



ASSOCIATION
OF BAY AREA
GOVERNMENTS

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

May 16th, 2023

Jesse Arreguin, President
Mayor, City of Berkeley

Belia Ramos, Vice President
Supervisor, Napa County

David Rabbitt
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

Belia Ramos
Chair of Board of Supervisors
County of Napa
1195 Third Street
Napa, CA 94559

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

Dear Belia Ramos:

This letter, effective as of May 16th, 2023 (“Effective Date”) is the agreement between County of Napa (“Recipient”) and the Association of Bay Area Governments (“ABAG”) to support a farmworker needs assessment to support planning for affordable farmworker housing on agricultural land near urban areas (“the Agreement”).

WHEREAS, ABAG has received grant funds awarded 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 REAP funding to support the Project. Pursuant to Article 4 below, Recipient has opted to receive the funds directly to administer a contract to complete the Project. Payments will be made directly to the Recipient based on the conditions in Article 4.

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. ABAG has suballocated one hundred two thousand, two hundred and one dollars and zero cents (\$102,201.00) (“Maximum Payment”), which Recipient has elected to receive directly. Expenses shall not exceed the Maximum Payment. Recipient will be compensated for the work in accordance with Attachment A-2.—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 or are due to third parties. These invoices will refer to the deliverables listed in Attachment A-2 to allow for expenditure tracking at the task level. Invoices shall be 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. 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 and 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 all 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).

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:

Alex Carrasco
Staff Service Analyst
alex.carrasco@countyofnapa.org
707-299-1352

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 require any consultant contracted to perform work related to the completion of the Scope of Work after the effective date of this Agreement to name the ABAG Indemnified Parties (as defined in Paragraph 14 below) and California Department of Housing and Community Development (HCD) as additional insureds in the same manner as Recipient in any agreement that requires the consultant to obtain and maintain insurance and to name Recipient as an additional insured.

Upon request by ABAG, Recipient shall deliver to ABAG insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the coverages. Such evidence of insurance shall make reference to all provisions and endorsements as required by the agreement between Recipient and consultant 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. 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.

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 700
San Francisco, CA 94105
Email: hpeters@bayareametro.gov

To RECIPIENT: Attention: Belia Ramos
Chair of Board of Supervisors
County of Napa
1195 Third Street
Napa, CA 94559
Email: Belia.Ramos@countyofnapa.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, MTC, and their respective board members, representatives, agents and employees (“ABAG Indemnified Parties”) 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 relationship 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 its 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,

Andrew B. Fremier
Metropolitan Transportation Commission
Executive Director
Acting pursuant to the Contract for Services dated
May 30, 2017

Accepted and Agreed to this:

Date: _____

Belia Ramos
Chair of Board of Supervisors
County of Napa

| | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| <p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Jason M. Dooley</u> Deputy County Counsel</p> <p>Date: <u>May 2, 2023</u></p> | <p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ _____ Deputy Clerk of the Board</p> | <p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|

ATTACHMENT A-1

SCOPE OF WORK FOR COUNTY OF NAPA (“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 – REIMBURSEMENT FOR COSTS ASSOCIATED WITH FARM LABOR HOUSING NEEDS ASSESSMENT

Recipient will incur costs associated with farmworker needs assessment to support planning for affordable farmworker housing on agricultural land near urban areas and will submit invoices for reimbursement of eligible expenses not to exceed the amount of the grant.

Task 1 Deliverables:

- 1.1 Invoices for costs associated with farmworker needs assessment to support planning for affordable farmworker housing on agricultural land near urban areas

ATTACHMENT A-2

PROJECT PAYMENT SCHEDULE FOR COUNTY OF NAPA (“RECIPIENT”)

All work described in this Agreement must be completed by December 31, 2023, and properly invoiced, to ABAG no later than December 31, 2023. 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 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------|
| <u>TASK 1 – REIMBURSEMENT FOR COSTS ASSOCIATED WITH FARM LABOR HOUSING NEEDS ASSESSMENT</u> | | |
| 1.1 Invoices for costs associated with farmworker needs assessment to support planning for affordable farmworker housing on agricultural land near urban areas | 12/31/2023 | \$102,201.00 |

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 this agreement, 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 the State of California ("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 this agreement 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 this agreement.
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 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 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 funding 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 this agreement.

ATTACHMENT E

NOT USED

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 logs 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**