

**TULARE COUNTY ASSOCIATION OF GOVERNMENTS  
SERVICES AGREEMENT  
Regional Early Action Planning Grant Program**

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**THIS AGREEMENT** ("Agreement") is entered into effective as of July 1, 2021, between the **TULARE COUNTY ASSOCIATION OF GOVERNMENTS**, a joint powers authority established under the laws of the State of California ("TCAG"), and the **CITY OF \_\_\_\_\_**, a California Municipal Corporation] ("CONTRACTOR"). TCAG and CONTRACTOR is each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

A. **WHEREAS**, the Fresno Council of Governments ("FCOG") received a local government planning support grant and executed an Agreement with the State of California's Department of Housing and Community Development in the amount of \$10,218,830.75 on August 20, 2020 (the "REAP Grant Agreement", which is attached as **Attachment A**) on behalf of the eight regional planning agencies within the San Joaquin Valley (the "COGs") to provide local jurisdictions with grant funding for technical assistance, preparation and adoption of planning documents, and process improvements to accelerate housing production and facilitate compliance to implement the sixth cycle of the Regional Housing Need Assessment; and

B. **WHEREAS**, in furtherance of the purposes of the grant, the COGs entered into a Memorandum of Understanding as of November 19, 2020 and amended that Memorandum of Understanding effective as of July 1, 2021 (together, the "REAP MOU", which is attached as **Attachment B**) whereby FCOG was named as the fiscal agent for the grant on behalf of the COGs, and in turn agreed to distribute grant funds to each of the COGs in proportion to each COG's relative population as of January 2020; and

C. **WHEREAS**, TCAG expects to receive approximately \$1,613,803 of such grant funds under the REAP MOU, will use \$225,000 of such funds to prepare the Regional Housing Need Assessment Plan and provide technical assistance and regional planning coordination for the provision of housing, and has agreed to suballocate the balance of said grant funds to the County of Tulare and to each of the Cities within Tulare County (the "member agencies") to carry out the purposes of the grant, with each member agency to receive a base amount of \$100,000 and the remaining suballocated funds to be distributed based on each member agency's percentage of population within Tulare County; and

D. **WHEREAS**, CONTRACTOR is willing and able to utilize its share of such funds, the amount and distribution of which TCAG will confirm in writing, for the permitted purposes, and TCAG is willing to make such funds available to CONTRACTOR under the terms of this Agreement.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **TERM:** This Agreement becomes effective as of July 1, 2021, and expires at 11:59 PM on December 31, 2024, unless its term is extended by written amendment or it is earlier terminated as provided below.

2. **SERVICES:** CONTRACTOR shall provide the services shown in the attached **Attachment C**.

3. **REAP Grant Agreement and REAP MOU:** The terms and conditions of the REAP Grant Agreement and of the REAP MOU are hereby incorporated into and made a part of this Agreement and CONTRACTOR shall abide by said terms and conditions in its performance under this Agreement.

4. **INSURANCE:** Before approval of this Agreement by TCAG, CONTRACTOR must file with the Clerk of the Board of Governors of TCAG evidence of the required insurance as set forth in the attached **Attachment D**.

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**5. GENERAL AGREEMENT TERMS AND CONDITIONS:** TCAG'S "General Agreement Terms and Conditions" are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein. TCAG'S "General Agreement Terms and Conditions" are included in the attached **Attachment E**.

**6. NOTICES:** (a) Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission, or sent by first class mail, postage prepaid and addressed as follows:

**TCAG:**

Attn: Ted Smalley  
210 N. Church Street, Suite B  
Visalia, CA 93291  
Phone No.: (559) 623-0450  
Fax No.: (559) 733-6720

**CONTRACTOR:**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

**7. SUBCONTRACTING:** If this box is checked ☐, CONTRACTOR has indicated it will utilize subcontractors to provide certain services related to this Agreement. CONTRACTOR has selected the following subcontractors ("Subcontractors") to provide the goods or services related to this Agreement: N/A. CONTRACTOR will supervise all Subcontractors and ensure that Subcontractors comply with all applicable laws and regulations. CONTRACTOR will include all applicable provisions of this Agreement in its contracts with Subcontractors and ensure compliance with those provisions. No other subcontractors shall be utilized without prior written approval from the Executive Director of TCAG.

**8. AUTHORITY:** CONTRACTOR represents and warrants to TCAG that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind CONTRACTOR to its terms. CONTRACTOR acknowledges that TCAG has relied upon this representation and warranty in entering into this Agreement.

**9. COUNTERPARTS:** The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

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**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**CITY OF** \_\_\_\_\_

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

By \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

**TULARE COUNTY ASSOCIATION OF GOVERNMENTS**

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

By \_\_\_\_\_

Ted Smalley  
Executive Director

ATTEST: Leslie Davis, Finance Director

By \_\_\_\_\_

Approved as to Form:  
County Counsel

By \_\_\_\_\_  
Deputy

Matter # 2021557

Attachments

- A = REAP Grant Agreement;
- B = REAP MOU and Amendment No. 1;
- C = Scope of Services;
- D = Insurance Provisions;
- E = TCAG'S General Agreement Terms and Conditions.

**ATTACHMENT A**

REAP GRANT AGREEMENT (ATTACHED)

Exhibit A

Grant funding agreement number 19-REAP-14029

## STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

## STANDARD AGREEMENT

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER

19-REAP-14029

PURCHASING AUTHORITY NUMBER (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

Fresno Council of 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:

\$10,218,830.75

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	3
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		15

*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.)

Fresno Council of Governments

## CONTRACTOR BUSINESS ADDRESS

2035 Tulare St., #201

## CITY

Fresno

## STATE

CA

## ZIP

93721

## PRINTED NAME OF PERSON SIGNING

TONY BOREN

## TITLE

EX. DIRECTOR

## CONTRACTOR AUTHORIZED SIGNATURE

Tony Boren

## DATE SIGNED

8/20/20

## 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

Shaun Singh

## DATE SIGNED

9/3/2020

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

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Prep. Date: August 12, 2020

## **EXHIBIT A**

of the NOFA, this Agreement, subsequent amendments to this Agreement, the 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.



**EXHIBIT A**

- C. The Department may monitor expenditures and activities of an applicant, as the Department deems necessary, to ensure compliance with statutory or Department requirements.
- 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 \$10,218,830.75.
- B. This Agreement authorizes an initial advance payment(s) for eligible activities as described in the 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 advance payment, any subsequent payment and the total amount prior to

## **EXHIBIT B**

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 modify the November 1, 2023 deadline and 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.

## **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, in consultation with the Grantee.
- 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.

## **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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## 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.

## 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.

**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

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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**

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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

## **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

## 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, 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 Product 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 by the Department 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. The Department shall 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 creation of each Work Product automatically assign, to the Department, ownership of all United States and international copyrights in each and

## EXHIBIT D

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 the Department'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. The Department shall have the right to obtain and hold in its name all copyright registrations and other evidence of rights that may be available for Work Product under this Agreement. 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 all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority thereunder and the same shall become and remain the Department's property regardless of whether such protection is sought. 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 Department and no further agreement will be necessary to transfer ownership to the Department.

### 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, in consultation with the Grantee.

## Exhibit B

### Pro-rata Initial Allocations to Each Regional Transportation Planning Agency Based on January 2020 California Department of Finance Population Estimates

REAP PLANNING GRANT INITIAL ALLOCATIONS			MPO
			DISTRIBUTION
MPO Share by Population*			
Fresno Council of Governments	1,032,227	23.50%	\$1,114,737.62
Kern Council of Governments	927,251	21.11%	\$1,001,370.41
Kings County Association of Governments	156,444	3.56%	\$168,949.28
Madera County Transportation Commission	160,089	3.64%	\$172,885.65
Merced County Association of Governments	287,420	6.54%	\$310,394.79
San Joaquin Council of Governments	782,545	17.81%	\$845,097.40
Stanislaus Council of Governments	562,303	12.80%	\$607,250.45
Tulare County Association of Governments	484,423	11.03%	\$523,145.14
<b>Total</b>	<b>4,392,702</b>	<b>100.00%</b>	<b>\$4,743,830.75</b>

**ATTACHMENT B**

REAP MOU and AMENDMENT No. 1 TO MEMORANDUM OF UNDERSTANDING  
SAN JOAQUIN VALLEY REGIONAL EARLY ACTION PLANNING COMMITTEE FOR HOUSING  
(ATTACHED)

## MEMORANDUM OF UNDERSTANDING

### San Joaquin Valley Regional Early Action Planning Committee for Housing

This memorandum of understanding ("**MOU**") is made this 19th day of November 2020 ("**Effective Date**"), by and between the agencies ("**Members**") comprising the San Joaquin Valley Regional Early Action Planning Committee for Housing ("**Committee**") set forth below:

**Fresno Council of Governments**

2035 Tulare Street Suite 201  
Fresno, CA 93721  
Email: tboren@fresnocog.org

**Kern Council of Governments**

1401 19th Street, Suite 300  
Bakersfield, California 93301  
Email: ahakimi@kerncog.org

**Kings County Association of Governments**

339 W D Street  
Lemoore, CA 93245  
Email: terri.king@co.kings.ca.us

**Madera County Transportation Commission**

2001 Howard Road, Suite 201  
Madera, CA 93637  
Email: patricia@maderactc.org

**Merced County Association of Governments**

369 W 18th Street  
Merced, CA 95340  
Email: stacie.guzman@mcagov.org

**San Joaquin Council of Governments**

555 E Weber Avenue  
Stockton, CA 95202  
Email: achesley@sjcog.org

**Stanislaus Council of Governments**

1111 "I" Street, Suite 308  
Modesto, CA 95354  
Email: rpark@stancog.org

**Tulare County Association of Governments**

210 N Church Street, Suite B  
Visalia, CA 93291  
Email: tsmalley@tularecog.org

## RECITALS

- A. Under section 50515.02, subdivision (a), of the Health and Safety Code, the State of California Department of Housing and Community Development ("**HCD**") has made available one hundred twenty-five million dollars (\$125,000,000) in local government planning support grants to regional entities and working groups as outlined by the statute.
- B. The Committee is one of the working groups identified in section 50515.02, subdivision (a), of the Health and Safety Code.
- C. On June 26, 2020, the Members approved submission of an application for grant funding ("**Application**") to HCD by Fresno Council of Governments ("**FCOG**") as the fiscal agent on behalf of the Committee.



- D. On August 14, 2020, HCD approved the Application and an allocation of \$10,218,830.75 in grant funds (the “**Initial Grant**”) to the Members through FCOG.
- E. On August 20, 2020, FCOG and HCD executed grant funding agreement number 19-REAP-14029 (“**Agreement**”). A true and correct copy of the Agreement is attached hereto as “Exhibit A.”
- F. This MOU is intended to reflect the Members’ understanding of the distribution of the Initial Grant and to facilitate the subsequent implementation of activities by the Members in furtherance of the purposes for which the Initial Grant was approved by HCD.

The Members therefore agree as follows:

1. Allocation of Initial Grant. The Members agree to allocate the \$10,218,830.75 of the Initial Grant as follows:
  - a. FCOG will retain \$5,475,000 of the Initial Grant to perform the following tasks:
    - i. FCOG shall prepare a comprehensive housing report and policy recommendations for implementation, as stated in the Application. FCOG may enter into agreements as necessary to perform its obligations under this provision of the MOU and under the Application and Agreement.
    - ii. FCOG shall conduct regional planning and coordination, and provide technical assistance, as stated in the Application. FCOG may enter into agreements as necessary to perform its obligations under this term of the MOU and under the Application and Agreement.
    - iii. FCOG shall administer of the Application, Agreement, this MOU, and the Initial Grant, as stated in the Application.
  - b. FCOG shall distribute the remaining \$4,743,830.75 of the Initial Grant directly to each of the Members, as more particularly described in “Exhibit B,” in proportion to each Member’s relative population using California Department of Finance population estimates updated as of January 2020.
2. Compliance with the Agreement and MOU. Each Member hereby acknowledges its cognizance of and its understanding of its obligation to comply with the terms and conditions of the Agreement and MOU. Each Member agrees to abide by the terms and conditions of the Agreement and to undertake all actions requested by FCOG pursuant to the Agreement or MOU, in order to facilitate FCOG’s compliance with the terms and conditions of the Agreement.
3. Compliance with the Law. Each Member agrees to comply with all Federal, State, and local laws in the performance of its obligations under this MOU.

4. Sub-Agreements. Copies of all agreements between any Member and any sub-recipient, contractor or subcontractor shall be submitted to FCOG, so that they then may be provided to HCD's Program Manager as required by Exhibit D, section 8, paragraph B of the Agreement.
5. Quarterly Reports. Each Member also shall deliver to FCOG, on a quarterly basis, status reports and accounting records reflecting any expenditure of the Initial Grant by that Member or by a sub-recipient of that Member. Each Member shall deliver its status reports and accounting records within thirty (30) days following the end of the period covered by the document. Each member's quarterly status reports shall, at a minimum, include discussion of any allocations or sub-allocations of the Initial Grant, a description of any project initiated in whole or in part with the Initial Grant and a description of the progress made on any such project.
6. Retention of Records. Each Member shall maintain public records (as that term is defined in Government Code section 6252) (collectively, "**Records**") required under the Agreement, relating to any matter contained in this MOU, or demonstrating that the Initial Grant was used in a manner consistent with the Agreement. Each Member shall make the Records available to FCOG, HCD or the State Auditor upon demand. Each Member shall maintain the Records and make them available for inspection for a period of at least one (1) year following the termination of this MOU or the time specified in Government Code section 8546.7, whichever is later. Records relating to any audit or litigation relevant to this MOU or the Agreement shall be retained by each Member for five years after the conclusion or final resolution of such matter, as required by Exhibit D, section 3, paragraph E of the Agreement.
7. Disallowed Costs. Each Member shall return to FCOG any funds which HCD has disallowed within 90 days following notice to the Member.
8. Indemnity.
  - a. Each Member shall indemnify FCOG, along with FCOG's officers, directors, and employees, for any costs or liabilities (including without limitation for damages, court costs, attorneys' fees, and expert witness fees) arising from, resulting from, or in connection with that Member's actions with respect to subject matter of this MOU or relating in any way to the use of the Initial Grant proceeds by that Member or any sub-recipient, contractor, or subcontractor of that Member.
  - b. Notwithstanding, the obligation to indemnify shall not apply to any costs or liabilities caused solely by the active negligence or willful misconduct of FCOG or any of its officers, directors, and employees.
9. Duration of MOU. This MOU shall be in effect from the Effective Date until December 31, 2024 unless its term is extended by written modification in accordance with the provisions of section 12, paragraph c of this MOU.

10. Subsequent MOUs. The Members understand and agree that subsequent MOUs may be necessary to facilitate the distribution of further grant funding from HCD under section 50515.02, subdivision (a), of the Health and Safety Code. The Members hereby commit to negotiate the terms and conditions of such subsequent MOUs in good faith, in order to achieve concurrence and ensure execution of same in a timely fashion.
11. Notices. All notices provided for or permitted under this MOU must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or as a PDF attachment to an email sent to the addresses provided for the Members above. Any Member may change its address for receipt of notice by providing notice of that change as provided in this section 11.
  - a. A notice delivered by personal service is effective upon service to the recipient.
  - b. A notice delivered by first-class United States mail is effective three business days after deposit in the United States mail, postage prepaid, addressed to the recipient.
  - c. A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.
  - d. A notice delivered by email is effective when sent, if the email is sent between the hours of 8:00 am and 5:00 pm on a business day. If sent outside the hours of 8:00 am and 5:00 pm on a business day, a notice delivered by email becomes effective on the first business day following.
12. General Provisions.
  - a. This MOU is binding upon and shall inure to the benefit of any successors or assigns of the Members.
  - b. This MOU represents the entire understanding of the Members as to those matters contained in this MOU. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this MOU.
  - c. This MOU may not be modified or altered except by writing signed by all Members.
  - d. No Member may assign, delegate or transfer its rights and duties in this MOU without the written consent of all other Members, except that any Member may enter into one or more sub-agreements with any sub-recipient, contractor, or subcontractor to implement activities in furtherance of the

purposes for which the Initial Grant was approved by HCD without the necessity of obtaining such consent.

- e. Any dispute arising under this MOU, which is not resolvable by informal mediation between or among the Members, shall be adjudicated in a court of law under the laws of the State of California.
- f. For all claims arising from or related to this MOU, nothing in this MOU establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).
- g. This MOU shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this MOU shall only be in California. Any action brought to interpret or enforce this MOU, or any of the terms or conditions hereof, shall be brought and maintained in the Fresno County Superior Court.
- h. If any part of this MOU is found by a court of competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this MOU remains in full force and effect, and the Members shall make best efforts to replace the unlawful or unenforceable part of this MOU with lawful and enforceable terms intended to accomplish the Members' original intent.
- i. Section headings are provided for convenience only and are not part of this MOU.
- j. This MOU does not and is not intended to create any rights or obligations for any person or entity except for the Members.
- k. Each Member represents and warrants that the individual signing this MOU is duly authorized to do so and their signature on this MOU legally binds that Member to the terms of this MOU.
- l. This MOU may be signed in counterparts, each of which is an original, and all of which together constitute this MOU.

[Signature pages follow.]

The Members have caused this MOU to be executed as of the date and year first above written.

**Fresno Council of Governments**

By: Tony Boren

\_\_\_\_\_  
Tony Boren, Director

Approved as to Legal Form:

By:

\_\_\_\_\_

Print:

\_\_\_\_\_

**Kern Council of Governments**

By: Ahron Hakimi

\_\_\_\_\_  
Ahron Hakimi, Director

Approved as to Legal Form:

By

: \_\_\_\_\_

Print:

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**Kings County Association of Governments**

By: Terri King

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Terri King, Director

Approved as to Legal Form:

By:

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Print:

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**Madera County Transportation Commission**

By: Patricia Taylor

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Patricia Taylor, Director

Approved as to Legal Form:

By:

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Print:

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**Merced County Association of Governments**

By: 

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Stacie Guzman, Director

Approved as to Legal Form:

By:

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Print:

**Stanislaus Council of Governments**

By:

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Rosa Park, Director

Approved as to Legal Form:

By: 

\_\_\_\_\_  
Print:

**San Joaquin Council of Governments**

By: 

\_\_\_\_\_  
Andrew Chesley, Director

Approved as to Legal Form:

By:

\_\_\_\_\_  
Print:

**Tulare County Association of Governments**

By:

\_\_\_\_\_  
Ted Smalley, Director

Approved as to Legal Form:

By: 

\_\_\_\_\_  
Print:

Exhibit A

Grant funding agreement number 19-REAP-14029

## STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

## STANDARD AGREEMENT

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER

19-REAP-14029

PURCHASING AUTHORITY NUMBER (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

Fresno Council of 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:

\$10,218,830.75

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	3
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		15

*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.)

Fresno Council of Governments

## CONTRACTOR BUSINESS ADDRESS

2035 Tulare St., #201

## CITY

Fresno

## STATE

CA

## ZIP

93721

## PRINTED NAME OF PERSON SIGNING

TONY BOREN

## TITLE

EX. DIRECTOR

## CONTRACTOR AUTHORIZED SIGNATURE

Tony Boren

## DATE SIGNED

8/20/20

## 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

Shaun Singh

## DATE SIGNED

9/3/2020

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

Regional Early Action Planning Grant Program (REAP)

NOFA Date: October 10, 2019

Approved Date: April 9, 2020

Prep. Date: August 12, 2020

## **EXHIBIT A**

of the NOFA, this Agreement, subsequent amendments to this Agreement, the 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.

**EXHIBIT A**

- C. The Department may monitor expenditures and activities of an applicant, as the Department deems necessary, to ensure compliance with statutory or Department requirements.
- 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 \$10,218,830.75.
- B. This Agreement authorizes an initial advance payment(s) for eligible activities as described in the 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 advance payment, any subsequent payment and the total amount prior to

## **EXHIBIT B**

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 modify the November 1, 2023 deadline and 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.

## **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, in consultation with the Grantee.
- 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.

## 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
- Regional Early Action Planning Grants (REAP)  
NOFA Date: October 10, 2019  
Approved Date: April 9, 2020  
Prep. Date: August 12, 2020

## 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.



**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: April 9, 2020

Prep. Date: August 12, 2020

**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

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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)  
NOFA Date: October 10, 2019  
Approved Date: April 9, 2020  
Prep. Date: August 12, 2020

## 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

## **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

## 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, 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 Product 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 by the Department 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. The Department shall 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 creation of each Work Product automatically assign, to the Department, ownership of all United States and international copyrights in each and

## EXHIBIT D

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 the Department'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. The Department shall have the right to obtain and hold in its name all copyright registrations and other evidence of rights that may be available for Work Product under this Agreement. 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 all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority thereunder and the same shall become and remain the Department's property regardless of whether such protection is sought. 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 Department and no further agreement will be necessary to transfer ownership to the Department.

### 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, in consultation with the Grantee.

## Exhibit B

Pro-rata Initial Allocations to Each Regional Transportation Planning Agency  
Based on January 2020 California Department of Finance Population Estimates

REAP PLANNING GRANT INITIAL ALLOCATIONS			MPO
			DISTRIBUTION
MPO Share by Population*			
Fresno Council of Governments	1,032,227	23.50%	\$1,114,737.62
Kern Council of Governments	927,251	21.11%	\$1,001,370.41
Kings County Association of Governments	156,444	3.56%	\$168,949.28
Madera County Transportation Commission	160,089	3.64%	\$172,885.65
Merced County Association of Governments	287,420	6.54%	\$310,394.79
San Joaquin Council of Governments	782,545	17.81%	\$845,097.40
Stanislaus Council of Governments	562,303	12.80%	\$607,250.45
Tulare County Association of Governments	484,423	11.03%	\$523,145.14
<b>Total</b>	<b>4,392,702</b>	<b>100.00%</b>	<b>\$4,743,830.75</b>



AMENDMENT No. 1 TO MEMORANDUM OF UNDERSTANDING  
SAN JOAQUIN VALLEY REGIONAL EARLY ACTION PLANNING COMMITTEE  
FOR HOUSING

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This Amendment to Agreement (hereinafter "Amendment No. 1 to MOU") amends that certain agreement (hereinafter "MOU") entered into November 19, 2020, by and between the agencies ("**Members**") comprising the San Joaquin Valley Regional Early Action Planning Committee for Housing ("**Committee**") set forth below:

**Fresno Council of Governments**  
2035 Tulare Street Suite 201  
Fresno, CA 93721  
Email: tboren@fresnocog.org

**Kern Council of Governments**  
1401 19th Street, Suite 300  
Bakersfield, California 93301  
Email: ahakimi@kerncog.org

**Kings County Association of Governments**  
339 W D Street  
Lemoore, CA 93245  
Email: terri.king@co.kings.ca.us

**Madera County Transportation Commission**  
2001 Howard Road, Suite 201  
Madera, CA 93637  
Email: patricia@maderactc.org

**Merced County Association of Governments**  
369 W 18th Street  
Merced, CA 95340  
Email: stacie.guzman@mcagov.org

**San Joaquin Council of Governments**  
555 E Weber Avenue  
Stockton, CA 95202  
Email: achesley@sjcog.org

**Stanislaus Council of Governments**  
1111 "I" Street, Suite 308  
Modesto, CA 95354  
Email: rpark@stancog.org

**Tulare County Association of Governments**  
210 N Church Street, Suite B  
Visalia, CA 93291  
Email: tsmalley@tularecog.org

**RECITALS**

- A. The Members have decided to amend the distribution of the proceeds of the Initial Grant (defined in the November 19, 2020 MOU).
- B. The revised distribution is attached hereto and incorporated herein by reference as Exhibit B-1, which the Members intend to replace Exhibit B under the November 19, 2020 MOU.

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## AGREEMENT

In consideration for their mutual promises, the Members agree as follows:

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1. Section 1, Allocation of Initial Grant of the November 19, 2020 MOU shall be deleted in its entirety and replaced with the following:
  1. Allocation of Initial Grant. The Members agree to allocate the \$10,218,830.75 of the Initial Grant as follows:
    - a. FCOG will retain \$4,475,000 of the Initial Grant to perform the following tasks:
      - i. FCOG shall prepare a comprehensive housing report and policy recommendations for implementation, as stated in the Application. FCOG may enter into agreements as necessary to perform its obligations under this provision of the MOU and under the Application and Agreement.
      - ii. FCOG shall conduct regional planning and coordination, and provide technical assistance, as stated in the Application. FCOG may enter into agreements as necessary to perform its obligations under this term of the MOU and under the Application and Agreement.
      - iii. FCOG shall administer of the Application, Agreement, this MOU, and the Initial Grant, as stated in the Application.
    - b. FCOG shall distribute the remaining \$4,743,830.75 of the Initial Grant directly to each of the Members, as more particularly described in Exhibit B-1, "Phase I" in proportion to each Member's relative population using California Department of Finance population estimates updated as of January 2020.
    - c. FCOG shall distribute and additional \$1,000,000 of the Initial Grant directly to each of the Members, on the basis of \$125,000 each as more particularly described in Exhibit B-1, "Phase II."
2. It is the intent of the parties this Amendment No. 1 to MOU shall become effective July 1, 2021 ("**Effective Date**").
3. Unless expressly modified by the terms of this Amendment No. 1 to MOU, all other terms of the November 19, 2020 MOU remain in full force and effect.

4. Each Member represents and warrants that the individual signing this Amendment No. 1 to MOU is duly authorized to do so and their signature on this Amendment No. 1 to MOU legally binds that Member to the terms of this Amendment No. 1 to MOU.
5. This MOU may be signed in counterparts, each of which is an original, and all of which together constitute this MOU.#

[Signature pages follow.]

The Members have caused this Amendment No. 1 to MOU to be executed as of the Effective Date.

**Fresno Council of Governments**

By:

\_\_\_\_\_  
Tony Boren, Director

**Kern Council of Governments**

By:

\_\_\_\_\_  
Ahron Hakimi, Director

**Kings County Association of Governments**

By:

\_\_\_\_\_  
Terri King, Director

**Madera County Transportation Commission**

By:

\_\_\_\_\_  
Patricia Taylor, Director

**Merced County Association of Governments**

By:

\_\_\_\_\_  
Stacie Dabbs, Director

**San Joaquin Council of Governments**

By:

\_\_\_\_\_  
Diane Nguyen, Director

**Stanislaus Council of Governments**

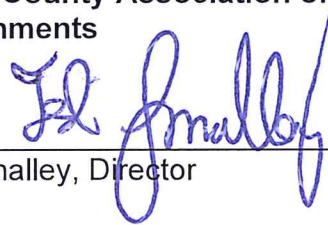
By:

\_\_\_\_\_  
Rosa Park, Director

**Tulare County Association of Governments**

By:

\_\_\_\_\_  
Ted Smalley, Director



## EXHIBIT B-1

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# San Joaquin Valley REAP Summary Funding Table

Initial Funding

	Phase I (1st app)				Phase II (2nd app)				Phase III (3rd app)				Summary			
	Original for RHNA	Sub Alloc Cities/County	Additional RHNA (a)	Total Phase I	Valleywide Planning	Supplemental RHNA (b)	Total Phase II		Sub Alloc Cities/County	Funds Dedicated to REAP	Funds Dedicated to RHNA	Total HCD Program				
FCOG	127,889	762,257	164,491	1,114,738	4,475,000	125,000			2,057,660	7,294,918	477,480	7,772,398	87%	13%		
Kern	168,871	684,737	147,762	1,001,370		125,000			1,848,399	2,533,136	441,633	2,974,769				
Kings	23,492	115,527	24,930	168,949		125,000			311,858	427,386	178,422	605,808				
Madera	29,155	118,219	25,511	172,886		125,000			319,124	437,344	179,666	617,010				
Merced	52,345	212,248	45,802	310,395		125,000			572,948	785,196	223,147	1,008,343				
San Joaquin	142,517	577,877	124,703	845,097		125,000			1,559,939	2,137,817	392,220	2,530,037				
Stanislaus	102,407	415,238	89,606	607,250		125,000			1,120,905	1,536,143	317,013	1,853,156				
Tulare	88,223	357,727	77,195	523,145		125,000			965,658	1,323,384	290,419	1,613,803				
Total	800,000	3,243,831	700,000	4,743,831	4,475,000	1,000,000	5,475,000	82%	8,756,492	16,475,323	2,500,000	18,975,323				
Percentage	17%	68%	15%	100%	82%	18%	100%		100%	87%	13%	100%				

Significant Local  
Agency Involvement  
in REAP process

Proposed future  
funding, subject to  
change by HCD

Notes: (a) Sum of Valleywide Tech Assist, Admin and Housing Report that was in the 1st app and subsequently moved to the 2nd app.  
(b) \$1M transferred from Valleywide to regional planning agencies for RHNA planning. Also can be used for admin and project staffing/management.

Phase II (2nd app) Valleywide Budget	
Supplemental RHNA	1,000,000
Comprehensive Housing Report	500,000
Housing Report Policy Implem.	1,000,000
Household Travel Survey	500,000
Consultant Bench	1,500,000
Outreach, Marketing	250,000
Fresno COG Admin	300,000
Housing Program Manager	314,200
Reserve/Contingencies	110,800
	5,475,000

## **ATTACHMENT C**

### **SCOPE OF SERVICES**

CONTRACTOR will undertake professional activities consistent with the requirements of Chapter 3.1 of Part 2 of Division 31 (commencing with section 50515) of the California Health & Safety, the REAP Grant Agreement, and the REAP MOU, and comply with the terms and conditions of same. CONTRACTOR'S attention is called to the requirements of the REAP MOU for submission of quarterly status reports and accounting records (section 5) and retention of records related to use of the grant funds (section 6). In addition, CONTRACTOR shall substantially comply with (1) the "Eligible Activities Best Practices" guidelines promulgated by the State of California's Department of Housing and Community Development dated as of May 12, 2020; and (2) the "San Joaquin Valley Regional Early Action Planning for Housing - REGIONAL PLANNING AGENCY GUIDANCE" dated as of May 6, 2021, copies of which are attached. Per the REAP MOU and the Grant Agreement, all funds provided to CONTRACTOR hereunder must be expended in full on or before August 31, 2023.

# **Regional Early Action Planning Grant Program (REAP)**

## **Eligible Activities Best Practices**

This document will be updated periodically with new ideas. Additions will be attached as a new page at the end of the document with the date of the addition.

### **Eligible Activity: Developing an Improved RHNA Methodology to Further Gov Code Section 65584 (d) Objectives.**

Gov Code Section 65584 (d) “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.

- Analyzing and incorporating Affirmatively Furthering Fair Housing and making data available to jurisdictions
- Increasing zoned capacity in jurisdictions with disproportionately high jobs-housing ratio, 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
- Outreach strategies in addition to conducting a survey to combat segregation and foster inclusive communities free from barriers that would restrict access to opportunity based on protected characteristics
- Education and awareness of fair housing laws and issues to stakeholders (e.g. community, developers, public staff)
- Providing language assistance for limited proficiency in English
- Incorporating and developing policy guide for displacement avoidance plan and affordable housing preservation
- Incorporating climate mitigation strategies (e.g. make housing more energy efficient, adopting renewable energy sources such as solar and wind)
- Incorporating disaster / climate adaptation and encouraging strategies in local land use documents



- Incorporating ways to promote infill development (i.e., promoting higher zoned capacity in areas with low per capita vehicle miles traveled and high access to opportunity, focusing new growth land that has already been developed with urban uses or is substantially surrounded by urban uses and/or incorporating ways to promote transportation-efficient development (i.e., development in places where there are multiple transportation options besides a single occupancy vehicle--transit, bike lanes, sidewalks- - and the density and mix of uses that make these transportation options a viable choice),
- Mapping regional Priority Development Areas or similar
- Implementing a Sustainable Communities Strategies (SCS) consistency program (e.g. Association of Bay Area Government's Resilience Program)
- Promotion of more zoned capacity for housing in jurisdictions with the highest housing costs.
- Local input surveys
- Mini grants to community groups and partnership with grassroots partners and community leaders to support full engagement in RHNA development
- Aligning transportation funding – especially competitive transportation grant programs and investments in transit, streetscape, placemaking, and active transportation – with RHNA plans for housing (i.e., Bay Area's Resolution 3434)
- Incorporating homelessness data to plan for meeting supply of below 30 percent AMI units
- Education and awareness of various tax increment financing tools, promoting use of local tax increment financing tools (i.e., Enhanced Infrastructure Financing Districts (EIFDs), Community Revitalization and Investment Authorities (CRIAs), Affordable Housing Authorities (AHAs), Infrastructure and Financing Revitalization Districts (IFRDs) and Neighborhood Infill Finance and Transit Improvements (NIFTI) districts. CRIAs have alignment with CalEnviro Screen and affordable housing requirement, see [tool comparison](#).
- Education and awareness on pairing federal Opportunity Zone (OZ) program with state programs (i.e., Strategic Growth Council Transformative Climate Community in Ontario has an affordable housing project funded by state with OZ funding). Opportunity Zones are census tracts that are defined by the Internal Revenue Service (IRS) as “economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment.” They were added to the tax code by the Tax Cuts and Jobs Act on December 22, 2017. <https://opzones.ca.gov/faqs/>.

- Incorporating methods to pair federal Opportunity Zone program with affordable housing

## **Eligible Activity: Suballocations to Jurisdictions**

- Developing approaches to insure equitable distribution of funding such as location-based minimums (e.g., at least 20% in a specified county), non-competitive programs coupled with population based or RHNA based award amounts, proactive outreach and technical assistance with under-resourced communities.
- Program criteria for SCS consistency, displacement, affordability, including deeper targeting, climate adaption
- Program criteria for Affirmatively Furthering Fair Housing
- COG to develop grant program to support development of compliant Housing Elements and community engagement strategies (i.e., Bay Area's 80k by 2020 challenge grant program, SANDAG's Policy 33)
- Program criteria or other incentives to facilitate pro-housing jurisdictions
- Jurisdictions' specific best practices after a COG develops a grant program:
  - Prepare a form based zoning or overlay zone to provide development standards and zoning that allows future higher-density housing and mixed-use development (may include Environmental Impact Report [EIR])
  - Develop framework for a trust to support the preservation and production of long-term affordable housing for lower-income households
  - Completing CEQA analysis and specific plan EIRs that promote streamlined approvals at the project-level or eliminate the need for project-level specific review.
  - Undertake rezoning efforts to bring local zoned capacity into compliance with HCD requirements for housing element prior to Housing Element due data
  - Objective design and/or development standards to comply with SB35 and other laws to provide more clarity and certainty for applicants.
  - Planning associated with local financial strategies such as a local housing trust fund, fee reductions for infill, TOD, or affordable developments, published fee schedules and fee calculators.

- Intensifying land-use patterns to allow for a variety of housing types (duplexes, triplexes, fourplexes, multi-family) and increasing densities on sites identified to accommodate the jurisdictions lower-income RHNA.
- When suballocating funds for comprehensive marketing strategies that the marketing is equitably designed and inclusive of disadvantage communities.
- Feasibility studies to determine the most efficient locations to site housing, such as those with lowest per capita vehicle miles traveled and highest access to jobs and other opportunities.
- Infrastructure planning that prioritizes infill development.
- Establishing a flexible housing subsidy pool.
- Anti-displacement strategies which may be applicable are those eligible pursuant to the program guidelines of other state housing assistance programs such as the Affordable Housing and Sustainable Communities (AHSC) Program, or policies and programs to implement the provisions of Government Code section 65583 (a)(9) and (c)(6) for preservation of assisted housing developments.
- Examples of priorities that may complement the acceleration of housing production can include consideration of practices that prohibit residential uses in areas zoned for open space, agriculture, areas considered environmentally hazardous (e.g., floodplains or high wildfire severity zone areas), or other sensitive areas.
- Feasibility for a tax increment financing tool that expedites housing development; prepare an Infrastructure Financing Plan for a tax increment financing tool to plan for future housing and housing funding. Such as Enhanced Infrastructure Financing Districts (EIFDs), Community Revitalization and Investment Authorities (CRIAs), Affordable Housing Authorities (AHAs), Infrastructure and Financing Revitalization Districts (IFRDs) and Neighborhood Infill Finance and Transit Improvements (NIFTI) districts. CRIAs have alignment with CalEnviro Screen and affordable housing requirement. [Tool comparison:](#)
- Pairing Federal Opportunity Zone Program for affordable housing development
  - Developing plan to increase affordable housing development in Federal Opportunity Zones.

- Creating toolkit/project pipeline to pair Opportunity Zone funding with state affordable housing programs (such as AHSC project or Infill Infrastructure Grant with an OZ Fund)
- Examples include the Strategic Growth Council  
Transformative Climate Community in Ontario has an affordable housing project funded by state with OZ funding

## **Eligible Activity: Technical Assistance, Temporary Staffing or Consultant Needs and Other Actions**

- To build capacity develop a planning academy (educate and engage on planning processes) for staff. E.g. City of Sacramento's Citizen's Planning Academy.
- Developing regional toolkits on a variety of housing-specific topics such as objective design and development standards, housing elements, CEQA streamlining, by-right zoning, ADUs, infrastructure planning, housing finance strategies, public engagement, planning adaptation, Opportunity Zones, tax-increment financing tools, and equity and environmental justice.
- Creation of data service menus and analysis templates to support preparation of housing elements
- Assistance with sites inventories to support preparation of the housing elements
- Developing public engagement and educational strategies to build support from local elected officials, stakeholders, and the general public on a variety of housing policies that encourage affordable housing. Strategies can include workshops, campaigns, fact sheets, customizable PowerPoint slide decks, etc.,
- Creating tools to encourage the development of ADUs such as, handbooks, prototype plans and designs that can be customized to a local jurisdiction. Other tools may include web-based ADU calculators, entitlement processing assistance and websites specific to jurisdictions.
- Establishing consulting benches or circuit rider programs that can provide targeted TA on a variety of housing and land use topics in the form of training, workshops, panel discussions, and direct assistance to jurisdictions around specific housing policy areas such as housing elements, ADUs, CEQA, by-right zoning, expediated permit processing, infrastructure, equity and environmental Justice, etc.,

- Toolboxes that include model ordinances, templates, checklists, and handbooks that help jurisdictions comply with land-use and planning laws such as density bonus, ADUs, supportive housing, reasonable accommodation, etc.,
- Developing a peer-to-peer learning environment through facilitating regional convenings and regularly scheduled meetings where local governments can exchange best practices and share resources.
- Establishing relationship and planning housing needs with Continuum of Care
- Outreach to jurisdictions applying for/receiving emergency shelter funds to assist with planning movement from shelter to permanent homes, i.e. site and funding readiness for permanent supportive housing.
- Technical assistance on how to incorporate homelessness data into housing element updates or housing planning.
- Developing toolkits or support for planning of infrastructure financing plans for tax-increment financing tools that support housing, such as Enhanced Infrastructure Financing Districts (EIFDs), Community Revitalization and Investment Authorities (CRIAs), Affordable Housing Authorities (AHAs), Infrastructure and Financing Revitalization Districts (IFRDs) and Neighborhood Infill Finance and Transit Improvements (NIFTI) districts.
- CRIAs have alignment with CalEnviro Screen and affordable housing requirement. See [tool comparison](#).
- Identifying infill opportunity areas or sites
- Compiling and providing information about regional conservation plans and other resource-area data to preclude time-consuming conflicts related to special-status species and other resource-conservation efforts (i.e., Butte County Association of Government's assistance in General Plan updates)
- Mapping of transportation costs to facilitate assessment of the combined cost of housing and transportation
- Development of a multi-jurisdictional Housing Element and other collaborative processes to assist the preparation and implementation of housing elements
- Convening regional stakeholders to identify solutions to regional housing challenges (e.g., the Committee to House the Bay Area (CASA) process)
- Public surveys, communications planning, development of communications materials (e.g., brochures) or tools (e.g., an online game), or communications purchases (e.g., a radio spot) to support local-government housing outreach
- Establishing a Transfer of Development Rights program

- CEQA streamlining support (i.e., Sacramento Area of Council of Government's (SACOG) assists projects within its region in utilizing the SB 375 CEQA streamlining provisions. SB 375 allows for streamlined review and analysis of residential or mixed-use projects consistent with an SCS; modified review and analysis, through an expedited Sustainable Communities Environmental Assessment (SCEA), for Transit Priority Projects (TPPs) that are consistent with an SCS; and a complete CEQA exemption for TPPs that are consistent with an SCS and meet a specific list of other requirements. In each of these cases, SACOG's MTP/SCS EIR serves as a first-tier environmental document under CEQA. SACOG provides lead agencies with a CEQA streamlining worksheet to determine if projects are consistent with their region's SCS, and to help determine the appropriate CEQA streamlining.)
- Facilitating partnerships between developers, local agencies, transit providers, and State agencies to secure a diverse set of investments in key housing areas, especially to facilitate infill development with many transportation choices
- Supporting efforts to secure other public funds by publicizing grant availability or providing grant-writing or other grant-related technical support for eligible projects

### **Eligible Activity: Program Administration**

Applicants may consult with HCD to identify whether a task is an activity or administration.

- Activity costs:
  - Applicants staff time for implementation of improving RHNA methodology directly related to eligible activity 1
  - Applicants staff time to review suballocation applications from jurisdictions directly related to eligible activity 2
  - Applicants staff time to develop contracts for jurisdictions as part of suballocation directly related to eligible activity 3
- Administrative costs (max 5%):
  - Monitoring and Reporting on allocations and suballocations
  - Prepare REAP application, including staff time to participate in Steering Committee calls/meetings. Preparing invoices and supporting documentation
  - File management

## **San Joaquin Valley Regional Early Action Planning for Housing REGIONAL PLANNING AGENCY FUNDING GUIDANCE**

*Revised Version – May 6, 2021*

### ***Background***

The Local Government Planning Support Grants Program (AB 101) was established to provide regions and jurisdictions with one-time grant funding for planning activities to meet the sixth cycle of the Regional Housing Needs Allocation (RHNA), and to spur affordable housing production. A total of \$18,975,323 in Regional Early Action Planning (REAP) grant funds is available to the eight San Joaquin Valley regional planning agencies.

The San Joaquin Valley Regional Early Action Committee for Housing (SJV REAP Committee), required by statute, will help guide the Valley's REAP planning efforts. The SJV REAP Committee comprises 24 members of the San Joaquin Valley regional planning agencies, cities, counties and community members. The SJV REAP Committee meets two to four times a year. The San Joaquin Valley Regional Planning Agencies' Directors' Committee will also advise the SJV REAP program implementation process.

### ***Overview***

The Fresno Council of Governments is the fiscal agent for this regional effort. There are three primary work areas highlighted below:

- RHNA (Regional Housing Needs Allocation) - Developing an improved methodology for the distribution of the sixth cycle RHNA.
- Suballocations to jurisdictions – Providing grants to accelerate housing production in a way that aligns with state planning priorities, housing, transportation, equity, and climate goals.
- Valleywide activities and deliverables – Conducting a comprehensive housing report, regional planning and coordination, program implementation, technical assistance, and other activities. REAP program administration, agreements, consultants, outreach, communication, and other administrative and program management duties.

RHNA and jurisdictional suballocations will primarily be conducted at the regional planning agency level, with each regional planning agency receiving a pro-rata share of funding for developing and implementing its RHNA process, and for distributing and coordinating the jurisdictional suballocations. Please reference the attached REAP Summary Funding Table for additional information.

The SJV Housing Program Manager (Sigala Inc.) and Fresno COG will lead the Valleywide planning efforts in coordination with the SJV REAP Committee, the Directors' Committee, staff at the regional planning agencies, and other partners.

### ***Distribution Process (initial funding)***

Fresno COG, on behalf of the San Joaquin Valley, has received \$10.2 million of initial funding (REAP applications one and two) for the SJV REAP process. The initial funding is being made available to the San Joaquin Valley as “front loaded” grant funds for immediate distribution. This is not typical of state planning grant funding, which is traditionally provided on a reimbursable basis. The SJV REAP Committee has approved a pro-rata funding allocation methodology for the initial funding amount.

#### **Breakdown of Initial Funding**

Fresno Council of Governments	\$1,114,737.62
Kern Council of Governments	\$1,001,370.41
Kings County Association of Governments	\$168,949.28
Madera County Transportation Commission	\$172,885.65
Merced County Association of Governments	\$310,394.79
San Joaquin Council of Governments	\$845,097.40
Stanislaus Council of Governments	\$607,250.45
Tulare County Association of Governments	<u>\$523,145.14</u>
Subtotal	\$4,743,830.75

#### **Funding for Valleywide work efforts \***

*(including Fresno COG administrative cost)*

\$5,475,000.00

Total \$10,218,830.75

\*\$1 million of Valleywide funding is to be transferred to regional planning agencies for supplemental RHNA planning. See below, “Supplemental RHNA Planning Funds.”

Each regional planning agency is responsible, through their respective boards, to determine funding amounts and policies for RHNA planning and jurisdictional suballocations. Fresno COG, the SJV Housing Program Manager, and staff at the eight regional planning agencies will coordinate and further develop policies and guidance for RHNA and suballocation disbursements across the region, as needed.

Initial funding distributions at the regional planning agency level should prioritize direct suballocations to jurisdictions, consistent with the policy direction as approved by the SJV REAP Committee and the amounts approved in first REAP funding application. Fresno COG advises that regional planning agencies generally adhere to the jurisdictional allocation amounts approved by the State of California in the first REAP application submittal. Those amounts are detailed in the table below and in the attached REAP Summary Funding Table.

Each regional planning agency may use up to five percent (5%) of funding for program administration (reporting, invoicing, etc.). Project management (staffing) can reasonably be used for program implementation outside of the five percent administration figure. Fresno COG



advises that administration and project management costs come out of the RHNA Planning amounts and not the jurisdictional suballocation amounts.

***\*Supplemental RHNA Planning Funds***

Due to the limited pro-rata RHNA planning shares, \$1 million of Valleywide funding will be apportioned equally to each regional planning agency in the amount of \$125,000.

**Combined breakdown of initial and supplemental funding amounts for RHNA planning and jurisdictional suballocations:**

	<u>RHNA Planning</u>	<u>Suballocations</u>	<u>Total</u>
Fresno Council of Governments	\$477,480	\$762,257	\$1,239,738
Kern Council of Governments	\$441,633	\$684,737	\$1,126,370
Kings County Association of Governments	\$178,422	\$115,527	\$293,949
Madera County Transportation Commission	\$179,666	\$118,219	\$297,886
Merced County Association of Governments	\$223,147	\$212,248	\$435,395
San Joaquin Council of Governments	\$392,220	\$577,877	\$970,097
Stanislaus Council of Governments	\$317,013	\$415,238	\$732,250
Tulare County Association of Governments	<u>\$290,419</u>	<u>\$357,727</u>	<u>\$648,145</u>
	\$2,500,000	\$3,243,831	\$5,743,831

Please reference the attached REAP Summary Funding Table for additional information.

***Use of Funds***

The region, and regional planning agencies, shall establish priorities and use funding to increase housing planning and accelerate housing production. The following are eligible activities:

- RHNA planning activities including developing an improved methodology for the distribution of the sixth cycle RHNA.
- 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.
- Covering the costs of administering any programs.
- Suballocating moneys directly and equitably to jurisdictions or other subregional entities in the form of grants, to accelerate housing production in a way that aligns with state planning priorities, housing, transportation, equity, and climate goals.
- A jurisdiction that receives a suballocation of funds shall only use that suballocation for housing-related planning activities, including, but not limited to, the following:

- Technical assistance in improving housing permitting processes, tracking systems, and planning tools.
- Facilitating technical assistance between jurisdictions.
- Establishing regional or countywide housing trust funds for affordable housing.
- 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.
- Performing feasibility studies for affordable housing projects on surplus properties owned by school districts or county offices of education.
- Covering the costs of temporary staffing or consultant needs associated with the activities described above.

The following are ineligible activities:

- Activities unrelated to accelerating housing production.
- Activities unrelated to preparation and adoption of planning documents, and process improvements to accelerate housing production.
- Activities that obstruct or hinder housing production.
- Capital financing, operation or funding related to programs of individual housing development projects.
- Administrative costs of persons employed by the grantee for activities not directly related to the preparation and adoption of the proposed Activity or Activities.

### ***Distribution Process (remaining funds)***

The remaining funds for Valley REAP planning purposes are \$8,756,492.25. An application to the state for the remaining funds needs has been submitted to the State of California, Housing and Community Development Department (HCD). The SJV REAP Committee has determined that the remaining funds shall be allocated on a population pro-rata basis to each regional planning agency process for jurisdictional suballocations and additional housing related activities at the regional planning agency level. Please see attached REAP Summary Funding Table for the breakdown by regional planning agency.

All REAP funds shall be expended by August 31, 2023.

### ***Reporting Requirements***

There will be quarterly, annual (by April 1 of each year) and a final report (by December 21, 2024) required by all entities that receive REAP funding. Fresno COG and the SJV Housing Program Manager will work with each regional planning agency to ensure compliance with State HCD reporting requirements.

## San Joaquin Valley REAP Summary Funding Table

< ----- Initial Funding ----- >

	Phase I (1st app)				Phase II (2nd app)			Phase III (3rd app)	Summary		
	Original for RHNA	Sub Alloc Cities\County	Additional RHNA (a)	Total Phase I	Valleywide Planning	Supplemental RHNA (b)	Total Phase II	Sub Alloc Cities\County	Funds Dedicated to REAP	Funds Dedicated to RHNA	Total HCD Program
FCOG	187,989	762,257	164,491	1,114,738	4,475,000	125,000	4,600,000	2,057,660	7,294,918	477,480	7,772,398
Kern	168,871	684,737	147,762	1,001,370		125,000	125,000	1,848,399	2,533,136	441,633	2,974,769
Kings	28,492	115,527	24,930	168,949		125,000	125,000	311,858	427,386	178,422	605,808
Madera	29,155	118,219	25,511	172,886		125,000	125,000	319,124	437,344	179,666	617,010
Merced	52,345	212,248	45,802	310,395		125,000	125,000	572,948	785,196	223,147	1,008,343
San Joaquin	142,517	577,877	124,703	845,097		125,000	125,000	1,559,939	2,137,817	392,220	2,530,037
Stanislaus	102,407	415,238	89,606	607,250		125,000	125,000	1,120,905	1,536,143	317,013	1,853,156
Tulare	88,223	357,727	77,195	523,145		125,000	125,000	965,658	1,323,384	290,419	1,613,803
Total	800,000	3,243,831	700,000	4,743,831	4,475,000	1,000,000	5,475,000	8,756,492	16,475,323	2,500,000	18,975,323
Percentage	17%	68%	15%	100%	82%	18%	100%	100%	87%	13%	100%

Significant Local  
Agency Involvement  
in REAP process

Proposed future  
funding, subject to  
change by HCD

Notes: (a) Sum of Valleywide Tech Assist, Admin and Housing Report that was in the 1st app and subsequently moved to the 2nd app.

(b) \$1M transferred from Valleywide to regional planning agencies for RHNA planning. Also can be used for admin and project staffing/management.

Phase II (2nd app) Valleywide Budget	
Supplemental RHNA	1,000,000
Comprehensive Housing Report	500,000
Housing Report Policy Implem.	1,000,000
Household Travel Survey	500,000
Consultant Bench	1,500,000
Outreach, Marketing	250,000
Fresno COG Admin	300,000
Housing Program Manager	314,200
Reserve/Contingencies	110,800
	5,475,000

## ATTACHMENT D

### **PROFESSIONAL SERVICES CONTRACTS** INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees, and subcontractors, if applicable.

#### A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury, and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

#### B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims-made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
  - a. TCAG and CONTRACTOR, their officers, agents, officials, employees, and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.
  - b. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects TCAG and CONTRACTOR, their officers, agents, officials, employees, and volunteers. Any insurance or self-insurance maintained by TCAG or CONTRACTOR, their officers, agents, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
  - c. *CONTRACTOR hereby grants to TCAG a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the CONTRACTOR by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of*

*subrogation, but this provision applies regardless of whether or not the TCAG or the CONTRACTOR has received a waiver of subrogation endorsement from the insurer.*

d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to TCAG.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of TCAG and the CONTRACTOR for all work performed by the CONTRACTOR, its employees, agents, and subcontractors. CONTRACTOR waives all rights against TCAG and the CONTRACTOR, their officers, agents, officials, employees, and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the TULARE COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A:-VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the TCAG, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to TCAG. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. TCAG and the CONTRACTOR reserve the right to require certified copies of all required insurance policies at any time.

## ATTACHMENT E

### TCAG'S GENERAL AGREEMENT TERMS AND CONDITIONS

**1. COMPLIANCE WITH LAW:** CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations, and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

**2. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK:** CONTRACTOR is not entitled to any payments under this Agreement until TCAG confirms that services provided, including any furnished deliverables, satisfy all of the requirements of this Agreement. Payments to CONTRACTOR by TCAG shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials, and services that do not conform to the requirements of this Agreement may be rejected by TCAG and in such case must be replaced by CONTRACTOR without delay and at no cost to the TCAG.

**3. DISALLOWANCE:** If CONTRACTOR requests or receives payment from TCAG for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to TCAG upon TCAG'S request. At its option, TCAG may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and TCAG. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.

**4. LIABILITY OF TCAG:** TCAG'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall TCAG be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

**5. QUALIFIED PERSONNEL:** CONTRACTOR shall utilize only competent personnel under the supervision of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with TCAG'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at TCAG'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

**6. INDEPENDENT CONTRACTOR STATUS:** The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of TCAG. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of TCAG. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and TCAG will have no right to control or exercise any supervision over CONTRACTOR as to how

CONTRACTOR will perform the services. As CONTRACTOR is not TCAG'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, TCAG will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, TCAG will have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

**7. LICENSES AND PERMITS:** CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

**8. GOVERNING LAW:** The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

**9. RECORDS AND AUDIT:** CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement. Additional record-keeping requirements may be located in Exhibit F or G (related to federally-funded contracts generally, or FTA-funded contracts specifically).

**10. CONFLICT OF INTEREST:**

(a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 *et seq.*, and the Political Reform Act, Government Code Section 81000 *et seq.*, and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations, and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of TCAG in which the officer, employee, or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee, or consultant/contractor participates in or influences any TCAG decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts-of-interests laws, then it will immediately inform TCAG and provide all information needed for resolution of this question.

**11. INSURANCE:** The attached **Attachmet E** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Attachment E** cannot be used to reduce limits available to TCAG as an additional insured from

CONTRACTOR's full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then TCAG may consider that failure a material breach of this Agreement. TCAG may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

## **12. INDEMNIFICATION AND DEFENSE:**

(a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by TCAG, which approval may not be unreasonably withheld), protect and hold harmless TCAG, all subsidiaries, divisions, committee, and affiliated agencies of TCAG, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors, and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, attorneys' fees, disbursements, and court costs, and all other professional expert or consultants' fees and costs and TCAG general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors, and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, and anyone employed directly or indirectly by any of them, or for whose acts they may be liable, or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the TCAG for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to TCAG for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S



indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CONTRACTOR must indemnify and hold TCAG harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by TCAG, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

### **13. TERMINATION:**

(a) **Without Cause:** TCAG may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONTRACTOR of its intention to terminate under this provision, specifying the date of termination. TCAG will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. TCAG will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. TCAG will not impose sanctions on CONTRACTOR under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, TCAG may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to TCAG'S retention of CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of TCAG, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement or exposes TCAG to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then TCAG may, in addition to any other remedy it may have, issue a declaration of default after 10 days' written notice to CONTRACTOR.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach

is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

TCAG will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. TCAG will not pay lost anticipated profits or other economic loss, nor will TCAG pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If TCAG terminates this Agreement for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to TCAG. TCAG may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Expiration or Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where TCAG terminates CONTRACTOR'S services, that termination will not affect any rights of TCAG to recover damages against CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the Executive Director of TCAG may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

**14. LOSS OF FUNDING:** It is understood and agreed that if TCAG'S funding is either discontinued or reduced for the services to be provided hereunder, then TCAG will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to TCAG of any kind, provided that TCAG shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

**15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Under applicable federal and state law, if CONTRACTOR submits a false claim to TCAG under this Agreement, then CONTRACTOR will be liable to TCAG for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to TCAG if CONTRACTOR:

- (a) Knowingly presents or causes to be presented to TCAG a false claim or request for payment or approval;
- (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by TCAG;
- (c) Conspires to defraud TCAG by getting a false claim allowed or paid by TCAG;
- (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to TCAG; or

(e) Is a beneficiary of an inadvertent submission of a false claim to TCAG, later discovers the falsity of the claim, and fails to disclose the false claim to TCAG within a reasonable time after discovery of the false claim.

**16. FORM DE-542:** If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, TCAG has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with TCAG to make that information available and to complete Form DE- 542. Failure to provide the required information may, at TCAG'S option, prevent approval of this Agreement, or be grounds for termination by TCAG.

**17. WORKS FOR HIRE:** CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to TCAG all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Agreement for TCAG will be the sole property of TCAG, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to TCAG. CONTRACTOR will execute all necessary documents to enable TCAG to protect TCAG'S intellectual property rights under this section.

**18. WORK PRODUCT:** All work product, equipment, or materials created for TCAG or purchased by TCAG under this Agreement belong to TCAG and CONTRACTOR must immediately deliver them to TCAG at TCAG'S request upon termination or completion of this Agreement.

**19. TIME OF ESSENCE:** The Parties agree that time is of the essence under this Agreement unless they agree otherwise in writing.

**20. CONFIDENTIALITY:** CONTRACTOR may not use or disclose any information it receives from TCAG under this Agreement that TCAG has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by TCAG. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, TCAG may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If TCAG determines that it must disclose any information that CONTRACTOR previously identified as confidential, then it shall promptly give CONTRACTOR written notice of its intention to disclose such information and the authority for such disclosure. CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify TCAG that it will not seek such an order. TCAG shall cooperate with CONTRACTOR in any efforts to seek such a court order. TCAG shall not disclose the information until the five (5) day period has expired without a response from CONTRACTOR, or CONTRACTOR has notified TCAG that it will not seek such an order, or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If CONTRACTOR seeks a protective order for such information, CONTRACTOR shall defend and indemnify TCAG from any and all loss, injury, or claim arising from TCAG'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of TCAG and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

**21. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, TCAG is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of TCAG, which consent TCAG may grant, delay, deny, or condition in its absolute discretion.

**22. DISPUTES AND DISPUTE RESOLUTION:** CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise, each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

**23. PROPERTY TAXES:** Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any TCAG-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

**24. FURTHER ASSURANCES:** Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

**25. CONSTRUCTION:** This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

**26. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

**27. NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

**28. WAIVERS:** The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

**29. ORDER OF PRECEDENCE:** In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

**30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be

terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

**31. ENTIRE AGREEMENT:** This Agreement represents the entire agreement between CONTRACTOR and TCAG as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

**32. ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and TCAG have the responsibility to protect TCAG employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. TCAG, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to TCAG under this Agreement with other employees where TCAG is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. TCAG'S right to require replacement of employees under this section does not preclude TCAG from terminating this Agreement with or without cause as provided for under this Agreement. Additional nondiscrimination requirements may be located in Exhibit F or G (related to federally-funded contracts generally, or FTA-funded contracts specifically).

**33. DRUG-FREE WORKPLACE POLICY:** CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TCAG premises. CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.

**34. RECYCLED PAPER CONTENT:** To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153, CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.