



ASSOCIATION  
OF BAY AREA  
GOVERNMENTS

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*Jesse Arreguin, President*  
Mayor, City of Berkeley

*Belia Ramos, Vice President*  
Supervisor, Napa County

*David Rabbit*  
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Supervisor, Sonoma County

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*Planning Committee*  
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*Jesse Arreguin*  
*Chair, Legislation Committee*  
Mayor, City of Berkeley

*Karen Mitchoff*  
*Chair, Finance Committee*  
Supervisor, Contra Costa County

\_\_\_\_\_, 2021

Name of signer  
Title of signer  
Name of grantee organization  
Street address  
City, State Zip Code

RE: REGIONAL EARLY ACTION PLANNING (REAP) GRANT SUBALLOCATION  
AGREEMENT, \_\_\_\_\_

Dear **Name of signer**:

This letter, effective as of \_\_\_\_\_, 2021 ("Effective Date") is the agreement between **Name of grantee organization** ("Recipient") and the Association of Bay Area Governments ("ABAG") to support the performance of **[describe type of services]** relating to **[state the project(s)]** ("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 **[spell out amount of total REAP Funding Amount from award letter]** thousand dollars and zero cents (\$**[insert total REAP Funding Amount from award letter in numerical format].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. **[USE THIS LANGUAGE AND DELETE THE NEXT PARAGRAPH IF RECIPIENT ELECTS TO RECEIVE FUNDS DIRECTLY]** 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. [USE THIS LANGUAGE AND DELETE THE PREVIOUS PARAGRAPH, IF RECIPIENT ELECTS TO HAVE ABAG HOLD THE FUNDS TO ADMINISTER A BENCH CONSULTING CONTRACT FOR RECIPIENT] Recipient elects not to receive the REAP funds directly, but rather elects to have ABAG administer the Maximum Payment set forth above on the Recipient's behalf to deliver the work outlined in Attachment A-1 in the timeframe set forth in Attachment A-2. ABAG will procure a consultant from the Regional Planning Consulting Bench in consultation with Recipient to deliver the work outlined in Attachment A-1 in the time frames outlined in Attachment A-2. Recipient shall be responsible for project managing the work of the selected consultant to ensure compliance with Attachments A-1 and A-2 of this Agreement. ABAG shall be responsible for contracting with the consultant and processing payment of invoices approved by Recipient.

6. 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.

7. 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.

8. 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.

9. 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:

[INSERT NAME(S)]

[INSERT TITLE(S)]

[INSERT EMAIL ADDRESS(S)]

[INSERT PHONE NUMBER(S)]

10. 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.

11. 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.

12. 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.

13. 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: Name of signer  
                                     Title of signer  
                                     Name of grantee organization  
                                     Street address  
                                     City, State Zip Cod  
                                     Email: email of signer

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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,

Therese W. McMillan  
Executive Director

Accepted and Agreed to this:

Date: \_\_\_\_\_

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Name of signer

Title of signer

Name of grantee organization

## ATTACHMENT A-1

### **SCOPE OF WORK FOR** **(“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 – INSERT NAME OF TASK**

Insert narrative describing discrete task to be accomplished with available REAP funding. See illustrative samples provided by ABAG for acceptable format and level of specificity.

##### ***Task 1 Deliverables:***

- 1.1 Insert short description of deliverable, list at least one per task
- 1.2 Insert short description of deliverable, if more than one for this task
- 1.3 Insert short description of deliverable, if more than two for this task, etc.

#### **Task 2 – INSERT NAME OF TASK (if more than one)**

Insert narrative describing discrete task to be accomplished with available REAP funding. See illustrative samples provided by ABAG for acceptable format and level of specificity.

##### ***Task 2 Deliverables:***

- 2.1 Insert short description of deliverable, list at least one per task
- 2.2 Insert short description of deliverable, if more than one for this task
- 2.3 Insert short description of deliverable, if more than two for this task, etc.

**INSERT AS MANY ADDITIONAL TASKS AND RELATED DELIVERABLES AS NEEDED TO DESCRIBE ALL WORK THAT WILL BE ACCOMPLISHED WITH AVAILABLE REAP FUNDING**



ATTACHMENT A-2

**PROJECT PAYMENT SCHEDULE FOR** [REDACTED]  
[REDACTED] (“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				
[REDACTED]		[REDACTED]		
1.1	[REDACTED]		[REDACTED]	
1.2	[REDACTED]		[REDACTED]	
1.3	[REDACTED]		[REDACTED]	
[REDACTED]		[REDACTED]		
2.1	[REDACTED]		[REDACTED]	
2.2	[REDACTED]		[REDACTED]	
2.3	[REDACTED]		[REDACTED]	
[REDACTED]		[REDACTED]		
3.1	[REDACTED]		[REDACTED]	
3.2	[REDACTED]		[REDACTED]	
3.3	[REDACTED]		[REDACTED]	
[REDACTED]		[REDACTED]		

**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](mailto: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**