

EQUIPMENT USE AGREEMENT

This Equipment Use Agreement (“Agreement”) is entered into on this ____ day of _____, 20__ by and between the SACRAMENTO AREA COUNCIL OF GOVERNMENTS (“SACOG”) and _____ (“User”).

RECITALS:

WHEREAS, SACOG is owner of certain equipment to be more particularly described in equipment loan agreements to be entered into by the parties in substantially the form attached hereto as Exhibit “A” to this Agreement (the “Equipment Check-out Form”); and

WHEREAS, User desires to utilize the equipment specifically identified in the Equipment Check-out Form (the “Equipment”) to collect pedestrian and bicycle counts at locations within User’s jurisdiction; and

WHEREAS, SACOG desires to permit use of the Equipment pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, SACOG and User agree as follows:

1. **Term**. This Agreement shall be effective through December 31, 2028 (the “Term”), unless otherwise terminated as provided for herein. User shall return the Equipment by the date specified in the Equipment Check-out Form or sooner in accordance with Section 3 of this Agreement.
2. **Data Collected**. In consideration for use of the Equipment, User agrees to share copies of any and all data collected by the Equipment with SACOG during the Term of this Agreement.
3. **Recall of Equipment**. User acknowledges that the Equipment is for the use and benefit of all SACOG member agencies. Once two months has expired since the commencement date listed on any Equipment Check-out Form, SACOG shall have the right to recall any or all Equipment upon ten (10) days written notice to User for use by other agencies.
4. **Installation of Equipment**. User shall be responsible for installing all Equipment. SACOG will make available to User Equipment manufacturer and supplier installation instructions and materials. SACOG does not assume any liability for any damages resulting from the improper installation or use of the Equipment. In no event shall SACOG be liable for any consequential, incidental, exemplary or special damages whether in contract or in tort, in any action connected with Users use or installation of the Equipment. User shall install Equipment at the locations identified in the Equipment Check-out Form. If User desires to relocate the Equipment due to any circumstance, the new location shall be mutually agreed upon by both SACOG and User prior to the User relocating the Equipment.

5. Maintenance and Operation of Equipment. User shall not alter or modify the Equipment and shall maintain the Equipment in good repair and operative condition and return it to SACOG in such condition, ordinary wear and tear resulting from proper use thereof excepted. In the event the Equipment or any portion thereof is damaged, destroyed, vandalized or rendered inoperable, User shall replace the Equipment at User's expense. User agrees to inform SACOG of any damage to the Equipment within three (3) days of discovery of such damage.
6. Repairs. The expense of all repairs made during the Term of this Agreement, including labor, material parts and other items shall be paid by User.
7. DISCLAIMER OF WARRANTIES. SACOG, BEING NEITHER THE MANUFACTURER, NOR SUPPLIER OF THE EQUIPMENT, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS MATERIAL, ITS WORKMANSHIP, ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT IT WILL MEET THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS, OR CONTRACTS WHICH PROVIDE FOR USE OF A SPECIFIC APPARATUS OR SPECIAL METHODS. SACOG FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO USER OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE EQUIPMENT. AS TO SACOG, USER UTILIZES THE EQUIPMENT "AS-IS". SACOG SHALL NOT BE LIABLE IN ANY EVENT TO USER FOR ANY LOSS, DELAY, OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, EQUIPMENT HEREBY USED OR ACCIDENTAL BREAKAGE THEREOF.
8. Indemnity. User shall indemnify SACOG against, and hold SACOG harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with or resulting from User's use of the Equipment, including without limitation, the manufacture, selection, delivery, leasing, renting, control, possession, use, operation, maintenance or return of the Equipment. User shall further indemnify SACOG and hold SACOG harmless from all loss and damage to the Equipment during the Term. This section shall survive the expiration of the Term of this Agreement.
9. Risk of Loss. SACOG shall not be responsible for loss or damage to property, material, or equipment belonging to User, its agents, employees, or anyone directly or indirectly employed by User while the Equipment is in User's care, custody, and control.
10. Ownership of Equipment. SACOG shall at all times retain ownership and title to the Equipment.

11. Execution of Equipment Check-out Form. SACOG and User agree that the Equipment Check-out Form may be submitted by User staff and approved by SACOG's project manager. The Equipment Check-out Form may be submitted multiple times by User throughout the term of this Agreement to request repeated use of the Equipment.
12. No Assignment. User shall not assign or transfer any interest in the Equipment, the Equipment Form, or this Agreement without written consent of SACOG.
13. Entire Agreement. This Agreement, including any approved Equipment Check-out Form(s), constitutes the entire agreement between SACOG and User as it relates to the terms and conditions of use of the Equipment and it shall not be amended, altered or changed except by written agreement of the parties.
14. Termination. Either party to this Agreement may terminate the Agreement without cause by giving no less than thirty (30) days prior written notice of such termination to the other party. All Equipment shall be returned to SACOG upon termination.

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

SACRAMENTO AREA COUNCIL OF GOVERNMENTS

JAMES CORLESS
Executive Director

APPROVED AS TO FORM:

SLOAN SAKAI YEUNG & WONG LLP
Legal Counsel to SACOG

[INSERT USER NAME]:

Name and Title

EXHIBIT “A”**EQUIPMENT CHECK-OUT FORM**

This Equipment Request Check-out Form is entered into on this ____ day of _____, 20____, by and between the Sacramento Area Council of Governments and _____ (“User”).

1. This Equipment Check-out Form is subject to the terms and conditions of the Equipment Use Agreement entered into by the parties.
2. SACOG agrees to provide the equipment specifically identified below (the “Equipment”), to User for use by User from _____ through _____, unless terminated sooner in accordance with the Equipment Use Agreement.
3. User hereby acknowledges SACOG has provided the Equipment in good working order. The User acknowledges all manufacturer and/or supplier instructions concerning installation of the Equipment have been provided to or made available to User.

Description of Equipment	Location of Installation (Location cannot be changed without consent of SACOG)	Quantity

SACRAMENTO AREA COUNCIL OF GOVERNMENTS

[INSERT PROJECT MANAGER]

[INSERT USER NAME]:

Name and Title

Sample Agreement