's program manager.
- C. The Department does not have a contractual relationship with the Grantee's sub-recipients, contractors, or subcontractors, and the Grantee shall be fully responsible for monitoring and enforcement of those agreements and all work performed thereunder.

9. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

- A. The Grantee agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the grant, the Grantee, its contractors or subcontractors, and any other grant activity.
- B. During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, genetic information, age, disability, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.
- C. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements that each of them in turn include the nondiscrimination and compliance provisions of this

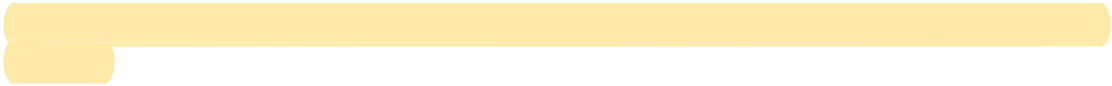
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- D. The Grantee shall, in the course of performing project work, fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- E. The Grantee shall adopt and implement affirmative processes and procedures that provide information, outreach and promotion of opportunities in the REAP project to encourage participation of all persons regardless of race, color, national origin, sex, religion, familial status, or disability. This includes, but is not limited to, a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, as required by 24 CFR 92.351.

10. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action consistent with the terms of this Agreement and the interests of the Department.

11. Changes in Terms/Amendments

- A. The Grantee may be subject to amendments to this section as a result of subsequent applications and awards.
- B. This Agreement may only be amended or modified by mutual written agreement of both parties.

12. State-Owned Data

- A. Definitions

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1) Work:

The work to be directly or indirectly produced by the Grantee, its employees, or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement.

2) Work Product:

All deliverables created or produced from Work under this Agreement including, but not limited to, all Work and Deliverables conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. Work Product includes all deliverables, inventions, innovations, improvements, or other works of authorship Grantee and/or Grantee's contractor subcontractor and/or sub-recipient may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

3) Inventions:

Any ideas, methodologies, designs, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Grantee or jointly with the Grantee's contractor, subcontractor and/or sub-recipient and/or Grantee's contractor, subcontractor, and/or sub-recipient's employees with one or more employees of the Department during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

B. Ownership of Work Product and Rights

1) All Work Products derived by the Work performed by the Grantee, its employees or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement, shall be owned jointly by the Department, Grantee, and any of Grantee's sub-recipients ("joint owners"), and shall be considered to be works made for hire by the Grantee and the Grantee's contractor, subcontractor and/or subrecipient for the Department for the benefit of the joint owners. The joint owners shall jointly own all copyrights in the work product.

2) Grantee, its employees and all of Grantee's contractor's, subcontractor's and sub-recipient's employees agree to perpetually assign, and upon

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creation of each Work Product automatically assign, to the joint owners, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Grantee's contractor, subcontractor and/or subrecipient from the Department. From time to time upon a joint owner's request, the Grantee's contractor, subcontractor and/or subrecipients, and/or its employees, shall confirm such assignments by execution and delivery of such assignment, confirmations or assignment or other written instruments as the Department may request. Grantee hereby waives all rights relating to identification of authorship restriction or limitation on use or subsequent modification of the Work.

3) Grantee, its employees and all Grantee's contractors, subcontractors and sub-recipients hereby agree to assign to the Department joint ownership of all Inventions. The Grantee, its employees and Grantee's contractor, subcontractor and /or subrecipient shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically noting features or concepts that the Grantee, its employees and/or Grantee's contractor, subcontractor and/or subrecipient believes to be new or different.

4) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications and estimates, produced as part of this Agreement shall automatically vest in the joint owners and no further agreement will be necessary to transfer ownership to the joint owners.

13. Special Conditions

The State reserves the right to add any special conditions to this Agreement it deems necessary to assure that the policy and goals of the Program are achieved.