

**FUNDING AGREEMENT BETWEEN  
CITY/COUNTY ASSOCIATION OF GOVERNMENTS  
AND THE CITY OF PACIFICA**

This Funding Agreement (“Agreement”) entered this \_\_\_\_ Day of \_\_\_\_2023\_\_, by and between the CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY, a joint powers agency whose members include the County of San Mateo and the twenty incorporated cities and towns within San Mateo County, hereinafter called “C/CAG,” and the City of Pacifica, hereinafter called “CITY.”

**W I T N E S S E T H**

**WHEREAS**, the Board of Directors of the City/County Association of Governments, at its April 14, 2022 meeting, authorized an infusion of \$900,000 in Measure M funds to pay for Safe Routes to School (SRTS) eligible projects under the approved guidelines and process for the OBAG 3 County & Local Program; and

**WHEREAS**, At the September 15, 2022 C/CAG Board meeting, the Board approved the project nomination list for the OBAG 3 Program, which included a recommended funding allocation of \$900,000 of Measure M SRTS funds and \$1,269,801 of OBAG 3 funds for the Pacifica Sharp Park Priority Development Area Pedestrian Improvement Project; and

**WHEREAS**, On September 30, 2022, C/CAG staff submitted to the Metropolitan Transportation Commission (MTC) the Sharp Park Priority Development Area Pedestrian Improvement Project as part of the Countywide nomination list for OBAG 3; and

**WHEREAS**, the Sharp Park Priority Development Area Pedestrian Improvement fell short of MTC funding however, Staff recommends moving forward with the City of Pacifica’s Sharp Park Priority Development Area Pedestrian Improvement Project by allocating \$900,000 of Measure M SRTS funds to begin the design and construction phase of the project; and

**WHEREAS**, it is necessary for C/CAG to enter into a funding agreement with the City of Pacifica and set forth the responsibilities of each party.

**NOW, THEREFORE, IT IS HEREBY AGREED** by the parties as follows:

1. **Project to be constructed by CITY.** In consideration of the payments hereinafter set forth, the CITY shall build the proposed Pacifica Sharp Park Priority Development Area Pedestrian Improvement Project approved for grant funding (hereinafter called the “PROJECT”) in accordance with the terms, conditions, and specifications set forth herein and in Exhibit B attached hereto and by this reference made a part hereof. C/CAG assumes no ownership, operations, or maintenance obligations in exchange for providing the specified grant payments.

2. **Contract Term.** This Agreement shall be in effect as of March 9, 2023 and shall terminate on December 31, 2024 provided, however, the C/CAG Executive Director may terminate this Agreement at any time for any reason by providing 30 days' written notice to CITY. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, CITY may request reimbursement for construction costs incurred prior to termination (less 15% local match). however, C/CAG reserves the right to reduce or withhold payment under this paragraph for projects that do not meet the overall intent of the grant program or that do not demonstrate balanced integration of Safe Routes to School and stormwater features.
3. **Payments.** In consideration of the CITY building the PROJECT in accordance with all terms, conditions and specifications set forth herein and in Exhibit B, C/CAG shall make payments to CITY for work completed as described in Exhibit B, in a total amount not to exceed \$900,000. Payments are for PROJECT construction costs only; planning, design, permitting, and staff costs are not eligible for reimbursement and do not count toward the local match requirement. Reimbursement requests, including any progress payment requests, shall recognize the required 15% local match component to ensure that C/CAG does not pay more than 85% of the total project construction costs, up to the grant award amount (i.e., after deducting 15% from the total PROJECT construction costs for local match, C/CAG will reimburse CITY for the remaining costs, up to the grant award amount). Reimbursement requests shall include the final PROJECT costs, either as a contractor bid document including any change orders, or an alternate version that details the total PROJECT costs.
4. **Amendments.** This Agreement may be amended by mutual agreement of C/CAG and the CITY at any time during the term of the Agreement. Any changes in the services to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in scope and schedule. All amendments shall be executed by C/CAG and the CITY. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.
5. **Submittal of Final Project Design.** To ensure the PROJECT is substantially consistent with the proposed project selected to receive funding via the Call for Projects, the CITY shall submit to C/CAG for concurrence the final PROJECT design prior to securing a contractor to build the PROJECT or before CITY staff or others would begin building the PROJECT. C/CAG recognizes there may be revisions between the grant proposal and final project design, but the overall intent is to ensure a comparable project is built consistent with what was submitted under the Call for Projects and for which the CITY was competitively selected to receive grant funding. CITY shall not proceed with building the PROJECT until it receives written concurrence from C/CAG staff that the PROJECT is substantially consistent with the project submitted with the original grant proposal.

6. **Relationship of the Parties.** It is understood that this is an agreement by and between independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor.
7. **Non-Assignability.** CITY shall not assign this Agreement or any portion thereof to a third party without the prior written consent of C/CAG, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.
8. **Hold Harmless/ Indemnity.** CITY shall indemnify and save harmless C/CAG, its agents, officers, and employees from all claims, suits or actions resulting from willful misconduct or negligence of CITY or its agents, officers, or employees relating to this Agreement. The duty to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
9. **Insurance.** CITY or its subcontractors performing the services on behalf of CITY shall not commence work under this Agreement until all insurance required under this section has been obtained. CITY shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the CITY's coverage to include the contractual liability assumed by CITY pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to C/CAG of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.
  - a) *Workers' Compensation and Employer Liability Insurance:* the CITY shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage.
  - b) *Liability Insurance:* CITY shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect CITY, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by CITY or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000 unless another amount is specified below and shows approval by C/CAG Staff.

Required insurance shall include:

Required  
Amount

Approval by  
C/CAG Staff  
if under

		\$ 1,000,000	
a. Comprehensive General Liability	\$ 1,000,000		_____
b. Workers' Compensation	\$ Statutory		_____

C/CAG and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to C/CAG, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if C/CAG, or its officers and employees have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

If work is to be performed by the CITY, CITY may satisfy the foregoing insurance requirements under this section via a program of self-insurance. In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the C/CAG Executive Director, at his option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement.

10. **Non-discrimination.** The contractor and any subcontractors performing the services on behalf of the contractor shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
11. **Compliance with All Laws.** CITY's contractor shall, with respect to the PROJECT, comply with all applicable laws and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. The CITY will timely and accurately complete, sign, and submit all necessary documentation of compliance.
12. **Access to Records.** C/CAG, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of CITY which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. CITY shall maintain all required records for five (5) years after C/CAG makes final payments and all other pending matters are closed.
13. **Merger Clause.** This Agreement, including Exhibit B attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding.

All subsequent modifications shall be in writing and signed by the C/CAG Executive Director. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit B attached hereto, the terms, conditions or specifications set forth herein shall prevail.

14. **Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.

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

To C/CAG                      City/County Association of Governments of San Mateo County

555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063  
Attn: Eva Gaye  
egaye@smcgov.org

To CITY:

City of Pacifica  
151 Milagra Drive  
Pacifica, CA 94044  
Attn: Lisa Peterson  
petersenl@ci.pacifica.ca.us

**IN WITNESS WHEREOF**, the parties hereto have affixed their hands on the day and year first above written.

**City of Pacifica**

By \_\_\_\_\_  
Lisa Peterson, Public Works Director

\_\_\_\_\_  
Date

Approved as to form:

By \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

**City/County Association of Governments (C/CAG)**

By \_\_\_\_\_  
Sean Charpentier, C/CAG Executive Director

\_\_\_\_\_  
Date

Approved as to form:

By \_\_\_\_\_  
Melissa Andrikopoulos, C/CAG Legal Counsel

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**Exhibit A:  
Summary of Project Description**

**City of Pacifica - Sharp Park Priority Development Area Pedestrian Improvement Project**

**Sponsor:** City of Pacifica

**Requested Funding:** \$2,360,000

**Requested Phases:** CON

**Recommended Award:** \$900,000 –  
C/CAG Measure M SRTS Funding

**Recommended Phases:** Design & CON

**Project Description:**

The Sharp Park Priority Development Area (PDA) Pedestrian Improvement Project is an essential component within the City of Pacifica's larger Sharp Park Specific Plan (SPSP) and will largely influence mobility in the Sharp Park community and beyond. The Sharp Park PDA Pedestrian Improvement Project will close sidewalk gaps, improve sidewalk to above ADA standards, install new ADA compliant driveways and corner curb ramps, install curb and gutter to improve storm water management, remove and replace failed pavement, slurry seal, and install bicycle and pedestrian striping along Paloma Avenue, Carmel Avenue and Santa Maria Avenue from Francisco Boulevard to Beach Boulevard. The new driveways and sidewalks will provide ADA complaint path of travel in the project area and provide a vital link for pedestrians and bicyclists from the eastern residential neighborhood of Pacifica to the Sharp Park district, Palmetto business area, Pacifica Civic Center, two schools, the Sharp Park Library, and the popular Sharp Park Beach and Pacifica Pier. Furthermore, the pavement improvements will aid bicyclists and pedestrians by remove tripping hazards while also installing up to date and improved pavement striping for a safer overall experience.

**EXHIBIT B**  
**SCOPE OF WORK**

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