



ASSOCIATION
OF BAY AREA
GOVERNMENTS

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Jesse Arreguin, President
Mayor, City of Berkeley

Belia Ramos, Vice President
Supervisor, Napa County

David Rabbitt
Immediate Past President
Supervisor, Sonoma County

Karen Mitchoff
Chair, Regional
Planning Committee
Supervisor, Contra Costa County

Jesse Arreguin
Chair, Legislation Committee
Mayor, City of Berkeley

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

_____, 2023

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

**RE: TERMS OF PARTICIPATION IN REGIONAL EARLY ACTION PLANNING
(REAP) RESIDENTIAL PERMIT STREAMLINING PILOT PROGRAM**

Dear [Insert name]:

This letter, effective as of _____, 2023 (“Effective Date”) is the agreement between [Insert name of City or County] (“Recipient”) and the Association of Bay Area Governments (“ABAG”) (“the Agreement”) regarding Recipient’s participation in the Residential Permit Streamlining Pilot Program including Plancheck Program Software (“the Streamlining Pilot”).

WHEREAS, ABAG has established a Regional Housing Technical Assistance Program that includes the Streamlining Pilot; and

WHEREAS, ABAG has selected Recipient to participate in the Streamlining Pilot through a competitive recruitment based on Recipient’s statements in applying for participation;

WHEREAS, ABAG has contracted with Symbium Corp (“Symbium”) to provide its Plancheck Program Software for use by participants in the Streamlining Pilot at no cost to participants for two years. See Attachment A - Association of Bay Area Governments Agreement with Symbium Corp; and

WHEREAS all of the obligations and responsibilities required of RECIPIENT under its Regional Early Action Planning (REAP) Grant Suballocation Agreement, and its funding source, the State of California Department of Housing and Community Development (“HCD”) Grant Agreement No. 19-REAP-13915 (“REAP Grant Agreement”), with ABAG also apply to this Agreement; and

WHEREAS, ABAG and the Metropolitan Transportation Commission (“MTC”) entered into a Contract for Services under which MTC provides administrative and program services to ABAG. Effective July 1, 2017, the staffs of ABAG and MTC were consolidated. MTC staff now serve both the Association of Bay Area Governments and the Metropolitan Transportation Commission. As such, all interactions between ABAG and Consultant contained within this Agreement, shall be conducted by MTC staff on behalf of ABAG;

1. It is agreed that Recipient shall:
 - a) Designate one or more planning staff members who have sufficient knowledge of Recipient's codes and regulations applicable to residential building to meet with Symbium to clarify code interpretations on the following schedule. . These meetings shall include a kick-off meeting and weekly follow up meetings as needed for an anticipated total of 12 hours over approximately 3 months. The frequency and length of the meetings will vary based on the complexity of Recipient's codes and regulations.
 - b) Provide Symbium access to Recipient's GIS database including parcels and zoning, including but not limited to, the URLs of the applicable GIS layers, within 30 days of signing this Agreement. GIS data must be provided in the form of REST APIs, ESRI layers, or URLs to download CSVs, GeoJSONs, or Shapefiles. GIS data must contain sufficient metadata to indicate when the data is updated and how it is made available to ensure that any updates to data will be available in the Plancheck Program Software.
 - c) Provide Symbium with the URL's for additional GIS data from third-parties that may impact the Recipient's zoning requirements. GIS data must be provided in the form of REST APIs, ESRI layers, or URLs to download CSVs, GeoJSONs, or Shapefiles. GIS data must contain sufficient metadata to indicate when the data is updated and how it is made available to ensure that any updates to data will be available in the Plancheck Program Software.
 - d) Provide Symbium with links to Recipient's online zoning codes, including Special Districts and Planned Unit Developments ("PUD") (via Municode, AmLegal or similar source) within one week of signing this Agreement and shall provide any updates within two weeks of adoption during the term of this Agreement.
 - e) Provide Symbium with all existing permit application forms, checklists, instructions and other documents within one week of signing this Agreement.
 - f) Test the configuration of the Plancheck Program Software and provide feedback to Symbium, including identification of any missing or incorrectly interpreted information within 30 days from the date that Symbium delivers the configuration. Subject to the terms and conditions set forth in Attachment A - Association of Bay Area Governments Agreement with Symbium Corp, ABAG will fund a one-year license for Plancheck Program Software ("License") at no cost to Recipient. The one-year term of the License shall begin on the date that Symbium delivers the configuration.
 - g) Approve the configuration of Plancheck Software and update Recipient's website to direct the public and applicants to Symbium's configuration of Plancheck for Recipient within one month from the date that Symbium delivers the configuration for testing.

- h) Facilitate training of staff with responsibility for answering questions residential development codes and regulations and/or for processing residential permit applications on Plancheck with Symbium within one month of commencement of the License as set forth in Section 1.f.
- i) Provide Symbium with a detailed Application Programming Interface (API) specification if Recipient requests the Plancheck Program Software to be integrated with Recipient's permit tracking system. Such an integration would be read-only, i.e., will only involve the Plancheck Program Software downloading permit records from the Recipient's tracking system through REST APIs. If a REST API is not available to download permit records from the Recipient's permit tracking system, the requested integration would not be supported in the Plancheck Program Software. A detailed specification includes, at a minimum, API documentation including relevant API URLs, sample API calls to access the types of records/structured data to be incorporated into Plancheck, and other specifications as requested by Symbium.
- j) Agrees that the following is excluded from the Streamlining Pilot:
- The encoding of uncodified plans, guidelines, requirements, regulations, and/or ordinances;
 - The encoding of any plans, guidelines, requirements, regulations, and/or ordinances that are not published in an online municipal code platform;
 - The encoding of any plans, guidelines, requirements, regulations, and/or ordinances that are published in PDF format;
 - The incorporation of mixed-use, commercial, and/or other nonresidential project scopes;
 - The inclusion of Subdivision Map Act or other subdivision regulations or requirements;
 - The addition of new software features;
 - The update or change of the existing Plancheck Program Software user interface or user experience (UI/UX);
 - The update of the Plancheck Program Software to incorporate changes to the Recipient's zoning code and/or State law with a frequency that exceeds once per calendar quarter;
 - The cleaning of GIS data (e.g., resolving inconsistencies between datasets); and
 - The management and tracking of permit submittals.
- k) Contact Heather Peters hpeters@bayareametro.gov or a designated representative (herein "ABAG ProjectManager") with any questions, concerns, comments or

suggestions regarding the Streamlining Pilot or Symbium's performance and shall participate in one meeting with ABAG to review the Pilot before the end of the one-year Streamlining Pilot term.

1) Other tasks as needed to effectuate Attachment A - Association of Bay Area Governments Agreement with Symbium Corp

2. Recipient acknowledges that a goal of ABAG's Regional Housing Technical Assistance Program is to facilitate statewide, regional and subregional collaboration on housing planning. To further this goal, at all times through the term of this Agreement, Recipient shall designate at least one person who is currently responsible for providing housing planning services to it to receive communications from ABAG, HCD and subregional Planning Collaboratives and their representatives regarding available technical assistance at the state, regional and subregional levels. Recipient designates the following person(s) to receive these communications and shall notify ABAG via email at HousingTA@BayAreaMetro.gov of a replacement designee in the event of a change in personnel within 10 days:

[insert name]

[insert title]

[insert email]

[insert phone]

3. Recipient acknowledges that Symbium will, at the end of the License timeframe, provide ABAG with detailed information on the use of Plancheck for analysis of the Pilot including a written report that may include:

- A summary of the efficiency of deployment of the software;
- Volume of usage by planners and the public (if a connection to the public portal is requested);
- Estimated cost savings of automation;
- Key lessons learned;
- Suggestions for improvement if the Pilot were to be expanded;
- Any other information that CONSULTANT believes would help ABAG evaluate the success of the Pilot;
- High level summary observations.

4. The term of the Agreement shall begin on the Effective Date and conclude at the expiration of Recipient's License unless ABAG terminates this Agreement earlier as provided below.

5. If Recipient fails to perform as specified in the Agreement, ABAG may terminate the Agreement and the License may be revoked for cause by advance 10-day written notice, providing Recipient with the opportunity to cure the default or present an acceptable plan for cure within the 10-day period. At the end of the 10-day period, if the default has not been cured

or an acceptable plan of cure presented, ABAG may issue a notice of termination for default, effective immediately, and Recipient will receive no compensation.

6. Except for invoices and any communications required to be submitted by Recipient via web-based system, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, or emailed to such party at their respective addresses as follows:

To ABAG: Attention: Heather Peters
 Association of Bay Area Governments
 375 Beale Street, Suite 700
 San Francisco, CA 94105
 Email: hpeters@bayareametro.gov

To RECIPIENT: Attention: [insert name]
 [insert title]
 [insert name of City or County]
 [insert address]
 [insert email]

7. In performing work under the Agreement, Recipient will be acting as an independent contractor and not as an agent or employee of ABAG. Recipient will have no authority to contract in the name of ABAG, and Recipient will be responsible for its own acts and those of its agents and employees.

8. Recipient shall indemnify, defend, and hold harmless MTC, ABAG, its board members, representatives, agents, and employees ("ABAG Indemnified Parties") from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of Recipient, its officers, employees or agents, or subconsultants or any of them in connection with this Agreement or License.

9. Recipient agrees to obtain and maintain at its own expense for the duration of the Agreement the types of insurance listed in Attachment B, Insurance Provisions. Failure to retain proper insurance levels will result in termination of this Agreement and revocation of the License.

10. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between ABAG and Recipient that cannot be resolved through the informal, good faith efforts of the parties may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue

available legal remedies in a California, State, or Federal court of competent jurisdiction. 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.

11. 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.

12. 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.

13. 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.

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

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

Very truly yours,

Therese W. McMillan
Metropolitan Transportation Commission
Executive Director
Acting pursuant to the Contract for Services dated
May 30, 2017

Accepted and Agreed to this:

Date: _____

[insert name]

[insert title]

[insert name of City or County]

ATTACHMENT A

**ASSOCIATION OF BAY AREA GOVERNMENTS AGREEMENT WITH
SYMBIUM CORP**

ATTACHMENT B **INSURANCE PROVISION**

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover Recipient's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Recipient authorizes to work under this Agreement (hereinafter referred to as "Agents.") Recipient shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

Recipient is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, Recipient shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Recipient's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event Recipient or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Recipient's insurance be primary without right of contribution from ABAG. Prior to beginning work under this contract, Recipient shall provide ABAG with satisfactory evidence of compliance with the insurance requirements of this section.

The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to ABAG. If the Recipient maintains broader coverage and/or higher limits than the minimum limits shown hereunder, ABAG shall be entitled to the broader coverage and/or higher limits maintained by the Recipient.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of Recipient's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of ABAG. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Recipient is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of Recipient and Recipient's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 per occurrence with a general aggregate liability of not less than \$2,000,000, a

products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation or “Waiver of Transfer of Rights of Recovery Against Others to Us” provision included in the policy language or by endorsement in favor of ABAG.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

ABAG and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Recipient’s operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by Recipient and Recipient’s officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of \$2,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to ABAG and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of ABAG’s personally identifiable information or confidential information. [If cyber risk coverages are included, the limit should match the limit for Errors and Omissions Professional Liability.]

The policy shall provide coverage for all work performed by Recipient and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Recipient. No contract or agreement between Recipient and any subcontractor/consultant shall relieve Recipient of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by Recipient and any subcontractor/consultant working on behalf of Recipient on the project.

B. Acceptable Insurers. All policies will be issued by insurers, generally with a Best’s Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

C. Self-Insurance. Recipient’s obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to ABAG.

D. Deductibles and Retentions. Recipient shall be responsible for payment of any deductible or

retention on Recipient's policies without right of contribution from ABAG. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that ABAG seeks coverage as an additional insured under any Recipient insurance policy that contains a deductible or self-insured retention, Recipient shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Recipient, subconsultant, subcontractor, or any of their employees, officers or directors, even if Recipient or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Recipient shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement Effective Date, Recipient shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Recipient's personnel, subconsultants, subcontractors, and equipment have been removed from ABAG's property, and the work or services have been formally accepted. Recipient must notify ABAG if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, Recipient shall deliver to Ebix, ABAG's authorized insurance consultant, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

CONSULTANT shall submit certificates of insurance to:

**Association of Bay Area Governments
Insurance Compliance
P.O. Box 100085-M8**

Duluth, GA 30096
or
Email: MTC@Ebix.com
or
Fax: 1-888-617-2309

ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

2. FINANCIAL SECURITY (BONDS) – NOT USED

3. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as ABAG Indemnified Parties, pursuant to Article 14 of the Agreement.

Metropolitan Transportation Commission (MTC)

California Department of Housing and Community Development (HCD)