

MEMORANDUM OF UNDERSTANDING
No. M-0XX-2X

SCAG Overall Work Program (OWP) No: XXX-XXXX

Federal/State Awarding Agency: State of California, Department of Housing and Community Development

Funding Source: Regional Early Action Planning Grants Program of 2021 (REAP 2.0)

Sub-Recipient Name: TBD

Sub-Recipient's UEI No: TBD

Total Amount of Federal Funds Obligated to Sub-Recipient: \$0

Total Amount of Non-Federal Funds Obligated to Sub-Recipient: TBD

Total Amount of the Sub-Award: TBD

Subaward Period of Performance Start Date: XXXX XX, 202X

Subaward Period of Performance End Date: XXXX XX, 202X

Type of Contract: Project Specific

Method of Payment: See Section 6 of this MOU

Project R&D: N/A

Indirect Cost Rate for the Award: See MOU Rate Confirmation sheet*

Fringe Benefits Cost Rate for the Award: See MOU Rate Confirmation sheet*

*See Section 9 of this MOU.

Subaward Project Title: [Sub-Recipient Name] REAP 2.0 Notice of Funds Availability for Lasting Affordability Program Grant

Subaward Project Description: [Sub-Recipient Name] will utilize REAP 2.0 funding for a project that supports programmatic level investments in housing trust funds, community land trusts, catalyst funds and nonprofit organizations that secure lasting affordability in compliance with the program and the state REAP 2.0 guidelines.

MEMORANDUM OF UNDERSTANDING

No. M-0XX-2X

**BETWEEN THE
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS
AND [SUB-RECIPIENT NAME]
FOR REAP 2.0 NOTICE OF FUNDS AVAILABLE FOR LASTING AFFORDABILITY
PROGRAM GRANT**

(SCAG Project/OWP No. XXX-XXXX)

This Memorandum of Understanding (“MOU”) is entered into by and between the **Southern California Association of Governments** (“SCAG”) and **[Sub-Recipient Name]** (“Sub-Recipient”), for a Notice of Funds Available for Lasting Affordability (“NOFA”) Program Grant. SCAG and Sub-Recipient may be individually referred to as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the Regional Early Action Planning Grants Program of 2021 (“REAP 2.0”) was established with a principal goal to make funding available to Metropolitan Planning Organizations (“MPO”) and other regional entities for transformative planning and implementation activities that meet housing and equity goals, reduce Vehicle Miles Traveled per capita, and advance implementation of the region’s Sustainable Communities Strategy or Alternative Planning Strategy, as applicable;

WHEREAS, the California Department of Housing and Community Development (“HCD”) administers REAP 2.0 in accordance with Health and Safety Code sections 50515.06 to 50515.10 (“Statutes”) and REAP 2.0 guidelines for MPO applicants released by HCD pursuant to the Statutes (“REAP 2.0 Guidelines”);

WHEREAS, SCAG is the federally designated MPO for Southern California, primarily responsible for the development of a Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS” also known as “Connect SoCal”) for the counties of Imperial, Los Angeles, Orange, San Bernardino, Riverside, and Ventura;

WHEREAS, HCD awarded funds to SCAG under REAP 2.0;

WHEREAS, SCAG’s Regional Council authorized funding for the NOFA Program and approved guidelines for the NOFA Program (“Program Guidelines”);

WHEREAS, SCAG released a competitive Call for Applications for the NOFA Program;

WHEREAS, Sub-Recipient, eligible for funds under the NOFA Program, developed and submitted a proposed project for the NOFA Program (“Project”);

WHEREAS, SCAG reviewed the Project and determined the Project to be consistent with the REAP 2.0 Guidelines and Program Guidelines, and approved the Project to receive funding; and

WHEREAS, the purpose of this MOU is to describe the responsibilities of the Parties.

NOW THEREFORE, IT IS MUTUALLY AGREED THAT:

1. Recitals and Exhibits

The Recitals and all exhibits referred to in this MOU are incorporated herein by this reference and made a part of the provisions of this MOU.

2. Term

The Term of this MOU shall begin on the Effective Date and continue until [Expiration Date (date can be no later than ~~June 30~~ December 31, 2026)], (“Completion Date”), unless terminated earlier as provided herein. Time is of the essence in the performance of services under this MOU.

3. Scope of Work and Sub-Recipient’s Responsibilities

- a. Sub-Recipient shall be responsible for implementing the Project in accordance with the “Scope of Work,” attached as Exhibit A.
- b. Interim deliverables and tasks, including budgets and schedules, required to implement the Scope of Work shall be documented using the “Scope of Work Approval Form,” attached as Exhibit B (“SOW Approval Form”). The SOW Approval Form must be signed by SCAG Project Manager, SCAG Department Manager, SCAG Deputy Director or their designee, and Sub-Recipient prior to the performance of the work outlined in the SOW Approval Form. The SOW Approval Form may be signed by way of a manual or authorized digital signature, or a signature stamp. The SOW Approval Form may be used to document interim deliverables and interim deliverable budgets and schedules but may not be used to modify the deliverables and budget noted in this MOU. The SOW Approval Form may be amended subject to approval by SCAG. No amendment to the SOW Approval Form shall be valid unless made in writing and signed by the Parties. If there is a conflict between the SOW Approval Form and this MOU, this MOU shall prevail.
- c. Sub-Recipient must demonstrate a clear and significant nexus to all the REAP 2.0 Goals and Objectives, as described in Section 9 of this MOU, and must carry out the Project to meet the REAP 2.0 Goals and Objectives. Any lack of action or action inconsistent with REAP 2.0 Goals and Objectives may result in review and could be subject to modification of funding, termination of this MOU, and repayment of the Grant Funds.
- d. When requested, Sub-Recipient shall provide other related documentation of compliance, as determined by SCAG, with terms and conditions of this MOU within ten (10) days of the request.
- e. Any and all notices, reports, or other communications required by this MOU, including but not limited to invoices, accounting reports, supporting documentation, and monitoring reports, shall be submitted under the penalty of perjury.
- f. Sub-Recipient shall be responsible for ensuring compliance with all applicable California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA)

requirements, and, as applicable, shall serve as the implementing agency for environmental approval(s).

4. **Project Management**

- a. All work under this MOU shall be coordinated with SCAG and Sub-Recipient through the Project Managers.
- b. For purposes of this MOU, SCAG designates the following individual as its Project Manager:

[Name]
[Title]
[Number]
[Email]

SCAG reserves the right to change this designation.

- c. For purposes of this MOU, Sub-Recipient designates the following individual(s) as its Project Manager:

[Name]
[Title]
[Number]
[Email]

Sub-Recipient reserves the right to change this designation upon written notice to SCAG.

5. **Funding**

a. Grant Funds: \$ XXX
Cash Match Contribution: \$ XXX

SCAG's contribution to the Project is funded wholly with REAP 2.0 funds, in an amount not to exceed \$xxx ("Grant Funds").

- b. Sub-recipient shall provide a minimum of \$[cash match] in support of the Project ("Match Contribution"). Match Contribution must be identified in writing and, if applicable, the associated commitments must be obtained, before the Sub-Recipient can incur any costs for which the Sub-Recipient will request reimbursement. Match Contribution must adhere to the terms and conditions of this MOU. Nothing shall prohibit the Sub-Recipient from providing additional Match Contribution to the Project, but the Grant Funds contributed by SCAG shall not exceed the Grant Funds, regardless of any increased Match Contribution. For the purposes of this MOU, Cash Match Contribution is an actual cash contribution. Cash Match Contribution shall be substantiated by identifying its source, including a contact name, address and telephone number, and the task(s) to which the Cash Match Contribution will be applied.

- ~~a.c.~~ SCAG shall not be obligated to make payments for any costs that exceed the Grant Funds. SCAG shall not be obligated to pay for any increase in costs which exceeds the budget included in this MOU and the most current fully executed SOW Approval Form. SCAG shall not be obligated to make payments from any source other than funds provided by HCD to SCAG pursuant to REAP 2.0. In the event HCD terminates its agreement to provide funds or reduces the funds provided, SCAG shall have the right to terminate this MOU, in accordance with Section 17, or to amend this MOU to reflect the changes in funding.
- ~~b.d.~~ SCAG shall make payments to Sub-Recipient only for work performed as part of the Scope of Work, as outlined in the most current fully executed SOW Approval Form, and consistent with REAP 2.0 Goals and Objectives, REAP 2.0 Guidelines, and Program Guidelines. Prior to SCAG issuing REAP 2.0 funding to be used in an existing or emerging housing trust and/or lending product, Grantee shall demonstrate to the satisfaction of SCAG the capacity to manage and utilize the funding for the purposes defined in the fund and/or lending product and meet all requirements of the REAP 2.0 and PATH Program Guidelines.
- ~~e.e.~~ SCAG reserves the right, in its sole discretion, to discontinue funding the Project and/or terminate this MOU as described in Section 17.
- ~~d.f.~~ Any costs for which Sub-Recipient receives reimbursement or credit that is determined by a subsequent audit or other review by either SCAG, HCD, other State authorities or federal cognizant agency to be ineligible or otherwise unallowable, shall be repaid by Sub-Recipient within thirty (30) calendar days of Sub-Recipient receiving notice or a written demand for reimbursement from SCAG. Such repayment may include interest, penalties, or related fees, as determined by HCD or other State authorities. Should Sub-Recipient fail to reimburse unallowable costs due to SCAG within thirty (30) calendar days of demand, or within such other period as may be agreed between both parties hereto, SCAG is authorized to withhold and/or off-set future payments to Sub-Recipient.

6. Invoices

- a. This MOU is a Lump Sum agreement. Amounts claimed must equal the Project's budget set forth in this MOU and the most current fully executed SOW Approval Form. All invoices submitted to SCAG for payment shall be e-mailed to accountspayable@scag.ca.gov (file cannot exceed 10MB) and copy the SCAG Project Manager. All invoices submitted to SCAG for the Project shall reference the OWP Project Number (OWP No. XXX-XXXX).
- b. Sub-Recipient shall submit an invoice to SCAG using the electronic "Invoice Template" in accordance with the invoice submittal instructions and requirements noted in Exhibit C. Invoices shall be submitted every month during the term of this MOU. Invoices must be submitted in both PDF format and Excel file format. Invoices shall contain a progress report portion which serves to provide an update on the completion of the Scope of Work. The invoice progress report shall serve as the formal progress report for the Project and shall be signed by the Sub-Recipient. The progress report shall include, in narrative form, a description of services performed by the Sub-Recipient as well as progress toward completion of tasks related to the Project for the invoiced period and progress achieved toward the REAP 2.0 Goals and Objectives. SCAG shall review invoices for

compliance with this MOU. If SCAG determines that an invoice is compliant with this MOU, SCAG shall approve the invoice and issue payment to the Sub-Recipient. If SCAG determines that an invoice is not compliant with this MOU or the most current fully executed SOW Approval Form, SCAG may withhold and/or off-set future payment(s) to the Sub-Recipient.

- c. Sub-Recipient must meet all requirements to receive funding, be approved by SCAG to submit an invoice for lump sum payment, and submit the invoice to SCAG by July 31, 2026, unless this date is extended in advance in writing. SCAG shall reimburse Sub-Recipient as promptly as SCAG's fiscal procedures permit, using Electronic Fund Transfer, available at: [ACH Vendor Payment Authorization Form](#), upon receipt of itemized invoices submitted in accordance with this MOU. Sub-Recipient shall complete the ACH Vendor Payment Authorization Form and email it to ACHpayment@scag.ca.gov, prior to executing this MOU.
- d. Incomplete or inaccurate invoices may be returned to Sub-Recipient for correction without payment until corrected and approved.
- e. Travel expenses are not allowed.

7. **Reporting**

- a. At any time during the term of this MOU, SCAG may request additional information, as needed, to demonstrate satisfaction of all requirements identified in the MOU and the most current fully executed SOW Approval Form.
- b. By February 10 of each year following receipt of funding pursuant to this MOU, Sub-Recipient shall submit an Annual Report using the "Report Template," attached as Exhibit D. The Annual Report shall include, in narrative form, a description of services performed by Sub-Recipient as well as progress toward completion of tasks related to the Project for the prior year, a reporting of all costs incurred for that period, and progress achieved toward the REAP 2.0 Goals and Objectives.
- c. ~~When a Project is finalized, and no later than the Completion Date,~~ Sub-Recipient shall submit a Close-Out Report for the Project by December 31, 2026. At the time of the execution of this MOU, HCD has not provided the requirements for the Close-Out Report due to HCD by all grantees at the conclusion of the grant performance period. Therefore, the Close-Out Report format required by SCAG of Sub-Recipient is not available at this time, but will be provided when it becomes available.
- d. All reports submitted to SCAG shall reference the OWP Project Number (OWP No. **XXX-XXXX**).

8. **Accounting**

- a. Sub-Recipient 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 as interim points of completion, and provide support for payment vouchers and invoices.

- b. Sub-Recipient shall establish a separate ledger account for receipts and expenditures of Grant Funds and maintain expenditure details in accordance with the Scope of Work, as outlined in the most current fully executed SOW Approval Form.
- c. Sub-Recipient shall maintain documentation of its normal procurement policy and competitive procurement bid process and completed procurements, and financial records of expenditures incurred during the course of the Project in accordance with GAAP.

9. Allowable Uses of Grant Funds

- a. Grant Funds shall be expended in compliance with the REAP 2.0 Goals and Objectives.
 - i. REAP 2.0 Goals (“Goals”) are to invest in housing, planning, and infill housing-supportive infrastructure across the entire state in a manner that reduces Vehicle Miles Traveled (“VMT”), increases housing affordability, and advances equity. More detailed information on the Goals can be found in Section 201 of the [REAP 2.0 Notice of Funding Availability \(“NOFA”\) and Final Guidelines for MPO Applicants](#) and are made a part of the provisions of this MOU as if set forth in full.
 - ii. REAP 2.0 Objectives (“Objectives”) include: (1) accelerating infill development that facilitates housing supply, choice, and affordability; (2) affirmatively furthering fair housing; (3) reducing vehicle miles traveled. More detailed information on the Objectives can be found in Section 202 of the [REAP 2.0 NOFA and Final Guidelines for MPO Applicants](#) and are made a part of the provisions of this MOU as if set forth in full.
- b. Grant Funds shall only be used by Sub-Recipient for activities approved by SCAG and included in the Scope of Work, as outlined in the most current fully executed SOW Approval Form.
- c. Grant Funds may not be used for administrative costs of persons employed by Sub-Recipient for activities not directly related to eligible activities.
- d. There must be a strong implementation component for the funded activity through REAP 2.0, including, where appropriate, agreement by Sub-Recipient to submit the completed planning document or effort to the applicable board, council, or other entity for adoption or approval. If Sub-Recipient does not formally request adoption or approval of the funded activity, it may be subject to repayment of the Grant Funds.
- e. Protection of Grant Funds.
 - i. Sub-Recipient shall use the Grant Funds to fund a lending or grant program. To the extent possible, loans or grants provided under the ~~lending~~ program shall be secured by a deed of trust recorded against the title to real property. SCAG in its reasonable discretion shall decide whether loans or grants must be secured by a deed of trust. Predevelopment loans or grants may be allowed if authorized by SCAG’s prior written approval of Sub-Recipient’s underwriting guidelines ~~for predevelopment loans~~. SCAG in its reasonable discretion shall decide whether predevelopment loans or grants are allowed. Any promissory note, grant agreement, or other written agreement equivalent or similar to a promissory note, grant

agreement, or agreement with a CDFI (or other lending consultant) as part of a lending or grant program, which requires repayment of REAP 2.0 funding to Sub-Recipient, shall contain an express provision that repayment shall be made to SCAG rather than Sub-Recipient in the event that Sub-Recipient is no longer in operation.

- ii. Multifamily rental projects assisted with Grant Funds are required to have a recorded Regulatory Agreement setting forth requirements for household income levels and rent restrictions for all units assisted by Grant Funds.
- iii. Where Grant Funds are provided in the form of a construction loan or grant, the Sub-Recipient and the housing developer shall enter into a development ~~loan~~-agreement setting forth the terms and conditions required to be met prior to closing escrow, which shall include, but not limited to, requirements for escrow, title insurance, property insurance, compliance with environmental remediation requirements, and other borrower responsibilities.
- iv. The Sub-Recipient shall submit documentation of its ~~loan~~-guidelines and underwriting standards and procedures for review by SCAG upon request.
- v. SCAG shall have the right to request copies of documentation of the activities of Sub-Recipient at any time prior to or after disbursement of Grant Funds.
- vi. Sub-Recipient shall ensure all Grant Funds are disbursed and used in compliance with Section 21 and 22 of this MOU.

10. Work Products

- a. For purposes of this MOU, “Work Products” shall mean all deliverables created or produced under this MOU including, but not limited to, all deliverables conceived or made either solely or jointly with others during the term of this MOU and during a period of six months after the termination thereof, which relates to the Project. Work Products shall not include real property or capital improvements. Work Products includes all deliverables, inventions, innovations, improvements, or other works of authorship Sub-Recipient may conceive of or develop in the course of this MOU, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.
- b. Sub-Recipient shall submit one (1) electronic copy of all Work Products associated with the Project to the assigned SCAG Project Manager.
- c. SCAG shall own all Work Products and may, at its sole discretion, grant to Sub-Recipient a perpetual royalty-free, non-assignable, non-exclusive and irrevocable license to reproduce, publish or otherwise use Work Products related to the Project and developed as part of this MOU; provided, however, that any reproduction, publishing, or reuse of the Work Products will be at Sub-Recipient’s sole risk and without liability or legal exposure to SCAG.

11. Amendments

No amendment or variation of the terms of this MOU shall be valid unless made in writing and signed by the Parties. If an amendment is to become effective before the date of full execution by the Parties, the effective date of such amendment shall be no earlier than the date that SCAG received the request.

12. Notices

Any notice or notices required or permitted to be given pursuant to this MOU 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 addresses:

To SCAG: Cindy Giraldo
Chief Financial Officer
Southern California Association of Governments
900 Wilshire Blvd., Suite 1700
Los Angeles, CA 90017
(213) 630-1413
giraldo@scag.ca.gov

SCAG reserves the right to change this designation.

To Sub-Recipient: Name
Title
Agency
Address
Phone
Email

13. Insurance

- a. Sub-Recipient, at their own expense, shall procure and maintain policies of insurance, or provide evidence of self-insurance, of the types and amounts below, for the duration of the MOU. The policies shall state they afford primary coverage.

| Insurance Type | Requirements | Limits |
|----------------------|--|---|
| General Liability | Commercial General Liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01. | Not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted. |
| Automobile Liability | Automobile insurance at least as broad as Insurance Services Office form CA 00 01. | Covering bodily injury and property damage for all activities of the Sub-Recipient arising out of or in connection with work to be performed under this MOU, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined |

| | | |
|--|--|---|
| | | single limit for each accident. |
| Workers' Compensation/ Employer's Liability | Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Not required for sole proprietors or Sub-Recipient with no employees. | Including Occupational Diseases in accordance with California Law and Employers' Liability Insurance with a limit of not less than \$1,000,000 each accident. |
| Professional Liability Insurance | Professional Liability (Errors and Omissions) insurance appropriate to the Sub-Recipient's profession. | With limits of not less than \$1,000,000 per occurrence. In addition, it shall be required that the professional liability insurance policy remain in effect for three (3) years after the Completion Date of this MOU. |

- b. Higher Limits: no representation is made that the minimum insurance requirements of this MOU are sufficient to cover the indemnity or other obligations of Sub-Recipient under this MOU.
- c. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - i. SCAG, its officials, employees, and volunteers are to be covered as additional insureds, as respects to liability arising out of the activities performed by or on behalf of Sub-Recipient; products and completed operations of Sub-Recipient; premises owned, occupied or used by Sub-Recipient; or automobiles owned leased, hired or borrowed by Sub-Recipient. The coverage shall contain no special limitations on the scope of protection afforded to SCAG, its officials, and employees.
 - ii. For any claims related to this Project, Sub-Recipient's insurance coverage shall be primary insurance as respects SCAG, its officials, and employees. Any insurance or self-insurance maintained by SCAG shall be excess of Sub-Recipient's insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SCAG, its officials, and employees.
 - iv. Sub-Recipient's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The Workers' Compensation and Employer's Liability policies shall include a waiver of subrogation endorsement in favor of SCAG, its, officials, employees, and volunteers.
- e. Any deductibles or self-insured retentions in amounts over \$10,000 must be declared to and approved by SCAG.
- f. Insurance is to be placed with California admitted insurers with a current A.M. Best's rating of no less than A and be admitted, unless otherwise approved by SCAG.

- g. Sub-Recipient shall furnish SCAG with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by SCAG before work commences. Upon request of SCAG at any time, Sub-Recipient shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

14. Indemnification

Sub-Recipient shall fully defend, indemnify and hold harmless SCAG, its members, officers, employees, and agents from any and all claims, losses, liabilities, damages, expenses, suits or actions including attorneys' fees, brought forth or arising under any theories or assertions of liability, occurring by or resulting from or otherwise related to the Project or this MOU. Such obligations shall not, however, extend to any claims, losses, liabilities, damages, expenses, suits, or actions that arise from SCAG's gross negligence or willful misconduct.

15. Disputes

Except as otherwise provided in this MOU, any dispute arising under this MOU which is not resolved by mutual agreement shall be decided through binding arbitration by a three (3) member panel in accordance with the rules of the American Arbitration Association and as provided in this provision. If this provision differs from the rules of the American Arbitration Association, then this provision shall control. Sub-Recipient shall continue with the responsibilities under this MOU during any dispute until the dispute is resolved. A judgment upon the award rendered by arbitration may be entered into any court having jurisdiction thereof. The arbitration panel shall have the authority to grant any remedy or relief that would have been available to the Parties had the matter been heard in a court of law. Following arbitration, the arbitration panel shall prepare a written decision containing the essential findings and conclusions on which the award is based so as to ensure meaningful judicial review of the decision. All expenses and fees for the arbitrator and expenses for hearing facilities and other expenses of arbitration shall be borne equally by both Parties unless they agree otherwise or unless the arbitrator in the award assesses such expenses against one of the parties or allocates such expenses other than equally between the Parties. Either Party may bring an action in court to compel arbitration under this MOU and to enforce an arbitration award.

16. Noncompliance

- a. In the event of nonperformance or noncompliance with any requirement of this MOU, including but not limited to Project eligibility, schedule, deliverables, or milestone timelines, as outlined in the most current fully executed SOW Approval Form, SCAG may:
 - i. Issue a written notice to stop work. If such notice is provided, Sub-Recipient shall immediately cease all work under the MOU. SCAG has the sole discretion to determine that Sub-Recipient is in compliance with the terms and conditions after a stop work order, and to deliver a written notice to Sub-Recipient to resume work under this MOU.
 - ii. Require repayment of the Grant Funds.

- iii. Terminate this MOU pursuant to Section 17.
- b. Notwithstanding the provisions set forth above, or any other provision contained in this MOU, no remedy conferred by any of the specific provisions of this MOU or the SOW Approval Form, is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy existing at law or in equity or by statute or otherwise.

17. Termination of MOU

- a. Termination for Cancellation or Reduction in REAP 2.0 Funding. In the event HCD terminates or cancels funding to SCAG, this MOU is deemed to be terminated and SCAG shall be relieved of any and all obligations under this MOU as of the effective date of HCD's termination. In the event HCD reduces funding to SCAG, SCAG shall have the unilateral right to stop work, proportionally reduce funding to Sub-Recipient or terminate this MOU.
- b. Termination for Convenience. Either Party may terminate this MOU at any time by giving written notice to the other party of such termination at least thirty (30) calendar days before the effective date of such termination. Should SCAG terminate the MOU for convenience, upon receipt of the notice of termination, Sub-Recipient shall immediately take action to avoid incurring any additional obligation costs or expenses except as may be necessary to terminate its activities. SCAG shall pay Sub-Recipient its reasonable and allowable costs through the effective date of termination and is not liable for any expenses after termination. In such event, all finished or unfinished Work Products shall be provided to SCAG.
- c. Termination for Cause. If through any cause, either Party shall fail to timely and adequately fulfill its obligations under this MOU, or if either Party violates any of the covenants, terms, or stipulations of this MOU, the non-breaching Party shall thereupon have the right to terminate the MOU by giving not less than ten (10) calendar days written notice to the breaching Party of the intent to terminate and specifying the effective date thereof. The non-breaching Party shall provide a reasonable opportunity for the breaching Party to cure prior to termination. In no event shall such opportunity to cure extend beyond the term of the MOU. In the event that SCAG invokes this termination for cause provision, Sub-Recipient shall reimburse SCAG for all funds provided for the Project and all finished or unfinished Work Products shall be provided to SCAG at its option.

18. Records Retention

- a. Sub-Recipient shall maintain and make available, in accordance with Section 19 of this MOU, all source documents, books and records connected with the Project, documentation of its normal procurement policy and competitive procurement bid process and completed procurements related to the Project, all work performed under this MOU, all evidence of environmental clearance, and evidence demonstrating the funding was used for the appropriate purposes for a minimum of five (5) years after December 31, 2026. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.
- b. 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 shall be retained and made

available by Sub-Recipient for five (5) years after: (a) the conclusion or resolution of the matter; (b) the date an audit resolution is achieved for each annual SCAG OWP; or (c) December 31, 2026, whichever is later.

19. Monitoring and Audits

- a. SCAG may monitor expenditures and activities of Sub-Recipient as SCAG deems necessary to ensure compliance with the MOU, the Statutes, the REAP 2.0 Guidelines and the Program Guidelines.
- b. At any time during the term of this MOU, SCAG, HCD, the California Department of General Services, the California Bureau of State Audits, or their designated representatives may perform or cause to be performed a financial audit of any and all phases of the Project. At their request, Sub-Recipient shall provide, at its own expense, a financial audit prepared by an independent certified public accountant.
- c. Sub-Recipient agrees that SCAG, HCD, the California Department of General Services, the California Bureau of State Audits, or their designated representatives shall have the right to review, obtain, and copy all records and supporting documentation related to the performance of this MOU. Sub-Recipient agrees to provide any relevant information requested. Copies shall be made and furnished to SCAG upon request at no cost to SCAG.
- d. Sub-Recipient agrees to permit SCAG, HCD, the California Department of General Services, the California Bureau of State Audits, or their designated representatives 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 this MOU, the Statutes, the REAP 2.0 Guidelines, or applicable state and federal laws, rules, and regulations.
- e. If there are audit findings from SCAG or HCD's audit, Sub-Recipient must submit a detailed response acceptable to SCAG or HCD for each audit finding within ninety (90) days of the audit finding report.

20. Small Business and Disabled Veteran Business Enterprise Participation

- a. If for this MOU Sub-Recipient made a commitment to achieve small business participation, then Sub-Recipient must within 60 days of receiving final payment under this MOU (or within such other time period as may be specified elsewhere in this MOU) report to SCAG the actual percentage of small business participation that was achieved. (Gov. Code § 14841.)
- b. If for this MOU Sub-Recipient made a commitment to achieve disabled veteran business enterprise ("DVBE") participation, then Sub-Recipient must within 60 days of receiving final payment under this MOU (or within such other time period as may be specified elsewhere in this MOU) certify in a report to SCAG: (1) the total amount the Sub-Recipient received under the MOU; (2) the name and address of the DVBE(s) that participated in the performance of the MOU; (3) the amount each DVBE received from the Sub-Recipient; (4) that all payments under the MOU have been made to

the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (M&V Code § 999.5(d); Gov. Code § 14841.)

21. Compliance with Laws, Rules, and Regulations

- a. Sub-Recipient agrees to comply with all federal, state, and local laws, rules, and regulations applicable to this MOU.
- b. Non-Discrimination/Equal Employment Opportunity
 - i. During the performance of this MOU, Sub-Recipient assures that no person shall be denied the MOU's benefits, be excluded from participation or employment, be denied Project benefits, or be subjected to discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, under the Project or any program or activity funded by this MOU, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. §§ 3601-20) and all implementing regulations, the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. §§ 12101 *et seq.*) and all applicable regulations and guidelines issued pursuant to the ADA, and the Age Discrimination Act of 1975 and all implementing regulations. Sub-Recipient shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
 - ii. Sub-Recipient shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 *et seq.*), the regulations promulgated thereunder (Cal. Code Regs. tit. 2, § 11000 *et seq.*), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§ 11135-11139.5), and the regulations or standards adopted by HCD to implement such article.
 - iii. Sub-Recipient shall permit access by representatives of the Department of Fair Employment and Housing, SCAG, and HCD upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as the Department of Fair Employment and Housing, SCAG, or HCD shall require to ascertain compliance with this Section.
 - iv. Sub-Recipient shall give written notice of its obligations under this Section to labor organizations with which they have a collective bargaining or other agreement.
 - v. Sub-Recipient shall adopt and implement affirmative processes and procedures that provide information, outreach, and promotion of opportunities in the 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 C.F.R. § 92.351.

- c. Recycling Certification. Sub-Recipient shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to SCAG regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code § 12205).
- d. Anti-Trust Claims. Sub-Recipient, by signing this MOU, hereby certifies that if these services or goods are obtained by means of a competitive bid, the Sub-Recipient shall comply with Title 1, Division 5, Chapter 11 of the California Government Code (Gov. Code §§ 4550-4554).
- e. Child Support Compliance Act. If the Grant Funds provided under this MOU are in excess of \$100,000, Sub-Recipient acknowledges in accordance with Public Contract Code 7110, that:
 - i. Sub-Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - ii. Sub-Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- f. Priority Hiring Considerations. If this MOU includes services in excess of \$200,000, the Sub-Recipient shall give priority consideration in filling vacancies in positions funded by the MOU to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
- g. Loss Leader. If this MOU involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC § 10344(e).)

22. Public Works and Construction

Without limiting the generality of Section 21.a., Sub-Recipient agrees to ensure compliance and ensure any recipients of funds administered by Sub-Recipient comply with all applicable legal authority regarding construction standards and requirements, including but not limited to the following:

- a. Labor Code Requirements
 - i. Sub-Recipient is hereby put on notice that the Project under the MOU may qualify as a public works project and Sub-Recipient will therefore be required to determine whether the Project falls under a classification that would require payment of prevailing wages. Services constituting

public works are described in California Labor Code Sections 1720-1861, as may be amended or recodified by legislative action from time-to-time.

- ii. If a Project qualifies as a public works project, Sub-Recipient shall be the Awarding Body for the public works project and required to comply with all requirements applicable to the Awarding Body.
 - iii. If Sub-Recipient will perform services that require payment of prevailing wages, they are required to register with the California Department of Industrial Relations (DIR) in order to be compliant with the law. Sub-Recipient may not work on a public works project without a current and active DIR registration.
 - iv. In the event that Sub-Recipient engages in the performance of a public work under this MOU as defined by Labor Code Section 1770 *et seq.*, Sub-Recipient shall be required to cause such employees who are entitled to prevailing wages, to be paid the required wage amounts pursuant to applicable state law. Sub-Recipient shall ensure compliance with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
 - v. Sub-Recipient further acknowledges that any work that qualifies as a public work within the meaning of California Labor Code Section 1720 shall require Sub-Recipient to comply with the provisions of California Labor Code Sections 1775 *et seq.* Sub-Recipient agrees to ensure compliance with Labor Code Section 1776 regarding retention and inspection of payroll records and noncompliance penalties, Labor Code Section 1777.5 regarding employment of registered apprentices, and Labor Code Section 1813 regarding forfeiture for violations of the maximum hours per day and per week provisions contained in the same chapter.
- b. Sub-Recipient shall comply with all applicable federal, state, and local procurement requirements for public works and construction projects and shall advertise, open bids, award, and approve all construction contracts in accordance with the California Public Contract Code and the California Labor Code.
 - c. All construction contracts for the Project shall be administered and managed by Sub-Recipient. Sub-Recipient shall prepare or have prepared a detailed schedule of performance for the Project, ensuring that all construction is completed within the timeline allowed by the MOU. Sub-Recipient shall be responsible for requiring the construction contractor to furnish any applicable labor and material bonds and payments and performance bonds naming the Sub-Recipient as obligee, and SCAG as additional obligee, or an insurance policy in lieu of such bonds.
 - d. Sub-Recipient agrees to procure any and all permits, licenses and approvals necessary to complete the Project, including those necessary to perform design, construction, operation and maintenance, and to comply with all California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements applicable to the Project. Sub-Recipient shall pay all charges and fees and give all notices necessary or incidental to the Project.
 - e. Sub-Recipient shall prepare, or have prepared, all plans, specifications and estimates for the Project and ensure that the Project adheres to the accessibility requirements set forth in California Building

Code, Chapter 11A and 11B and the Americans with Disabilities Act, Title II. In addition, projects or Programs shall adhere to either the Uniform Federal Accessibility Standards, 24 Code of Federal Regulations (CFR) Part 8, or U.S. Department of Housing and Urban Development's (HUD) modified version of the 2010 American with Disabilities Act Standards for Accessible Design (Alternative 2010 ADAS), HUD-2014-0042-0001, 79 F.R. 29671 (5/27/14) (commonly referred to as "the Alternative Standards" or "HUD Deeming Memo"). Accessible units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project and be available in a sufficient range of sizes and amenities consistent with 24 CFR, Section 8.26.

- f. Sub-Recipient shall conduct all necessary due diligence for the Project, including but not limited to performing necessary environmental assessments/review of environmental hazard reports, conducting engineer/geotechnical review, commissioning title reports to identify and evaluate the condition of title and encumbrances on the subject property, including but not limited to any covenants conditions and restrictions, determining the entity(ies) with site control, including whether any third parties have ownership or site control rights, and determining the suitability for the Project.
- g. Sub-Recipient shall ensure any contractors or subcontractors are paid in accordance with applicable laws and regulations.
- h. Sub-Recipient shall comply with the procedure set forth in Public Contracts Code Section 9204 for processing contractor claims, paying undisputed amounts, and requiring mediation of disputed amounts.
- i. Sub-Recipient shall be responsible for ensuring ongoing maintenance of the Project after completion. SCAG shall not be responsible for ongoing maintenance of the Project after completion.

23. Conflict of Interest

The Parties shall comply with all applicable Federal and State conflict of interest laws, regulations, and policies.

24. Independent Contractor

Sub-Recipient shall be independent contractors in the performance of this MOU, and not officers, employees, or agents of SCAG.

25. Assignment

Neither Party shall assign any rights or interests in this MOU, or any part thereof, without the written consent of each Party to this MOU, which consent may be granted, withheld, or conditioned in the consenting Party's sole and absolute discretion. Any assignment without such written consent shall be void and unenforceable. The covenants and agreement of this MOU shall inure to the benefit of and shall be binding upon each of the Parties and their respective successors and assignees.

26. Release of Information

- a. Subject to any provisions of law, including but not limited to the California Public Records Act, any Work Product or materials deemed confidential by either Party shall be held confidential by the receiving Party who shall safeguard such confidential materials from unauthorized disclosure, using the same standard of care to avoid disclosure as the receiving Party treats its confidential information, but in no case less than reasonable care. Nothing furnished to either Party which is otherwise known or is generally known, or has become known, to the related industry shall be deemed confidential.
- b. Sub-Recipient shall not release any information or Work Products to a third party or otherwise publish or utilize any information or Work Products obtained or produced by it as a result of or in connection with the performance of services under this MOU without the prior written authorization of SCAG, except as provided under this MOU or as required by law (including, without limitation, pursuant to the California Public Records Act).
- c. All public-facing communications materials relating to this MOU, or its subject matter, shall acknowledge SCAG. Communications materials include, but are not limited to, site signage, printed information materials, print and online publications, websites, advertisements, video, public service announcements, social media postings, events, media advisories, news releases, and all other related materials.
- d. To ensure consistency of public information about SCAG programs and funded work products, Sub-Recipient is required to notify and coordinate with SCAG Project Manager who will coordinate with SCAG's Manager of Media & Public Affairs or a specified designee on any media inquiries or plans for proactively providing information to media outlets.
- e. All communication materials must be provided to SCAG Project Manager prior to completion so that inclusion of this element can be confirmed.

27. Non-Exclusivity

Nothing herein is intended nor shall be construed as creating an exclusive arrangement between SCAG and Sub-Recipient. This MOU shall not restrict SCAG from acquiring similar, equal or like services from other entities or sources.

28. Severability

If any provision of this MOU is held to be illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

29. Survival

The following sections survive expiration or termination of this MOU:

Section 5 (Funding)

Section 9.e. (Protection of Grant Funds)

Section 10 (Work Products)

Section 12 (Notices)
Section 13 (Insurance)
Section 14 (Indemnification)
Section 15 (Disputes)
Section 18 (Records Retention)
Section 19 (Monitoring and Audits)
Section 21 (Compliance with Laws, Rules, and Regulations)
Section 22 (Public Works and Construction)
Section 23 (Conflict of Interest)
Section 26 (Release of Information)
Section 31 (Jurisdiction and Venue)
Section 32 (Waiver)

30. Flow-Down Provisions

Sub-Recipient shall include the following provisions in all agreements entered into containing funds provided under this MOU, require the provisions below that survive expiration or termination of this MOU to survive, and shall include a requirement in all agreements that each of them in turn include the requirements in all contracts and subcontracts they enter into to perform work under the Project. SCAG does not have a contractual relationship with Sub-Recipient's Consultant(s), and Sub-Recipient shall be fully responsible for monitoring and ensuring compliance with these provisions.

Section 3.c. (Scope of Work and Sub-Recipient's Responsibilities – nexus to REAP 2.0)
Section 3.e. – 3.f. (Scope of Work and Sub-Recipient's Responsibilities – penalty of perjury)
Section 5.e. (Funding – repayment of ineligible costs)
Section 6 (Invoices)
Section 7 (Reporting)
Section 8 (Accounting)
Section 9 (Allowable Uses of Grant Funds)
Section 10 (Work Products)
Section 13 (Insurance)
Section 14 (Indemnification)
Section 18 (Records Retention)
Section 19 (Monitoring and Audits)
Section 20 (Small Business and Disabled Veteran Business Enterprise Participation)
Section 21 (Compliance with Laws, Rules, and Regulations)
Section 22 (Public Works and Construction)
Section 23 (Conflict of Interest)
Section 24 (Independent Contractor)
Section 25 (Assignment)
Section 26 (Release of Information)

Upon SCAG's request, Sub-Recipient shall provide SCAG a copy of any such agreement.

Reserved

31. Jurisdiction and Venue

This MOU shall be deemed an agreement under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Subject to the provisions in Section 15, the Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Los Angeles County, California.

32. Waiver

No delay or failure by either Party to exercise or enforce at any time any right or provision of this MOU shall be considered a waiver thereof of such Party's right thereafter to exercise or enforce each and every right and provision of this MOU. A Waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

33. Standard of Care

Sub-Recipient shall perform the work required for the Project under this MOU in accordance with generally accepted industry standards, practices, and principles applicable to such work.

34. Force Majeure

Neither Party shall be liable or deemed to be in default for any delay or failure in performance under this MOU or interruption of services resulting, directly or indirectly, from acts of nature, civil or military authority, acts of public enemy, war, strikes, labor disputes, pandemics, or any other similar cause beyond the reasonable control of the Parties, provided that the Party seeking to delay or excuse its performance as a result of such event shall notify the other Party in writing of such circumstances within not more than ten (10) days following the first occurrence of the event forming the basis of the delay or excuse of performance. In the event that the Party seeking to delay or excuse its performance fails to timely deliver the notice described in the previous sentence, then such event shall not relieve the Party from its timely performance.

35. Entire MOU

This MOU, comprised of these terms and conditions, the attached exhibits, and any properly executed amendments, represents and contains the entire agreement of the Parties with respect to the matters set forth herein. This MOU supersedes any and all prior negotiations, discussions and, if any, previous agreements between the Parties with respect to the matters set forth herein.

36. Execution

This MOU, or any amendments related thereto, may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The signature page of this MOU or any amendments may be executed by way of a manual or authorized digital signature. Delivery of an executed counterpart of a signature page to this MOU or an amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOU or any amendment.

37. Effective Date

This MOU shall be effective as of the last date on which the document is executed by all Parties.

38. Authority

Sub-Recipient warrants and certifies that it possesses the legal authority to execute this MOU and to undertake the Project, and, if applicable, that a resolution, motion, or similar action has been fully adopted or passed, as an official act of Sub-Recipient's governing body, authorizing receipt of the Grant Funds, and directing and designating the authorized representative(s) of Sub-Recipient to act in connection with the Project and to provide such additional information as may be required by SCAG.

[The remainder of this page is intentionally left blank. Signatures on following page.]

**SIGNATURE PAGE TO
MEMORANDUM OF UNDERSTANDING
NO. M-0XX-2X**

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the dates indicated below:

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (“SCAG”)

By: _____
Cindy Giraldo
Chief Financial Officer
Date _____

APPROVED AS TO FORM:

By: _____
Richard Lam
Senior Deputy Legal Counsel
Date _____

xxx (“Sub-Recipient”)

By: _____
Name
Title
Date _____

APPROVED AS TO FORM:

By: _____
Name
Title
Date _____