

ASSOCIATION
OF BAY AREA
GOVERNMENTS

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

November 16, 2023

Belia Ramos, President
Supervisor, Napa County

Jesse Arreguin, Vice President
Mayor, City of Berkeley

David Rabbitt, Immediate Past President
Supervisor, Sonoma County

Belia Ramos, Chair ABAG Administrative Committee
Supervisor, County of Napa

David Rabbitt, Chair ABAG Finance Committee
Supervisor, Sonoma County

Jesse Arreguin, Vice Chair Joint MTC-ABAG Legislation Committee
Mayor, City of Berkeley

Vacant Chair ABAG Regional Planning Committee

Carlos Romero, Chair ABAG Housing Committee
Councilmember, City of East Palo Alto

Raymond Hodges
Director of Department of Housing
County of San Mateo
264 Harbor Blvd.
Belmont, CA 94002

RE: REGIONAL EARLY ACTION PLANNING GRANTS OF 2021 (REAP 2.0) GRANT SUBALLOCATION AGREEMENT, COUNTY OF SAN MATEO COUNTY DEPARTMENT OF HOUSING

Dear Raymond Hodges:

This letter, effective as of November 16, 2023, (“Effective Date”) is the agreement (“the Agreement”) between County of San Mateo Department of Housing (“Recipient”) and the Association of Bay Area Governments (“ABAG”) to support a Planning Collaborative (“Project”). Planning Collaboratives facilitate shared technical assistance and cross-jurisdiction knowledge sharing amongst jurisdictions within County of San Mateo and throughout the Bay that meets all of the following objectives: 1) accelerating infill development that facilitates housing supply, choice, and affordability, 2) affirmatively furthering fair housing (“AFFH”), and 3) reducing vehicle miles traveled (“VMT”).

WHEREAS, the Metropolitan Transportation Commission (MTC) has received grant funds awarded by the State of California Department of Housing and Community Development (HCD) Grant Agreement No. 23-REAP2-17909 (“REAP 2.0 Grant Agreement”), attached hereto and incorporated herein by this reference as Attachment B, Pursuant to the Notice of Funding Availability and Final Guidelines – Metropolitan Planning Organization Allocations Regional Early Action Planning Grant (REAP 2.0) (“REAP 2.0 NOFA”), attached hereto and incorporated by reference as Attachment C; and

WHEREAS, MTC suballocated funds to ABAG to support Planning Collaboratives; and

WHEREAS, ABAG adopted Resolution No. 16-2023 to allocate a portion of the funds received from the REAP 2.0 Grant Agreement to continue to support the subregional Planning Collaboratives that were originally created as part of RHTA using REAP 1.0; and

WHEREAS, to fulfill the goals of the REAP 2.0 Grant Agreement, ABAG desires to fund the Project: and

WHEREAS, pursuant to the REAP 2.0 Agreement Grant Agreement, the state-required clauses in Attachment D, State-Required Clauses, are incorporated herein by this reference; and

WHEREAS, ABAG has suballocated REAP 2.0 funding to support the Project. Pursuant to Article 3 and Article 4 below, Recipient has opted to receive the funds directly to administer a contract to complete the Project. Payments will be made directly to the Recipient based on the conditions in Article 3.

1. It is agreed that Recipient either has or will perform all the services specified in Attachment A-1, Scope of Work, according to the schedule in Attachment A-2, Project Schedule, incorporated herein by this reference, and in compliance with the requirements of all other attachments to this Agreement, which are also incorporated herein by this reference.
2. Work will be reviewed by Heather Peters or a designated representative (herein “ABAG Project Manager”) for compliance with the terms of this agreement including the terms of Attachments B and C hereto. Work must meet the following objectives:
 - 1) Accelerating infill development that facilitates housing supply, choice, and affordability,
 - 2) Affirmatively furthering fair housing “AFFH”, and
 - 3) Reducing vehicle miles traveled “VMT”.
3. ABAG has suballocated one hundred seventy-two thousand five hundred dollars and zero cents (\$172,500.00), (“Maximum Payment”) which Recipient has elected to receive directly. Expenses shall not exceed the Maximum Payment. Recipient will be compensated for the work in accordance with Attachment A-3, Project Payment Schedule. ABAG shall make payments to Recipient in accordance with the provisions described in Attachment A-3.
4. Contingent upon Recipient’s satisfactory completion of Work Products or milestones, as applicable, required under Attachment A-1, and availability of funds under REAP 2.0 Grant Agreement, Recipient shall submit invoices to ABAG for reimbursement of that portion of the funds available to Recipient that have been expended or are due to third parties. These invoices will refer to the deliverables listed in Attachment A-1 and performed in accordance with the schedule specified in Attachment A-2 to allow for expenditure tracking at the task level. Invoices shall be provided no more frequently than prescribed by ABAG in Attachment A-3. In addition, all supporting documentation must accompany expenditures included on Recipient invoices. All

invoices shall include the ABAG Contract Number supplied to Recipient by ABAG Project Manager and shall be submitted electronically via email to ABAG at acctpay@bayareametro.gov as well as HousingTA@bayareametro.gov or in writing to:

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

Payment shall be made by ABAG within thirty (30) days of receipt of receipt of payment from the grantor and after approval of an acceptable invoice, which shall be subject to the review and approval of ABAG's Project Manager or a designated representative.

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

6. Recipient acknowledges that one goal of ABAG's Regional Housing Technical Assistance Program is to share Work Product funded in whole or in part by REAP 2.0 widely to achieve economies of scale and to avoid inefficient duplication of effort. To further this goal, Recipient shall provide a copy of the final Work Product described in Attachment A-1 to ABAG via email to HousingTA@BayAreaMetro.gov or as directed by the ABAG Project Manager within 10 days of completion. If completion of a task contained in Attachment A-1 does not result in the production of a document, then Recipient shall submit a short summary of the work completed to the reasonable satisfaction of ABAG, including lessons learned, to ABAG via email to HousingTA@BayAreaMetro.gov or as directed by the ABAG Project Manager within 10 days of completion.

As defined in Attachment B, REAP 2.0 Grant Agreement, Work Product includes, but is not limited to, all Work and deliverables conceived or made, either solely or jointly, during the term of this Agreement, and during a period of six (6) months after the termination of this Agreement, are considered Work Product. Work Product includes all deliverables, inventions,

innovations, improvements, or other works conceived of, or developed, in the course of this Agreement, whether or not such Work Product is eligible for patent, copyright, trademark, or other legal protection. Additionally, Recipient acknowledges that all Work Product created pursuant to this Agreement is subject to the joint ownership requirements of Section 13, State-Owned Data, of Exhibit D, REAP 2.0 Terms and Conditions, of Attachment B, REAP 2.0 Grant Agreement, and Recipient shall take all necessary actions to comply and have its subcontractors and/or subconsultants comply with such requirements.

7. All Work Product described in Attachment A-1 shall include the following acknowledgement on the first page, slide or introduction of oral presentations: “Funding provided by Metropolitan Transportation Commissions and the Association of Bay Area Governments” and shall comply with federal accessibility requirements, as specified in Section 508 of the Rehabilitation Act (29 U.S.C. § 798 SECTION 508”). Compliance encompasses both website structure (design, layout, function), and website content (text, images, documents). Information on Section 508 compliance resources can also be found here: <https://abag.ca.gov/technical-assistance/section-508-accessibility-resources-program-overview>

8. Recipient acknowledges that one goal of ABAG’s Regional Housing Technical Assistance Program is to facilitate statewide, regional, and subregional collaboration on housing planning. To further this goal, at all times through the term of this Agreement, Recipient, in consultation with jurisdictions within the County of San Mateo that are members of the Planning Collaborative shall designate a Leader and shall designate a Steering Committee, consisting of at least three (3) persons, to ensure that the terms and conditions of this Agreement are being met and to receive communications from ABAG, HCD and their representatives regarding available technical assistance at the state, regional and subregional levels. The Steering Committee, to the extent practicable, should include members who represent jurisdictions of varying types within the Planning Collaborative to encourage discussion of a range of different housing planning challenges. No Jurisdiction shall have more than one representative on the Steering Committee. The Steering Committee shall meet as needed to ensure that the terms and conditions of this Agreement are being met. Meetings can be virtual. The Leader, in consultation with the Steering Committee, shall be responsible for oversight of any staff or consultants supporting the Planning Collaborative. Recipient, after consulting with the Leader or members of the Planning Collaborative, hereby designates the following person(s) as Leader and persons to serve on its Steering Committee, and shall notify

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

LEADER:

Helen Tong-Ishikawa
Senior Housing & Community Development Policy Analyst
Department of Housing
(628) 222-3159
htongishikawa@smchousing.org

STEERING COMMITTEE:

Nori Jabba
Community Development Housing Coordinator
City of Foster City
(650) 286- 3230
njabba@fostercity.org

Julia Ayres
Principal Planner
City of Brisbane
(415) 519-0165
jayres@brisbaneca.org

Sophie Mintier
Assistant Director, Planning and Building Department
County of San Mateo
(650) 363-1865
smintier@smcgov.org

Adena Friedman
Senior Planner
City of South San Francisco
(650) 877-8535
adena.friedman@ssf.net

Helen Tong-Ishikawa
Senior Housing & Community Development Policy Analyst
Department of Housing
(628) 222-3159
htongishikawa@smchousing.org

9. The term of the Agreement shall begin on the Effective Date and conclude on December 31, 2025, unless ABAG terminates this agreement earlier as provided below.

10. ABAG may terminate the Agreement without cause upon five (5) days written notice. Without cause includes, but is not limited to, HCD terminating or reducing the REAP 2.0 funding to MTC. If ABAG terminates the Agreement without cause, Recipient may be entitled to payment for costs incurred for completed work prior to notice of termination, if funds are available. ABAG may terminate the Agreement for default by advance 10-day written notice, providing Recipient with the opportunity to cure the default or present an acceptable plan for cure within the 10-day period. At the end of the 10-day period, if the default has not been cured or an acceptable plan of cure presented, ABAG may issue a notice of termination for default, effective immediately, and Recipient will be entitled only to costs incurred for acceptable work performed in accordance with the Agreement, not to exceed the maximum amount payable under the Agreement for such work.

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

Upon request by ABAG, Recipient shall deliver to ABAG insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the coverages. Such evidence of insurance shall make reference to all provisions and endorsements as required by the agreement between Recipient and consultant and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance. ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

12. All notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, or emailed to such party at their respective addresses as follows:

dispute resolution being agreed to by the parties at the time. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction.

Recipient must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action. The prevailing party in any dispute shall be entitled to payment of its attorneys' fees and costs. This section shall survive the termination or expiration of the Agreement.

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

18. Recipient may subcontract to consultants or contractors for performance of portions of the work required under this Agreement, without the prior written consent of ABAG, provided Recipient complies with any other applicable requirements of this Agreement and the applicable Attachments hereto, and applicable federal and state requirements.

19. For purposes of this Agreement, "subconsultant" shall mean any consultant or contractor under contract with the Recipient to perform Project work. Any subconsultants must be engaged under written contract with Recipient with provisions allowing Recipient to comply with all requirements of this Agreement. Failure of a subconsultant to provide any insurance required under this Agreement shall be at the risk of Recipient. ABAG's Project Manager shall be notified in writing of any substitution or addition of subconsultants.

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

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

communicating to their subconsultant of all applicable provisions of this Agreement.

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

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

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

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

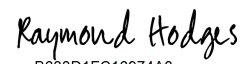
Very truly yours,

DocuSigned by:

8584B49D6DE64E9...
Andrew B. Fremier
Metropolitan Transportation Commission
Executive Director
Acting pursuant to the Contract for
Services dated May 30, 2017

Accepted and Agreed to this:

Date: 7/2/2024

DocuSigned by:

B633D4FC16074A8...
Raymond Hodges
Director of Department of Housing
County of San Mateo

ATTACHMENT A-1
SCOPE OF WORK (“SOW”) FOR COUNTY OF SAN MATEO (“RECIPIENT”)

Planning Collaboratives facilitate shared technical assistance and cross-jurisdiction knowledge sharing amongst jurisdictions within County of San Mateo and throughout the Bay. All work will support the overarching goals of the REAP 2.0 program to support activities that meet all of the following objectives: 1) accelerating infill development that facilitates housing supply, choice, and affordability, 2) affirmatively furthering fair housing “AFFH”, and 3) reducing vehicle miles traveled “VMT”. Funds will only be used for planning activities that meet the above objectives and will not be used to support the development of specific housing projects, including capital financing, building operation costs, or resident services.

Task 1 – MEETINGS OF THE PLANNING COLLABORATIVE & DELIVERY OF TECHNICAL ASSISTANCE (“TA”)

Recipient shall ensure that regular meetings, at least monthly, of the Planning Collaborative are planned, promoted, and convened to:

- Develop, prioritize and track progress on Workplans and budgets discussed below.
- Share housing TA provided by ABAG, HCD or others.
- Deliver more locally tailored TA as detailed in the Workplans.

Task 1 Deliverables:

- 1.1 Meetings, at least monthly of the Planning Collaborative through March 2026.
- 1.2 Meeting notes summarizing each meeting shall be provided to ABAG’s Project Manager, or their designee, within one week of each meeting.

Task 2 – ADMINISTRATION OF THE PLANNING COLLABORATIVE

- Recipient shall ensure that the Leader of the Planning Collaborative, or its Consultant if any, attends regular meetings, approximately monthly, with Coordinators of other County Collaboratives lead by ABAG to share technical assistance products, shared learnings and program information.
- Recipient shall maintain current contact information and a list serve of staff working on Housing Elements and housing projects in each jurisdiction in the Collaborative to be shared with all members of the Planning Collaborative and with ABAG’s Project Manager, or their designee.
- ABAG’s Project Manager, or their designee, shall be copied on all emails sent to the full membership of the Planning Collaborative.
- Recipient shall act as a liaison between ABAG and member jurisdictions. ABAG may request that Recipient ask jurisdictions for local information or send information on ABAG’s behalf.
- Recipient shall obtain and share with ABAG, copies of all final TA Work Product funded in whole or in part by this Agreement. If the delivery of TA funded in whole or in part by this Agreement does not result in the production of a document, then Recipient shall share with ABAG a short summary of the work completed to the reasonable satisfaction of ABAG, including lessons learned. Copies shall be shared with ABAG’s Project

Manager, or their designee, within one week of production. This may be accomplished by creating and regularly updating and maintaining a website for the Planning Collaborative and sharing log in credentials with ABAG's Project Manager, or their designee, if required to access the website. On a quarterly basis, Recipient shall provide a written progress report summarizing the work completed for the Planning Collaborative during the given period. Specific points to discuss in the progress report include: notable accomplishments or milestones; Housing Element program implementation updates and questions from member jurisdictions; and notable challenges facing member jurisdictions, either individually or as a group.

Task 2 Deliverables:

- 2.1 Attendance at ABAG meetings approximately monthly.
- 2.2 Contact information for Members of the Planning Collaborative and copies of emails.
- 2.3 Copies of all final TA Work Products, or if the delivery of TA does not result in the production of a document, then short summaries of the work completed to the reasonable satisfaction of ABAG, including lessons learned.
- 2.4 Quarterly progress reports.

TASK 3 – INITIAL WORKPLAN AND BUDGET

No later than 30 days after signing this Agreement, Recipient shall provide a written Workplan for the Planning Collaborative to ABAG's Project Manager, or their designee, describing REAP 2.0-eligible tasks to be completed by December 31, 2024, including budgeted costs of **at least 30%** of the amount of the Maximum Payment set forth in this Agreement. ABAG shall review the workplan within 15 business days. The Workplan is effective following approval by ABAG.

Task 3 Deliverables:

- 3.1 Workplan & Budget through December 31, 2024

TASK 4 –WORKPLAN(S) AND BUDGET(S) THROUGH MARCH 31, 2026

If on or before January 31, 2025, Recipient has provided ABAG with invoices and supporting documentation for eligible expenses representing **at least 30%** of the amount of the Maximum Payment set forth in Article 3 to this Agreement, then on or before **February 15, 2025**, Recipient shall provide a written workplan to ABAG's Project Manager, or their designee, describing REAP 2.0-eligible tasks to be completed by **December 31, 2025**, including budgeted costs of **the entire remaining balance** of the amount of the Maximum Payment set forth in this Agreement.

If by January 31, 2025, Recipient has not properly invoiced ABAG for at least 30% of the amount of the Maximum Payment set forth in Article 3 to this Agreement, then Recipient **shall be considered delinquent** and on or before **February 15, 2025** shall provide a written workplan to ABAG's Project Manager, or their designee, describing REAP 2.0-eligible tasks to be completed by **June 30, 2025**, including budgeted costs representing **at least 75%** of the amount of the Maximum Payment set forth in this Agreement, and Recipient shall properly invoice ABAG for **at least 75%** of the amount of the Maximum Payment set forth in this Agreement by

July 30, 2025. If Recipient is subject to this paragraph and has not properly invoiced ABAG for at least **75%** of the amount of the Maximum Payment by **July 30, 2025**, then Recipient **shall be considered seriously delinquent** and is at risk for Termination for Cause in accordance with Article 10 of this agreement.

Task 4 Deliverables:

4.1 Workplans & Budgets on schedule set forth above

TASK 5 – SUCCESSION PLANNING

Recipient shall work with the Steering Committee and members of the Planning Collaborative to hold at least two meetings for all members of the Planning Collaborative to create a succession plan to be submitted to ABAG no later than six months before this Agreement concludes. The Succession Plan shall describe what will happen to the Planning Collaborative once REAP funding runs out. It shall include, but not be limited to:

- Dates of the succession planning meetings and lists of attendees.
- A summary of efforts made to discuss succession planning with any jurisdictions in San Mateo County that were not represented at the meetings.
- Outcomes of the meetings
- Next steps and timeline

Task 5 Deliverables:

5.1 Succession plan, may include, but is not limited to:

- Funding source(s)
- Facilitation and management structure
- Workplan for first year following the expiration of REAP 2 funding

ATTACHMENT A-2
PROJECT SCHEDULE FOR COUNTY OF SAN MATEO (“RECIPIENT”)

All work described in this Agreement must be completed by December 31, 2025, and properly invoiced, to ABAG no later than January 31, 2026.

DELIVERABLE	DUE DATE
TASK 1 – MEETINGS OF THE PLANNING COLLABORATIVE & DELIVERY OF TECHNICAL ASSISTANCE (“TA”)	
1.1 Meetings, at least monthly of the Planning Collaborative through December 2025.	Monthly Through December 2025
1.2 Meeting notes summarizing each meeting shall be provided to ABAG’s Project Manager or their designee within one week of each meeting.	Monthly Through December 2025
TASK 2 - ADMINISTRATION OF THE PLANNING COLLABORATIVE	
2.1 Attendance at ABAG meetings approximately monthly.	Monthly Through December 2025
2.2 Contact information for Members of the Planning Collaborative and copies of emails.	Monthly Through December 2025
2.3 Copies of all final TA Work Products, or if the delivery of TA does not result in the production of a document, then short summaries of the work completed to the reasonable satisfaction of ABAG, including lessons learned.	Monthly Through December 2025
2.4 Quarterly progress reports	Quarterly Through December 2025
TASK 3 - INITIAL WORKPLAN AND BUDGET	
3.1 Workplan & Budget through December 31, 2024	30 days after effective date of this Agreement
TASK 4 - WORKPLAN(S) AND BUDGET(S)	
4.1 Workplans & Budgets on the schedule set forth in the SOW above	As set forth in the SOW.
TASK 5 – SUCCESSION PLAN	
5.1 Succession plan, may include, but is not limited to: <ul style="list-style-type: none"> • Funding source(s) • Facilitation and management structure • Workplan for first year following the expiration of REAP 2 funding 	No later than six months before this Agreement concludes

ATTACHMENT A-3
PROJECT PAYMENT SCHEDULE AND INVOICE PROCEDURES FOR COUNTY OF
SAN MATEO (“RECIPIENT”)

Recipient may invoice ABAG as reimbursable expenses are paid by Recipient or as reimbursable expenses become due to third parties as evidenced by an invoice from the third party to Recipient. However, Recipient shall not submit more than one invoice in any month to ABAG.

Notwithstanding the process described in Article 4 above, ABAG will reimburse Recipient for all expenses deemed reasonable and necessary by ABAG incurred by Recipient in the performance of this Agreement.

Recipient acknowledges the following expenditure goals for the Maximum Payment set forth in this Agreement and agrees to work diligently to meet these goals or risk termination of this Agreement and forfeiture of unexpended funds as set forth in this Agreement:

December 31, 2024	At least 30%
June 30, 2025	At least 75%
December 31, 2025	100% (Final invoice due January 31, 2026)

ATTACHMENT B
STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT GRANT AGREEMENT NO. 23-REAP2-17909 (INCLUDES
AMENDMENTS)

ATTACHMENT C
NOTICE OF FUNDING AVAILABILITY AND FINAL GUIDELINES –
METROPOLITAN PLANNING ORGANIZATION ALLOCATION REGIONAL EARLY
ACTION PLANNING GRANT (REAP 2.0)

ATTACHMENT D
STATE REQUIRED CLAUSES

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this agreement, Recipient shall not discriminate against any employee for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Recipient shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Recipient shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.
2. Recipient, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Each of the Recipient's contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.
3. Recipient shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this agreement.
4. Recipient shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this agreement.
5. Remedies for Willful Violation:
 - (a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Recipient was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Recipient has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

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