

## **SACOG 2021 Programming Round Funding (Round 9)**

### **Memorandum of Understanding Between the Sacramento Area Council of Governments (“SACOG”) and the [REDACTED] (“Recipient”) For the Project known as “[REDACTED]”**

This Memorandum of Understanding (“MOU”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Sacramento Area Council of Governments (“SACOG”) and \_\_\_\_\_ (“Recipient”).

#### **1. Introduction: Project Description and Scope of Work**

##### **A. Program Description:**

The SACOG Community Design Funding Program (the “Program”) is intended to provide financial assistance to local governmental agencies that are planning or constructing projects that are consistent with SACOG identified guidelines and principles. Local agencies submit project applications to SACOG and SACOG awards funding through a regional selection process. The project was awarded funding through the Program and is more particularly described in subsection E below (the “Project”).

The Project is receiving local funds from SACOG-managed local funding sources. Accordingly, the Project is not subject to administrative review by the California Department of Transportation (“CalTrans”), but rather solely by SACOG. SACOG will review any delay in the Project, as noted in Section 4.b below. SACOG must approve of the Project Scope of Work, milestones, deliverables and timelines, and shall review and approve all invoices before the Recipient will be reimbursed by SACOG.

The Program is a reimbursement based program. Recipient will be reimbursed for eligible Project costs after SACOG receives, reviews, and approves invoices covering those expenditures. By signing this MOU, Recipient certifies that it can fund the Project on its own until it seeks reimbursement from SACOG. The Recipient shall carry the expenses until it invoices SACOG for expenditures and SACOG reviews and approves such expenditures. SACOG will reimburse the Recipient within 45 days of receiving and approving an invoice that is determined to meet the terms of this MOU.

##### **B. Recipient Project Manager and SACOG Program Coordinator:**

The following persons shall serve as the point of contact for all communications unless mutually agreed in writing that another individual may represent either the Recipient or SACOG.

The Recipient's officially designated Project Manager is:

Name

Title

Address

[EMAIL ADDRESS] to correspond with Section 2.a below]

Phone #

SACOG's Program Coordinator is:

Gregory R. Chew

Community Design Program

Sacramento Area Council of Governments

1415 L Street, Suite 300

Sacramento, CA 95814

gchew@sacog.org

Phone 916-340-6227

C. Scope of Work, Deliverables, Milestones and Timeline:

Exhibit "A" attached hereto and incorporated herein, describes the scope of work to be performed by Recipient as well as the Project milestones, deliverables, and timeline for the Project(the "Scope of Work"). SACOG, in reviewing invoices, will verify the work completed and deliverables comply with the Scope of Work.

D. Project Application and Amount:

Recipient submitted an application to SACOG for funding under the Program (the "Application"). A copy of the Recipient's Project Application is located at: <http://www.sacog.org/regionalfunding/communitydesign.cfm> and is incorporated herein by this reference. The Project Application was evaluated through a competitive regional selection process and has been awarded One Hundred Thousand Dollars (\$100,000.00), to be provided under the terms and conditions of this MOU. In no instance shall SACOG be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs. Recipient is responsible for any and all all costs and expenses exceeding the awarded amount.

E. Project Description:

Based on the submitted Project Application, the Project's general purpose and scope is [Insert Brief General Description of Project].

F. Payment:

As the work is satisfactorily performed and funds are available, SACOG will reimburse Recipient for Project costs approved by SACOG. Recipient will not be paid in advance of work completed. Reimbursement shall be in accordance with Section 3 herein.

**2. Performance**

A. Notice to Proceed:

The Recipient may not start reimbursable Project activities until this Agreement is signed by both SACOG and Recipient. SACOG's Program Manager shall issue a written Notice to Proceed ("NTP"), via a letter or email, to Recipient's Project Manager after this Agreement is fully executed. The NTP shall contain the effective date for reimbursable activities, which date shall coincide with the date on which the NTP is issued. In no event will SACOG pay Recipient for work performed prior to issuance of the NTP.

B. Recipient Accountability Duties:

Recipient shall comply with duties in this Section 2B. Recipient acknowledges that a failure to perform these duties may result in the disqualification of Recipient from receiving future funding through SACOG as further specified below. It is incumbent upon Recipient, particularly the Recipient Project Manager, to understand these accountability duties and perform them throughout the term of this MOU or until the Scope of Work is completed, whichever comes first. SACOG will not remind Recipient to perform these duties.

(1) **Staff Requirements.** Recipient shall assign a staff person who is familiar with the contents of Recipient's Application to oversee the delivery of this Project. Recipient acknowledges that if it does not maintain an assigned, qualified staff person or consultant to manage the delivery of the Project pursuant to the Recipient's Application, SACOG may, in its sole discretion, withdraw funding for the Project.

(2) **Funding Cycle Deadline.** The Project as set forth in the Application, including the scope, timeline and deliverables, must be delivered no later than the current funding round cycle deadline of April 30, 2024. Recipient will not be reimbursed for any costs or expenses incurred after April 30, 2024. Recipient acknowledges that, if it does not deliver the specified Project on the agreed to timeline and prior to the funding cycle deadline, Recipient may be penalized in future funding cycles of SACOG's four regional funding programs.

(3) **Status Reports.** All Round 9 Community Design recipients are required to submit status reports with any invoices sent to SACOG for reimbursement. Following issuance of the NTP, Recipient shall provide the SACOG Program Manager with a brief status report in writing. This status report may be as brief as one or two paragraphs, depending upon the complexity and status of the Project. If Recipient's designated Project Manager changes during the course of the Project, it is the

responsibility of Recipient to notify SACOG of the change in Project Manager and convey all requirements of this MOU, including the requirement to submit status reports, to the new Project Manager.

**C. Overall Performance:**

Recipient recognizes that SACOG considers Recipient's performance on this Project a factor in qualifying Recipient for proposed future projects for any other current or future SACOG funding programs (e.g., Community Design, Bicycle/Pedestrian, Regional/Local, Air Quality programs).

**D. Recipient Responsibilities:**

After the NTP has been issued the Recipient is required to perform the accountability requirements in Section 2.B., including, submission of a brief Project status reports. Recipient shall complete the Project, in accordance with Exhibit "A", by no later than the expiration of this Agreement.

**E. SACOG Responsibilities:**

SACOG shall:

(1) Review progress reports and invoices promptly and contact Recipient in a timely manner to discuss any issues. Invoices will not be approved until issues have been resolved to SACOG's satisfaction.

(2) Remit invoice for payment promptly after approving invoices.

(3) Verify final Project completion as appropriate to close out final completion and payment.

**3. Reimbursement**

**A. Invoices and Payments:**

Recipient shall submit regular Project invoices to SACOG for reimbursement following issuance of the NTP, but shall submit such invoices no more frequently than once a month and no less frequently than once a quarter. Each invoice shall contain a one-page progress report narrative (bullet format acceptable) of work completed to date along with reference to the scope of work, timeline, milestones, and deliverables in Exhibit "A." Recipient shall clearly identify which of the activities have been performed in the period for which reimbursement is being requested. Recipient may include copies of any deliverables or photographs of physical construction, as applicable, to provide documentation of work completed.

**B. Travel Reimbursement:**

Recipient shall comply with, and shall require its subcontractors to comply with, the requirements for non-state employee travel and subsistence (per diem) expenses found in the California Department of Transportation ("Caltrans") Travel Guide,

Non-State Employee Travel (referencing the current California Department of Personnel Administration rules) at the following link:

<https://travelpocketguide.dot.ca.gov/>

Lodging rates shall not exceed rates authorized to be paid non-state employees unless written verification is supplied that such rates are not commercially available to Recipient and/or its subcontractors at the time and location required as specified in the Caltrans Travel Guide Exception Process.

**C. Evaluation of Invoices:**

SACOG will review invoices in the order received from all Program projects. Upon the review of each invoice received, SACOG will evaluate the degree of progress being made in comparison to the Scope of Work and may ask Recipient to provide additional information to support an invoice. SACOG may withhold payment of a full or partial invoice amount if it believes insufficient evidence has been provided to justify the amount requested. All invoices must comply with the requirements provided for in SACOG's Required Supporting Documentation for Invoices form, attached hereto and incorporated herein as Exhibit "B".

**D. Methods of Payment:**

After the SACOG Program Manager has approved an invoice, it will be submitted to the SACOG Finance Department for processing. Reimbursement will be made within 45 days of invoice approval and will be made by check, unless an electronic fund transfer arrangement has been made in advance.

**E. Retention and Completion:**

SACOG reserves the right to withhold up to 10% of the awarded amount until it can verify the Project is completed as described in Exhibit "A."

**4. Completion; Termination**

**A. Agreement Expiration Date:**

All reimbursable expenses must be incurred before April 30, 2024. The expiration date of this MOU is July 31, 2024, which is the final date for submitting invoices to SACOG, and the date when all projects funded in the 2021 Program funding cycle must be completed. Reimbursement will be made as outlined in Section 1.A. and Section 3.

**B. Extensions:**

This MOU may be extended by written agreement of the parties, but such written agreement by SACOG may only occur by one of two ways. First, SACOG may agree to an extension in the event that a delay is caused by SACOG, Caltrans or state or federal agencies regarding the funding, programming or regulatory review of this project and such delay is deemed unusual by SACOG. Second, SACOG may agree to an extension for any other reason only by direct approval of the SACOG Board of Directors, but the Recipient's governing body must take a formal action to approve

the request for an extension before a request can be made to the SACOG Board of Directors.

C. Termination by Recipient:

The Recipient may terminate this Agreement upon 30 days' written notice to SACOG identifying the reason for termination. Within 10 working days of the notice, Recipient shall submit an invoice which shall be paid according to the terms set forth in Section 3 of this MOU.

D. Termination by SACOG:

Recipient's failure to perform any material obligation hereunder is a material breach of this MOU. SACOG shall provide Recipient with written notice of any such failure and specify a reasonable opportunity to cure. If Recipient fails to cure a material breach after SACOG provides written notice thereof and a reasonable opportunity to cure, SACOG may terminate this Agreement upon 10 days' written notice to the Recipient identifying the reason for termination. Upon receipt of the notice of termination, Recipient shall immediately cease its own reimbursable activities on the Project and shall give notice to any third party working on the Project to immediately cease its reimbursable activities on the Project. Within 30 working days of receipt of the notice of termination, Recipient shall submit an invoice for work done through the date of termination. Reasons for termination may include, but are not limited to:

- (1) failure by the Recipient to submit a progress report or invoices for two consecutive quarters after the Notice to Proceed;
- (2) if the Project falls more than 6 months behind the timeline in Exhibit "A" and the Recipient fails to timely inform the SACOG Program Manager; or
- (3) the Recipient does not respond in a timely manner to requests by SACOG's Project Manager for information.

Reimbursable funding for the Project shall cease upon the effective date of the termination notice.

## 5. General Provisions

A. Amendments:

No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

B. Indemnity:

Recipient and SACOG are each responsible for its own acts and omissions. Further, each party agrees to indemnify, defend, and hold harmless the other party, its governing body, officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses, including reasonable attorney's fees and costs, damages, and liabilities, resulting from the negligent acts or omissions or willful misconduct of the indemnifying party. The provisions of this Section shall survive the expiration or termination of this MOU.

C. Audit, Records:

SACOG shall have the right to audit, or have audited by a representative agent, Recipient's use of Project funds. Recipient shall maintain books, records, documents and other evidence (collectively "Records") pertinent to Project work performed under this Agreement in accordance with generally accepted accounting principles and practices for a minimum of three years following completion of the Project. Recipient shall make the Records available to SACOG or its agents upon request.

D. Notices:

All notices required or provided for under this Agreement shall be in writing and delivered in person or by first class U.S. mail, postage prepaid, to the Project Managers identified in Section 1.B.

E. Integration:

This Agreement represents the entire understanding of SACOG and Recipient as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 5.A.

F. Headings:

The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

G. Severability:

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, the remainder of this Agreement, or the application of such term or provision to persons or circumstances

other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

H. Counterparts:

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

I. Dispute Resolution:

Each party hereto will notify the other party promptly of any matters that may cause disputes arising out of their respective rights and obligations under this Agreement and will make every reasonable effort to settle such disputes by prompt and diligent negotiations. If the parties are unable to resolve the dispute through negotiation, the dispute will be sent to mediation administered by a mediator acceptable to both parties prior to the initiation of legal action, unless delay in initiating legal action would irrevocably prejudice one of the parties. All expenses of the mediation will be borne by the parties equally; however, each party will bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS MOU AS OF THE DATE HEREIN ABOVE APPEARING:

**Sacramento Area Council of Governments**

***(Recipient Agency)***

\_\_\_\_\_  
JAMES CORLESS  
Executive Director

\_\_\_\_\_  
*(Name)*  
*(CEO title)*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
SLOAN SAKAI YEUNG & WONG LLP  
Legal Counsel to SACOG



**Exhibit “A”**

**SCOPE OF WORK  
DELIVERABLES, MILESTONES, AND TIMELINE**