



REGIONAL EARLY ACTION PLANNING (REAP) GUIDELINES

FINAL

Approved February 25, 2021



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REAP Guidelines

INITIAL REAP ALLOCATION: \$845,097

TOTAL REAP ALLOCATION: \$2,404,628 (estimated)

These guidelines outline how SJCOG proposes to utilize its allocation of funds from the Regional Early Action Planning (REAP) program. The guidelines outline regional and local planning activities that are eligible for funding and that help to advance SJCOG Regional Housing Priorities, as adopted by the policy board in September of 2020. Ultimately, REAP funds should be used to plan and accelerate housing production throughout the region, specifically more infill housing, more housing product choices, and to better leverage future funding opportunities.

Background

The State of California Department of Housing and Community Development (HCD) has made available \$125,000,000 in local government planning support grants to regional entities and working groups. The San Joaquin Valley Regional Early Action Planning Committee for Housing (Committee), comprised of the eight Regional Transportation Planning Agencies (RTPAs), is one of the working groups identified in statute. On June 26, 2020, the Committee approved submission of an application for initial grant funding to HCD. On August 14, 2020, HCD approved the application and an allocation of \$10,218,830.75 in grant funds to the members through Fresno COG, the fiscal agent on behalf of the Committee.

The member agencies comprising the Committee agreed to allocate the Initial Grant as follows:

- Fresno COG will retain \$5,475,000 to lead the preparation of a comprehensive San Joaquin Valley housing report and policy recommendations for implementation, conduct regional planning, coordination, and technical assistance, and grant administration
- Fresno COG will distribute the remaining \$4,743,830 of the Initial Grant directly to each member agency in proportion to each member's relative population

Accordingly, SJCOG's initial allocation of REAP funds will be in the amount of \$845,097.

Pending HCD approval, a second and final round of funding allocations is expected in Spring 2021 and is anticipated to make additional REAP funds available to the SJCOG

region in the approximate amount of \$1,559,531. With the second round of REAP funding, SJCOG intends to use the same allocation formula applied to the initial round of funding (Table 1).

The Committee has recommended that each MPO receiving its share of the Initial Funding Application allocate funds accordingly:

1. Allocate funds to its RHNA (regional housing needs allocation) process.
2. Sub-allocate funds to its County and Cities.

Furthermore, according to HCD guidelines, a council of governments that receives an allocation of REAP funds shall establish priorities and use those monies consistent with priorities. Funds must be used for housing planning activities and demonstrate a nexus to increasing housing planning and accelerating housing production.

With direction and guidance from the Board, SJCOG staff developed program guidelines and budget allocations in accordance with Committee recommendations above and adopted SJCOG Board priorities for use of REAP funds by SJCOG and its member agencies. SJCOG Regional Housing Priorities are outlined in the Purpose section of the document.

Purpose

In September of 2020, the SJCOG Board adopted Regional Housing Priorities. The priorities are a mix of strategies that can be implemented regionally or locally to plan and accelerate housing production. REAP funds will be used to advance SJCOG Regional Housing Priorities.

Development of a Regional Housing Trust Fund

Funding for affordable housing has significantly declined since 2007 making it extremely difficult to build. Affordable housing developers in the region have consistently expressed the need to enhance and expand local programs to close the gap in financing projects and provide much needed leverage to compete for other funds. A housing trust fund can be established to support the preservation and production of affordable housing and increase opportunities for families and individuals to access decent affordable homes. While ineligible to seed a housing trust fund, REAP funds may be used to develop the framework for a housing trust fund which may entail a rigorous planning process to define the parameters of the program, including goals, administration, fund distribution, as well as funding sources. Additionally, housing trust funds are distinct funds established by city, county or state governments that receive on-going dedicated sources of public

funding to support the preservation and production of affordable housing and increase opportunities for families and individuals to access decent affordable homes.

Streamlining the Development Process

HCD has emphasized the need for improving development processes through streamlining as an important strategy for reducing the cost of development. While each jurisdiction in the region may be at varying stages of identifying and implementing streamlining in their own departments, REAP funds may be used to support these activities. These may include the preparation of Specific Plans with an accompanying Environmental Impact Report, objective design and/or development standards to comply with SB 35 and provide more certainty for applicants, and other strategies intended to reduce the time for application approval.

Planning and Coordination to Develop a Regional Project Pipeline

In regional transportation planning, a list of projects is developed with the help of various stakeholders in order to coordinate and facilitate the process of funding each project through planning, environmental review, design and engineering, and finally, construction. Analogous to transportation planning, programming, and project delivery, the development of an affordable housing project pipeline may facilitate the project finance process. While there are no precedents for this type of activity in staff's research, HCD has identified other best practices which may elevate regional planning and coordination to support housing development. These Refining a Regional Housing Approach to Housing best practices include feasibility studies to determine the most efficient locations to site housing, the development of regional toolkits on a variety of housing-specific topics, establishing consulting benches or circuit rider programs to provide targeted technical assistance in housing policy areas, and developing a regional peer-to-peer learning exchange.

Supporting Local Jurisdictions Impacted by COVID-19

In addition to the three priorities outlined here, a fourth priority was identified by SJCOG staff in response to the impact COVID-19 may have on local jurisdiction budgets and staffing levels. To the extent that REAP funds can be used to support the ongoing activities of local jurisdictions regarding the production of housing, this may be an opportunity to offset any negative impacts introduced by COVID-19.

Eligible Activities

Eligible activities must be related to housing planning and facilitate the acceleration of housing production. Eligible activities conducted by applicants must fall under one or more of the following main categories:

Regional Housing Activities (Up to 35% of initial REAP allocation or \$300,000)

REAP Grant Administration

1. Administrative costs related to the categories listed below.
2. Covering the costs of administering any programs described in Health and Safety Code section 50515.02.
 - a. Recipients shall use no more than 5% of the allocation (s) for costs related to the administration of the activity(ies) for which the allocation(s) were made. Staff and overhead costs directly related to carrying out the eligible activities are 'activity costs' and not 'administrative costs'.

Regional Housing Needs Assessment (RHNA) Process

1. Develop an improved methodology for the distribution of the sixth cycle regional housing needs assessment (RHNA), to further the objectives described in subdivision (d) section 65584 of the Government Code.
 - a. Activities under this category must demonstrate a nexus to an improved methodology that furthers the RHNA Objectives.
 - b. Activities under this category may include implementation measures associated with an improved methodology that furthers RHNA Objectives.

Regional Housing Trust Fund

1. Establish a regional housing trust fund for affordable housing (e.g. planning activities and processes, guidelines, and charters).
 - a. Inclusion of a feasibility study to determine regional housing trust fund parameters.
2. Establish a regional housing task force.

Regional Project Pipeline

1. Accommodate the development of housing and infrastructure that accelerate housing production.
 - a. Establishing pro-housing policies.
2. Activities must demonstrate a nexus to increasing housing and accelerating housing production.
3. Outreach, education, priority setting, and other related activities in consultation with SJCOG and HCD to carry out the overall program consistent with statutory objectives.

4. In consultation with local jurisdictions and/or HCD, develop and/or conduct a planning study related to regional housing and/or the acceleration of housing production.

Local Jurisdiction Housing Activities (Up to 65% of initial REAP allocation or \$545,097, distributed by formula)

Streamlining Permit Process

1. Technical assistance in improving housing permitting processes, tracking systems, and planning tools (i.e. pre-stamped ADUs, zoning code updates, recording fees, CEQA, Specific Plans/Master Plans/GP Amendments).
 - o Environmental hazard assessments; data collection on permit tracking; feasibility studies, site analysis, or other background studies that are ancillary (e.g., less than 15 percent of the total grant amount) and part of a proposed activity with a nexus to accelerating housing production.
2. Performing infrastructure planning, including sewers, water systems, transit, roads, or other public facilities necessary to support new housing and new residents.
3. Performing feasibility studies to determine the most efficient locations to site housing consistent with Government Code sections 65040.1 (State Planning Priorities) and 65080 (regional transportation plans).
4. Revamping local planning processes to speed up housing production.
5. Developing or improving an accessory dwelling unit ordinance in compliance with Section 65862.2 of the Government Code.

COVID-19 Relief

To the extent that REAP funds can be used to support the ongoing activities of local jurisdictions regarding the production of housing, this may be an opportunity to offset any negative budgetary impacts introduced by COVID-19.

1. Covering the costs of temporary or permanent staff and/or consulting needs associated with eligible activities.
2. Other eligible activities include:
 - a. Update local planning and zoning documents, expediting application processing, and other actions to accelerate additional housing production.
 - i. Planning documents for a smaller geography (less than jurisdiction-wide) with a significant impact on housing production, including an overlay district, project level specific plan, or development

- standards modifications proposed for significant areas, or development standards proposed for significant areas of a locality, such as corridors, downtown, or priority growth areas.
- ii. Rezoning to meet requirements pursuant to Government Code Section 65583(c)(1), and other zoning efforts to comply with Housing Element requirements, including Government Code Section 65583(c) (AB 1397, Statutes of 2018).
 - iii. Upzoning or other implementation measures to intensify land use patterns in strategic locations, such as close proximity to transit, jobs or other amenities.
 - iv. Rezoning for multifamily housing in high resource areas (according to Tax Credit Allocation Committee/Housing Community Development Opportunity Area Maps).
 - v. Establishing pre-approved architectural and site plans.
 - vi. Zoning for by-right supportive housing, pursuant to Gov. Code section 65651 (Chapter 753, Statutes of 2018).
 - vii. Zoning incentives for housing for persons with special needs, including persons with developmental disabilities.
- b. Establish housing incentive zones or other area-based housing incentives beyond State Density Bonus Law such as a workforce housing opportunity zone pursuant to Article 10.10 (commencing with Section 65620) or Chapter 3 of Divisions 1 of Title 7 of the Government Code, or a housing sustainability district pursuant to Chapter 11 (commencing with Section 66200) of Division 1 of Title 7 of the Government Code.

Ineligible Activities

1. Activities unrelated to accelerating housing production;
2. Activities unrelated to preparation and adoption of planning documents, and process improvements to accelerate housing production (The Department may consider proposals that include activities under (1) and (2) if a significant housing component is also present and the net effect on accelerating housing production is positive. For example, an applicant may propose combining an open-space designation, downzoning, preservation or anti-displacement measures with by-right upzoning that has a significant net gain in housing capacity);
3. Activities that obstruct or hinder housing production, e.g., moratoriums, downzoning, planning documents with conditional use permits that significantly

impact approval certainty and timing, planned development, or other similarly constraining processes;

4. Capital financing, operation or funding related to programs of individual housing development projects; and
5. Administrative costs of persons employed by the grantee for activities not directly related to the preparation and adoption of the proposed activity or activities.

Local Grant Timing and Process

In order for a local jurisdiction to receive an allocation of REAP funds, the following is required to be submitted to SJCOG:

- Letter outlining concept proposal for funds (Attachment 1).
- A signed council resolution (Attachment 2).

The purpose of this letter is to provide SJCOG with enough information to determine whether a project meets the requirements of the program. The letter must either be accompanied by a board or council resolution, or be signed by a city manager, county executive, city councilmember, or county supervisor. SJCOG will review and respond to concept proposal letters within **30 days** of receipt. Prior to initiating work on REAP funded activities, SJCOG and local jurisdiction shall execute an agreement (Attachment 4).

This grant application period is tentatively targeted to begin on a rolling basis in February 2021 through June 2021.

Timely Use of Funds

REAP funds are one-time housing planning funds made available to the region with an expenditure deadline of December 31, 2023 in statute. SJCOG reserves the right to reprogram funds in order to minimize the risk of losing funds that are intended to benefit the region.

To ensure timely use of funds, SJCOG requests that each grantee submit invoicing and progress reports on a quarterly basis. Please see sample REAP reporting form (Attachment 3).

Additionally, SJCOG staff will monitor expenditures according to the following schedule:

- December 1, 2021: Approximately 1/3 of allocated funds expended
- December 1, 2022: Approximately 2/3 of allocated funds expended
- June 1, 2023: Approximately 85% of allocated funds expended

According to the schedule, SJCOG staff will notify recipients who have not met the expenditure milestone and will require submission of a funding expenditure plan for its remaining allocation within 30 days. SJCOG staff will review the expenditure plan and determine if funds need to be reprogrammed.

Shortlisted Consultants Available to Local Jurisdictions

The Committee issued a Request for Qualifications to establish a pre-qualified bench of consultants that can perform REAP eligible activities. The consultant bench will primarily support San Joaquin Valleywide housing planning activities, but may also be utilized by local jurisdictions depending on availability and interest:

- AECOM
- Cascadia Partners
- EPS-VRPA
- Estolano Advisors
- HDR-Calthorpe
- Mintier Harnish
- Precision Engineering
- QK
- Raimi and Associates

Technical Assistance Resources

- [Eligible Activities Best Practices](#)
- Contact Information
 - HCD: Marisa Prasse, Marisa.Prasse@hcd.ca.gov
 - SJV REAP Committee: Robert Phipps, rphipps@fresnocog.org
 - SJCOG: Christine Corrales, corrales@sjcog.org

Timeline

The timeline of the REAP program includes the following dates:

- Final REAP Guidelines Release: February 2021
- Concept letters for local allocations rolling deadline through June 2021
- Final Invoice to SJCOG: September 30, 2023
- Expenditure Deadline: December 31, 2023
- Technical Assistance: Ongoing through December 2023

Table 1: SJCOG REAP Allocation

			INITIAL ALLOCATION	FINAL ALLOCATION***	ESTIMATED TOTAL
SJCOG REGIONAL HOUSING ACTIVITIES					
			Funding Amount	Estimate	
Grant Administration (5%)			\$ 42,705	\$ 78,807	\$ 121,512
RHNA Process			\$ 100,000	\$ 250,000	\$ 350,000
Regional Housing Trust Fund			\$ 117,918	\$ 120,000	\$ 237,918
Regional Planning & Coordination			\$ 39,377	\$ 104,809	\$ 144,186
REGIONAL SUBTOTAL			\$ 300,000	\$ 553,616	\$ 853,616
LOCAL JURISDICTION FORMULA DISTRIBUTION					
Jurisdiction	Population Estimate*	Percentage Share	Funding Amount	Estimate	
Stockton	318,522	41%	\$ 206,992	\$ 414,158	\$ 621,150
San Joaquin County	156,209	20%	\$ 101,513	\$ 203,111	\$ 304,623
Tracy	95,931	12%	\$ 62,341	\$ 124,734	\$ 187,075
Manteca	84,800	11%	\$ 55,107	\$ 110,261	\$ 165,369
Lodi	67,930	9%	\$ 44,144	\$ 88,326	\$ 132,470
Lathrop**	26,833	3%	\$ 25,000	\$ 34,890	\$ 59,890
Ripon**	15,930	2%	\$ 25,000	\$ 20,713	\$ 45,713
Escalon**	7,478	1%	\$ 25,000	\$ 9,723	\$ 34,723
LOCAL SUBTOTAL	773,632	100%	\$ 545,097	\$ 1,005,915	\$ 1,551,012
GRAND TOTAL			\$ 845,097	\$ 1,559,531	\$ 2,404,628
*DOF 2020 Estimates					
**Initial grant allocation minimum of \$25,000 established for small cities.					
***Final allocation pending HCD approval.					

ATTACHMENT 1: SAMPLE REAP CONCEPT LETTER

[PLEASE PUT ON AGENCY LETTERHEAD]

DATE
CONTACT NAME/TITLE
ADDRESS

RE: CONCEPT LETTER INTENDING TO FULFILL REAP REQUIREMENTS

Section 1:

Please describe and outline tasks.

Section 2:

Please describe which priority above tasks fall under.

Section 3:

Please describe how much funds will be used.

Section 4:

Please provide a schedule of tasks.

Section 5:

Please provide contact information for the project manager/lead staff person.

Section 6:

Please provide signature and date.

ATTACHMENT 2: REAP COUNCIL RESOLUTION

RESOLUTION

(Name of Metropolitan Planning Organization)

APPROVING THE PARTICIPATION AND ALLOCATION OF FUNDING FOR THE REGIONAL EARLY ACTION PLANNING GRANT (REAP) FUNDS AWARDED TO SAN JOAQUIN COUNCIL OF GOVERNMENTS ON BEHALF OF THE SAN JOAQUIN COUNTY MEMBER AGENCIES.

WHEREAS, the Housing and Community Department (HCD) have provided funds for the program shown above; and

WHEREAS, the provided funds by HCD have been made available through the San Joaquin Valley REAP Committee on behalf of Fresno Council of Governments, Kern Council of Governments, Kings County Association of Governments, Madera County Transportation Commission, Merced County Association of Governments, Stanislaus Council of Governments, Tulare County Association of Governments, and San Joaquin Council of Governments (SJCOG); and

WHEREAS, the San Joaquin Valley REAP Committee signed a Memorandum of Understanding (MOU) to facilitate the regional sub-allocations (Exhibit A); and

WHEREAS, SJCOG has been delegated the responsibility for the administration of the grant allocation, establishing necessary procedures; and

WHEREAS, the Housing and Community Development Department (HCD) awarded the allocation to SJCOG on behalf of San Joaquin County Member Agencies (City of Escalon, City of Lathrop, City of Lodi, City of Manteca, City of Ripon, City of Stockton, City of Tracy, and County of San Joaquin); and

WHEREAS, SJCOG and participating member agencies, will conduct planning activities that will accelerate housing production and housing-relative initiatives; and

WHEREAS, the technical assistance provided by the participating Valley MPOs represents staffing for the program that is reimbursable to the grant.

NOW, THEREFORE, BE IT RESOLVED THAT THE [INSERT LOCAL AGENCY]:

1. Conducts activities consistent with the grant requirements; and
2. Commits to providing documentation of work completed and other deliverables consistent with the grant requirements, and;
3. Total invoicing shall not exceed the allotted share as stipulated in Table 1 of SJCOG REAP Grant Guidelines.

Approved and adopted the [] of [], 2021. I, the undersigned hereby certify that the foregoing Resolution was duly adopted by the (Name of the Local Agency)

Following Roll Call Vote:

{Name of CITY MANAGER} _____(signature)

Clerk/Secretary for the Governing Board

Ayes: _____ Nos: _____ Absent: _____

Draft

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: _____

Kings County Association of Governments

By: *Terri King*

Terri King, Director

Approved as to Legal Form:

By: _____

Print: _____

Madera County Transportation Commission

By: *Patricia Taylor*

Patricia Taylor, Director

Approved as to Legal Form:

By: _____

Print: _____

Merced County Association of Governments

By: Stacie Guzman
Stacie Guzman, Director

Approved as to Legal Form:
By: _____
Print: _____

San Joaquin Council of Governments

By: Andrew T. Chesley
Andrew Chesley, Director

Approved as to Legal Form:
By: _____
Print: _____

Stanislaus Council of Governments

By: _____
Rosa Park, Director

Approved as to Legal Form:
By: Rosa Park
Print: _____

Tulare County Association of Governments

By: _____
Ted Smalley, Director

Approved as to Legal Form:
By: Ted Smalley
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)
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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
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PRINTED NAME OF PERSON SIGNING <i>TONY BOREN</i>	TITLE <i>EX. DIRECTOR</i>
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CONTRACTOR AUTHORIZED SIGNATURE <i>Tony Boren</i>	DATE SIGNED <i>8/20/20</i>
--	-------------------------------

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
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PRINTED NAME OF PERSON SIGNING Shaun Singh	TITLE Contracts Manager, Business & Contract Services Branch
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CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED <i>9/3/2020</i>
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Shaun Singh 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.

Regional Early Action Planning Grants (REAP)
NOFA Date: October 10, 2019
Approved Date: March 30, 2020
Prep. Date: August 12, 2020

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.

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

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, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents contractors, sub-recipients, or subcontractors under this Standard Agreement.

6. **Waivers**

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

7. **Relationship of Parties**

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

8. **Third-Party Contracts**

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
Total	4,392,702	100.00%	\$4,743,830.75

REAP REPORTING FORM

Agency: _____
 Name: _____
 Title: _____
 Date: _____

Quarterly Report: Q1-Q4

Q 1: FUNDING \$\$

Q 2: FUNDING \$\$

Q 3: FUNDING \$\$

Q 4: FUNDING \$\$

Make sure the following is complete before submittal:

- Form Complete
- Backup Attached

Send attachments electronically to Hailey Lang at lang@sjcog.org.

Task List	Funding Used	Funding Available	Notes
INSERT TASK			

Please describe what funding was used for:

**MASTER AGREEMENT
BETWEEN
THE SAN JOAQUIN COUNCIL OF GOVERNMENTS
AND
[LOCAL JURISDICTION]**

SJCOG Regional Early Action Planning Grant

MASTER AGREEMENT
BETWEEN
THE SAN JOAQUIN COUNCIL OF GOVERNMENTS
AND
[LOCAL JURISDICTION]

This AGREEMENT (hereinafter “Agreement”), effective as of [Month Day, 2021] is made and entered into by and between SAN JOAQUIN COUNCIL OF GOVERNMENTS a Joint Powers Authority established under California Government Code section 6500 et seq. (hereinafter “SJCOG”) and, [LOCAL JURISDICTION] (hereinafter “Grantee”);

I. Witnesseth

WHEREAS, the California Department of Housing and Community Development (HCD) has provided funds for the Regional Early Action Planning Program; and

WHEREAS, the provided funds by HCD have been made available through the San Joaquin Valley REAP Committee on behalf of Fresno Council of Governments, Kern Council of Governments, Kings County Association of Governments, Madera County Transportation Commission, Merced County Association of Governments, and San Joaquin Council of Governments (SJCOG); and

WHEREAS, the San Joaquin Valley REAP Committee signed a Memorandum of Understanding (MOU) to facilitate regional sub-allocations; and

WHEREAS, SJCOG has been delegated the responsibility for administration of the grant allocation, establishing necessary procedures; and

WHEREAS, HCD awarded the allocation to SJCOG on behalf of San Joaquin County Member Agencies (City of Escalon, City of Lathrop, City of Lodi, City of Manteca, City of Ripon, City of Stockton, City of Tracy, and County of San Joaquin); and

WHEREAS, SJCOG and participating member agencies, will conduct planning activities that will accelerate housing production and housing-related initiatives; and

WHEREAS, the technical assistance provided by the participating Valley MPOs represents staffing for the program that is reimbursable to the grant.

NOW, THEREFORE: The parties hereto do mutually agree as follows:

This Agreement is fully comprised of these terms and the attached exhibits which are incorporated herein by reference. The exhibits attached to this Agreement are:

- Exhibit A - Work Plan
- Exhibit B - Project Team

Exhibit C – Project Schedule and Deliverables
Exhibit D – Project Budget

II. Statement of Work

Subject to the terms and conditions set forth in this Agreement, Grantee shall conduct the scope of work described in Exhibit “A,” in accordance with the provisions contained in Exhibit “A,” and according to the schedule and budget identified in Exhibits “C” and “D.” Grantee shall not be compensated for services outside the scope of Exhibit “A” unless otherwise agreed upon pursuant to Section VI of this Agreement.

III. Project Managers

During the performance of this Agreement, the representative project managers for SJCOG and Grantee will be:

SJCOG: CHRISTINE CORRALES

Grantee: PROJECT MANAGER

IV. Term

Time is of the essence in this Agreement. The term of this Agreement is [Date] through DECEMBER 31, 2023. The various phases involved in this project shall be completed as indicated in Exhibit "C", Schedule and Deliverables. However, Grantee shall not be responsible for delays caused by acts of God, agency reviews or delays from third parties.

V. Assignability

Grantee shall not assign any interest in this Agreement, and shall not transfer the same, without the prior written consent of SJCOG.

VI. Modification of Agreement

No alteration, modification or deviation of the terms of this Agreement shall be valid unless made in writing and signed by both parties. No oral understanding or agreement not incorporated herein, shall be binding on any of the parties. SJCOG may request, at any time, amendments to this Agreement and will notify Grantee in writing regarding changes. Upon a minimum of ten (10) days notice, Grantee shall determine the impact on both time and compensation of such changes and notify SJCOG in writing. Upon agreement between SJCOG and Grantee as to the extent of these impacts on time and compensation, an amendment to this Agreement shall be prepared describing such changes. Such amendments shall be binding on the parties if signed by SJCOG and Grantee, and shall be effective as of the date of the amending

document unless otherwise indicated.

VII. Costs and Reimbursements

A. Maximum Agreement Amount/Budget Amendments

The total sum billed under this Agreement shall not exceed [GRANT ALLOCATION] (\$XXX), including all costs, overhead, and fixed fee expenses. Such billings, up to the specified amount, shall constitute full and complete reimbursement for Grantee's work. SJCOG shall reimburse Grantee for services rendered pursuant to this Agreement in accordance with the provisions contained in Exhibit "D." The payments specified in Exhibit "D" shall be the only payments to be made to Grantee for the services rendered pursuant to this Agreement unless otherwise agreed pursuant to Section VI.

B. Progress Payments

Grantee shall invoice SJCOG every month for services performed during the month's period. Supporting documentation on all expenses is required. Grantee shall be paid following the receipt and approval of each invoice by SJCOG. Progress payment invoices shall be numbered sequentially and identify the total Agreement amount, amount previously invoiced, current invoice, and remaining available amounts. A progress report describing the work performed needs to accompany each invoice

C. Billing Format and Content

Requisitions for payment shall refer to SJCOG REGIONAL EARLY ACTION PLANNING GRANT, or as may be specified in a written notice by SJCOG. All billings shall be in the same format as Exhibit "D." Specific budget category detail is given below:

1. Hourly Labor Rates: This project will be billed on a time and materials basis using fixed billing rates, up to the Agreement maximum. All labor charges shall be billed on an hourly rate basis by class of employee, rate per hour and number of hours. (Anticipated personnel cost-of-living or merit increases, if any, should be reflected in the budget).
2. Subconsultant/Subcontractor Charges: All subconsultant/subcontractor billings (as applicable) shall identify the name of the subconsultant/subcontractor, the amount of work performed (as categorized in the budget), the reimbursement rate, the total amount billed, and the date and amount paid by Consultant. A copy of the sub consultant's invoice is required.
3. Overhead: All overhead shall be included in the fixed billing rate.
4. Direct Costs: All direct costs billed shall be specifically identified. Any travel costs shall not exceed the per diem and mileage rates payable to SJCOG employees. Any direct costs not specifically identified in the Agreement budget cannot be reimbursed.

5. Fixed Fee: A fixed fee on labor shall be included in fixed billing rate.

D. Allowable Costs and Documentation

All costs charged to this Agreement by Grantee shall be supported by properly executed payrolls, time records, invoices, and vouchers, evidencing in proper detail the nature and propriety of the charges. These records shall be maintained by Grantee for three years after SJCOG makes final payment under this Agreement and shall be made available upon the request of SJCOG.

E. Final Billing

Final billing shall be received by SJCOG no later than September 30, 2023, to ensure SJCOG provides final invoicing and reporting to HCD before the grant expenditure deadline of December 31, 2023. This Agreement will be closed no later than 90 days following the end date of this Agreement.

VIII. Progress Reports

Grantee shall submit written progress reports with each invoice and shall specify, by task, the percentage of work completed to date and since the date of the preceding invoice, if any. The progress reports shall describe the status of work performed as identified in Exhibit "A." The purpose of the reports is to allow SJCOG to determine if Grantee is completing the activities identified in Exhibit "A" in accordance with the agreed upon schedule, and to afford occasions for airing difficulties or special problems encountered so remedies can be developed. Grantee's Project Manager shall meet with SJCOG's Project Manager, as identified under Section III, as needed to discuss work progress.

IX. Inspection of Work

Grantee, and any subcontractors, shall permit SJCOG the opportunity to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

X. Staffing

There shall be no change in Grantee's Project Manager, or members of the project team, without prior written approval by SJCOG. The Project Manager shall be responsible for keeping SJCOG informed of the progress of the work and shall be available for meetings with SJCOG Board, and its formal committees.

XI. Subcontracting

Grantee shall perform the work with resources available within its own organization, unless otherwise specified in this Agreement. No portion of the work included in this Agreement shall be subcontracted except as identified in Exhibit "B" of this Agreement, or with written

authorization by SJCOG. All authorized subcontracts shall contain the same applicable provisions specified in this Agreement.

XII. Termination of Agreement

A. Termination by SJCOG

SJCOG may terminate or suspend this Agreement at any time by giving written notice to Grantee of such termination, and the effective termination date, at least thirty (30) days before the effective date of such termination. In such event, all finished or unfinished documents and other materials pertaining to this Agreement shall become the property of SJCOG. If this Agreement is terminated by SJCOG, as provided herein, Grantee shall be reimbursed for billings incurred prior to the termination date, in accordance with the cost provisions of this Agreement.

B. Termination for Cause

If Grantee shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Grantee violates any of the covenants, provisions, or stipulations of this Agreement, SJCOG shall thereupon have the rights to terminate the Agreement by giving not less than ten (10) days written notice to Grantee of the intent to terminate and specifying the effective date thereof. SJCOG shall provide an opportunity for consultation with Grantee prior to termination. In such an event, all finished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by Grantee under this Agreement shall become properties of SJCOG. If SJCOG terminates this Agreement, Grantee shall immediately suspend its activities under this Agreement, as specified in such notice. Grantee shall promptly deliver to SJCOG copies of all information prepared pursuant to this Agreement. Grantee shall be entitled to receive compensation for all satisfactory work completed prior to the effective date of termination.

XIII. Prevailing Wage and Compliance with Laws, Rules and Regulations

A. Compliance With All Applicable Laws

All services performed by Grantee pursuant to this Agreement shall be performed in accordance and full compliance with all applicable state or local statutes, rules, and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1770 et seq.

B. Pay Prevailing Wage

Pursuant to section 1770 et seq. of the California Labor Code, Grantee and any subcontractor shall pay not less than the prevailing wage. A determination of the general prevailing rates of per diem wages and holiday and overtime work where the work is to be performed is available for review upon request at the SJCOG offices. The General Prevailing Wage Determinations and the General Prevailing Wage Apprentice Schedules made by the Director of Industrial Relations are also now available on the Internet at www.dir.ca.gov. Grantee shall post one copy

of the prevailing rates of wages at the job site. Grantee shall forfeit as penalty to SJCOG the sum of up to fifty dollars (\$50.00) for each calendar day or portion thereof, and for each worker, including subcontractors' workers, paid less than the prevailing rates under the Agreement. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Grantee as provided in section 1775 of the California Labor Code.

C. Work Day

Eight (8) hours labor constitutes a legal day's work. Workers shall be paid at a rate of one and one-half times the basic rate of pay for work in excess of eight (8) hours during a calendar day or forty hours during a calendar week of the foregoing hours. Grantee shall keep and make available an accurate record showing the name of each worker and hours worked each day and each week by each worker. As a penalty, Grantee shall forfeit fifty dollars (\$50.00) for each worker, including subcontractors' workers, for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week without being paid the wages required by Labor Code Section 1815.

D. Income Tax Forms

Grantee shall issue W-2 forms or the forms as required by law for income and employment tax purposes for all of Grantee's assigned personnel.

E. Payroll Record Keeping

Grantee shall also comply with the payroll record keeping requirements of Section 1776 of the California Labor Code and shall be responsible for each subcontractor complying with the requirements of the California Labor Code sections 1770 et seq.

XIV. Standard of Performance

Grantee shall perform all services required pursuant to this Agreement in the manner according to the standards currently observed by a competent practitioner of Grantee's profession in California. All products of whatsoever nature which Grantee delivers to the SJCOG pursuant to this Agreement shall be prepared in a professional manner and conform to the standards to quality normally observed by a person currently practicing in Grantee's profession. Grantee shall assign only competent personnel to perform.

XV. Conflict of Interest

A. Independent Capacity

Grantee and the agents and employees of Grantee, shall act in an independent capacity in the performance of this Agreement, and not as officers, employees or agents of SJCOG. No officer, member, or employee of SJCOG or other public official of the governing body of the locality or localities in which the work pursuant to this Agreement is being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the aforesaid work shall:

1. Participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his or her tenure or for one year thereafter.

B. Covenant of No Interest

Grantee hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not knowingly acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. Grantee further covenants that in the performance of this work, no person having any such interest shall be employed.

XVI. Contingency Fees

Grantee warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, SJCOG has the right to terminate this Agreement without liability allowing payment only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

XVII. Documentation

The Grantee shall document the results of all work to the satisfaction of SJCOG. This may include, but not be limited to, preparation of progress and final reports, calculations, plans, specifications, estimates, evaluations, and other records.

XVIII. Ownership of Documents

Aerial photos, topographic mapping, tracings, plans, specifications, as-built plans, electronic files, technical data, evaluations, and all other documents prepared, assembled, or obtained by the Grantee under this Agreement shall be delivered to and become properties of SJCOG upon completion of the work pursuant to this Agreement. The basic survey notes and sketches, aerial photos, topographic maps, charts, computations and other data assembled and prepared under this Agreement shall be made available, at any time, upon request to SJCOG without restriction or limitation on their use.

XIX. Copyrights

The Grantee shall not have copyrights of reports or products of this Agreement.

XX. Publication

A. Written Approval of SJCOG

No report, information, or other data given to or prepared or assembled by Grantee pursuant to this Agreement, shall be made available to any individual or organization by Grantee without the prior written approval of SJCOG.

B. Acknowledge SJCOG

Any and all reports published by Grantee shall acknowledge that it was prepared in cooperation with SJCOG. Articles, reports, or works reporting on the work provided for herein or on portions thereof which are published by Grantee shall contain in the forward, preface, or footnote the following statement:

“The contents of this report reflect the views of the author who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the San Joaquin Council of Governments. This report does not constitute a standard, specification, or regulation.”

XXI. Disputes

Except as otherwise provided in this Agreement, any dispute concerning a question of fact which is not disposed of by mutual agreement shall be decided by a court of competent jurisdiction in California.

XXII. Hold Harmless

Grantee agrees to indemnify, defend (upon request of SJCOG) and hold harmless SJCOG, its officers, agents and employees from any and all actions, causes of action, claims, demands, costs, liabilities, judgments, penalties, losses, damages and expenses of whatsoever kind and nature (including attorney's fees) for injuries to or death of any person or persons, or damage to property of third persons to the extent caused by the negligent acts, errors or omissions, recklessness, or willful misconduct of the Grantee, its subcontractors, subconsultants or agents, and their respective employees in the performance of the work to be provided pursuant to this Agreement. Notwithstanding the foregoing, Grantee has no obligation to defend or pay SJCOG's defense costs incurred prior to a final determination of liability as determined by a court of competent jurisdiction.

XXIII. Insurance

On or before beginning any of the services or work called for by any term of this Agreement, Grantee, at its own cost and expense, shall procure, carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to SJCOG the insurance specified in subsections A through C below with insurers and under forms of insurance satisfactory in all respects to the SJCOG. Grantee shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Grantee has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

A. Workers' Compensation

Grantee shall, at Grantee's sole cost and expense, procure and maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Grantee. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than the amount required by law. In the alternative, Grantee may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Grantee, if a program of self-insurance is provided, shall waive all rights of subrogation against SJCOG for loss arising from work performed under this Agreement. In signing this CONTRACT, the Grantee certifies under section 1861 of the California Labor Code that Consultant is aware of the Workers Compensation provisions contained in section 3700 et seq. of the Labor Code.

B. Commercial General and Automobile Liability Insurance

Grantee, at Grantee's own cost and expense, shall procure and maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this

Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto). Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

1. SJCOG, its officers, employees, agents, and volunteers are to be covered as an additional insured with respect to each of the following: liability arising out of activities performed by or on behalf of Grantee, including the insider's general supervision of Grantee; products and completed operations of Grantee; premises owned, occupied or used by Grantee. The coverage shall contain no special limitations on the scope of protection afforded to SJCOG, its officers, employees, agents, or volunteers.
2. The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.
3. An endorsement must state that coverage is primary insurance and that no other insurance affected by SJCOG shall be called upon to contribute to a loss under the coverage.
4. Any failure of Grantee to comply with reporting provisions of the policy shall not affect coverage provided to SJCOG and its officers, employees, agents, and volunteers.
5. Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
6. Notice of cancellation or non-renewal must be received by SJCOG at least thirty days prior to such change.

C. Professional Liability Insurance

Grantee, at Grantee's own cost and expense, shall procure and maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than One Million Dollars (\$1,000,000) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:

1. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
2. Notice of cancellation, material change, or non-renewal must be received by SJCOG at least thirty days prior to such change and shall be included in the coverage or added as

an endorsement to the policy.

3. The policy must contain a cross liability or severability of interest clause.
4. The following provisions shall apply if the professional liability coverage's are written on a claims made form:
 - a) The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - c) If coverage is canceled or not renewed and it is not replaced with other claims made policy form with a retroactive date that precedes the date of this Agreement, Grantee must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. SJCOG shall have the right to exercise at the Grantee's cost, any extended reporting provisions of the policy should the Grantee cancel or not renew the coverage.
 - d) A copy of the claim reporting requirements must be submitted to SJCOG prior to the commencement of any work under this Agreement.

D. Deductibles and Self-Insured Retentions

Grantee shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of SJCOG's Project Manager, Grantee may increase such deductibles or self-insured retentions with respect to SJCOG, its officers, employees, agents, and volunteers.

E. Notice of Reduction in Coverage

In the event that any coverage required under subsections A, B, or C of this section of the Agreement is reduced, limited, or materially affected in any other manner, Grantee shall provide written notice to SJCOG at Grantee's earliest possible opportunity and in no case later than five days after Grantee is notified of the change in coverage.

F. Additional and Alternative Remedies

In addition to any other remedies SJCOG may have if Grantee fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, SJCOG may, at its sole option:

1. Obtain such insurance and deduct and retain the amount of the premiums for such

insurance from any sums due under the Agreement;

2. Order Grantee to stop work under this Agreement or withhold any payment which becomes due to Grantee hereunder, or both stop work and withhold any payment, until Grantee demonstrates compliance with the requirements hereof;

3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies SJCOG may have and is not the exclusive remedy for Grantee's breach.

XXIV. Equal Employment Opportunity/Nondiscrimination

Grantee shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in Title 49, Code of Federal Regulations (CFR), Part 21 through Appendix C and 23 CFR 170.405(b). During the performance of this Agreement, Grantee, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance with Regulations

Grantee shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (hereinafter "DOT") 49 CFR 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

B. Nondiscrimination

Grantee, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, disability, sex, age or national origin in the selection or retention of subcontractors, including procurements of materials and leases of equipment. Grantee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontractors, including Procurements of Materials and Equipment

On all solicitations, either by competitive bidding or negotiations made by Grantee for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Grantee's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, religion, color, disability, sex, age or national origin.

D. Information and Reports

Grantee shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of

information and its facilities as may be determined by SJCOG to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Grantee is in the exclusive possession of another who fails or refuses to furnish this information, Grantee shall so certify to SJCOG, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance

In the event of Grantee's noncompliance with the nondiscrimination provisions of this Agreement, SJCOG shall impose such sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to Grantee under this Agreement until Grantee complies; and/or
2. Cancellation, termination or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions

Grantee shall include the provisions of subsections A through F of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt from the regulations, or directives issued pursuant thereto. Grantee shall take such action with respect to any subcontract or procurement as SJCOG may direct as a means of enforcing such provisions including sanctions for noncompliance. However, in the event Grantee becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Grantee may request SJCOG to enter into such litigation to protect the interests of SJCOG.

XXV. Disadvantaged Business Enterprise (DBE)

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)

Directory

This project is subject to a combination race-neutral/race conscious requirements. Please refer to the following website for assistance. <http://www.dot.ca.gov/obeo/index.html>

Contract Goal

By *race-neutral* means (a term that includes gender neutrality for purposes of this rule), DOT means outreach, technical assistance, procurement process modification, etc.-measures that can be used to increase opportunities for all small businesses, not just DBEs, and *do not involve setting specific goals for the use of DBEs on individual contracts.*

By *race-conscious* means a goal is set if SJCOG is unable to meet the DBE participation level under *race-neutral* means.

Good Faith Efforts

The DBE policy requires contractors to follow Good Faith Effort Guidelines; however, they are limited to UDBEs. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian-Pacific Americans.

Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted procurement and contracts of products and services contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy, as recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

Prompt Payment

Prompt Progress Payment to Subcontractors

SJCOG requires contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

SJCOG requires prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied with the following provisions:

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Grantee or Subcontractor in the event of a dispute involving late payment or nonpayment by the Grantee, deficient subcontractor performance, and/or noncompliance by a Subcontractor. This clause applies to both DBE and non-DBE Subcontractors.

XXVI. Audits

At any time during normal business hours, and as often as SJCOG may deem necessary, Grantee shall make available for examination all of its records with respect to all matters covered by this Agreement for purposes of audit, examination, or to make copies or transcripts of such records, including, but not limited to, contracts, invoices, material, payrolls, personnel records, conditions of employment and other data relating to all matters covered by this Agreement. Such records shall be retained and access to the facilities and premises of Grantee shall be made available during the period of performance of this Agreement, and for three years after SJCOG makes final payment under this Agreement.

XXVII. Clean Air Act/Clean Water Act Requirements

Grantee, in carrying out the requirements of this Agreement, shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857[h]), Section 508 of the Clean Water Act (33 USC 1368), Presidential Executive Order 11738, and those Environmental Protection Agency regulations contained in 40 CFR Part 15.

XXVIII. Agreement Completion Retainer

Ten percent (10%) shall be retained from all Agreement billings. Grantee may invoice SJCOG for one hundred percent (100%) of the retention upon submittal of the DELIVERABLES, DEFINED IN THE EXHIBIT A – WORK PLAN. In addition to any other remedy under this Agreement, in the event Grantee breaches this Agreement, SJCOG shall be entitled to keep all amounts retained including any interest accrued on those amounts.

XXIX. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **SJCOG**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **SJCOG**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XXX. CLEAN WATER

The Grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Grantee agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

XXXI. CLEAN AIR

The Grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Grantee agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

XXXII. Attorney's Fees

In the event of a dispute arising under this Agreement, the prevailing party shall be entitled to an award against the other party of reasonable attorney's fees and costs incurred in connection with the dispute. The venue for any litigation shall be San Joaquin County, California.

XXXIII. Notice

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following address:

For SJCOG:

Ms. Diane Nguyen, AICP
Executive Director
San Joaquin Council of Governments
555 East Weber Avenue
Stockton, CA 95202

For Grantee:

[Name], Project Manager
[Address]

XXXIV. Captions and Pronouns

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

XXXV. Cumulative Remedies

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

XXXVI. Enforceability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

XXXVII. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the SJCOG and GRANTEE have executed this Agreement as of the day and year first above written.

Diane Nguyen, Executive Director
San Joaquin Council of Governments

Approved:

Steve Dial, Deputy Executive Director/CFO
San Joaquin Council of Governments

[Name], Project Manager
[Local Jurisdiction]