



**SACOG Board of Directors**

May 22, 2008

**Approve Subrecipient Funding Agreements for Transit Projects Using Proposition 1B Transit—Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Regional Funds**

**Issue:** SACOG is allocated \$13.985 million in PTMISEA Regional Funds for FY 2007/08. A total of \$11.657 million was allocated to 15 transit projects at the Board's April 17, 2008 meeting. SACOG will be the grant recipient for these funds and will pass the funding through to transit agencies for the approved transit projects. SACOG Board approval is required for the Subrecipient Funding Agreements.

**Recommendation:** Because there was no quorum, the Government Relations & Public Affairs Committee did not take an official vote, but it was the consensus of those attending that they recommend that the Board authorize the Executive Director to enter into Subrecipient Funding Agreements for the transit projects previously approved at the April 17, 2008, meeting and listed in Attachment A.

**Committee Action/Discussion:** SACOG has submitted PTMISEA grant applications for 13 transit projects, with two additional grant applications pending for large RT projects. Based on recommendations from SACOG's attorneys, the grant applications were prepared with SACOG as the recipient agency for project funds under the regional funding program. As the recipient of these funds, SACOG will work closely with the sponsoring transit agencies to ensure the flow of funds to the projects and ensure completion of the projects and funding requirements. In order to transmit these funds to the transit operators, SACOG, and the subrecipient agency must execute a Subrecipient Funding Agreement.

A copy of the approved projects and the draft Subrecipient Funding Agreement are attached to this staff report.

Approved by:

Mike McKeever  
Executive Director

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Attachments

Key Staff: James E. Brown, Supervising Senior Planner, (916) 340-6221  
Gary Taylor, Associate Planner, (916) 340-6279

## SACOG Staff and Transit Coordinating Committee Recommendations

### Applications for PTMISEA “Regional” Funding Projects

#### City of Elk Grove

Replace Wheelchair Lifts on five Orion V Buses	\$ 50,000
Rebuild Engines on two Buses	74,795
Matching funds for four replacement buses	378,371
Slow Fill CNG Fueling Station	275,000
Fleet Maintenance Equipment	134,740
Replace Destination Signs on ten buses	<u>65,260</u>
Subtotal	<u>978,166</u>

#### Sacramento Regional Transit District

ADA Transit Plan Improvements	300,000
Ahern/12 <sup>th</sup> Street Crossing Improvement	70,000
Bus Maintenance Facility II – CNG Fueling Station	4,000,000
LRT Crossing Enhancements	500,000
UTDC LRT Mid-life Rebuild	<u>3,527,903</u>
Subtotal	<u>8,397,903</u>

#### Yolo County Transportation District

Replace five CNG buses	923,673
Replace one paratransit cutaway vehicle	<u>72,000</u>
Subtotal	<u>995,673</u>

#### Unitrans

Replace one CNG bus	450,000
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#### SACOG

Universal Fare Card Project – Matching Funds	<u>835,000</u>
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Total Recommended Allocation	<b><u>\$11,656,742</u></b>
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**SUBRECIPIENT AGREEMENT**

**THIS SUBRECIPIENT AGREEMENT** is made and entered into effective \_\_\_\_\_, 2008, by and between **SACRAMENTO AREA COUNCIL OF GOVERNMENTS**, a California joint powers agency (“SACOG”) and the \_\_\_\_\_ (“Subrecipient”).

**WHEREAS**, SACOG has been awarded Proposition 1B Transit – Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) funding administered through the California Department of Transportation (“Caltrans”), to implement and support transit capital projects; and

**WHEREAS**, SACOG has awarded Subrecipient with funding, on a reimbursable basis, for [*insert description of Subrecipient’s Project*] “Project”; and

**WHEREAS**, Subrecipient has identified full funding for the Project(s) identified above and PTMISEA funds do not require a minimum match; and

**WHEREAS**, the parties wish to enter into this Subrecipient Agreement (“Agreement”) to document the terms and conditions of SACOG’s funding of the Project.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Scope of Work: Subrecipient will fully perform all work necessary to complete the Project. Attached hereto as Exhibit “A” and incorporated herein is Subrecipient’s Grant Application. Exhibit “A” includes a detailed scope of work to be performed by Subrecipient as well as Project deliverables, timeline, and budget. Any proposed amendment to Exhibit “A” must be agreed to in advance by the parties pursuant to a written amendment and is subject to review by the Transit Coordinating Committee and is subject to approval by the FTA, FHWA, Caltrans, or any other federal or state agency having jurisdiction.

2. Time of Performance:

a. Subrecipient will commence work upon the effective date of this Agreement and will complete work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work. Subrecipient will provide written progress reports to SACOG at least quarterly. Subrecipient agrees to follow, and to require its contractors to follow, the timeline identified in Exhibit “A.” If a substantive change to the identified timeline is desired, Subrecipient’s Project Manager will provide an immediate written request for approval to the SACOG Project Manager, including the reasons for the requested change. Approval by the SACOG Project Manager will not be unreasonably withheld.

- b. All work will be completed and this Agreement will expire on \_\_\_\_\_, unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties, which written agreement is subject to review by the Transit Coordinating Committee and is subject to approval by the FTA, FHWA, Caltrans, or any other federal or state agency having jurisdiction. .
- c. Through the competitive grant award process, as identified in the SACOG Guidelines for Distribution of PTMISEA Funds, the Subrecipient has represented the project(s) as ready to proceed and will be completed within two years of the funding award. The Subrecipient has also represented sufficient funding is available to complete the project(s) as defined in the Scope of Work and that the completed Scope of Work will result in a fully-usable amenity or service to the general public.

The Subrecipient certifies that: In the event the project(s) cannot be completed as originally scoped, scheduled and estimated, or the project(s) is terminated prior to completion, the Subrecipient shall, at its own expense, ensure the project is in a safe and operable condition for the public.

3. Compliance with Laws: Subrecipient will comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, circulars, and directives, including, without limitation, all federal regulatory requirements associated with the funding provided to Subrecipient hereunder. These regulations, orders, circulars, and directives include, without limitation, the following: 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Office of Management and Budget Circular A-87, Revised “Cost Principles for State, Local, and Indian Tribal Governments”; and FTA Circular No. 4220.1E, “Third Party Contracting Requirements.” Further, for all federal funding provided to Subrecipient hereunder, the Subrecipient will require the appropriate debarment certification form from all Subrecipient contractors and Subrecipient certifies that it will not knowingly enter into any transaction with a contractor, subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state agency.

4. Funding Amount: The amount to be paid to Subrecipient under this Agreement will not exceed \$\_\_\_\_\_, unless agreed to in advance by the parties pursuant to a written amendment. In no instance will SACOG be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs.

5. Reporting and Payment:

- a. On a quarterly basis, Subrecipient will provide SACOG with both a written report on the progress made on the Scope of Work (Exhibit “A”) and an invoice for reimbursement pursuant to Subsection 6.b. below. Subrecipient shall submit an Activities and Progress Report to SACOG on a semiannual basis. Reports shall

be complete and accurate and be submitted on the required Caltrans form or other agency form, to be provided by SACOG.

- b. Payments to Subrecipient hereunder will be made in arrears. Subrecipient will submit a detailed and properly documented invoice for reimbursement not more often than quarterly, which invoice will include the following: (i) a description of the work performed, and (ii) a detailed accounting of costs incurred.
- c. Subrecipient will submit notice of encumbrance of funds, including contracts and equipment purchases, within one month of the encumbrance. The notice of encumbrance shall be completed on the required Caltrans form or other agency form, to be provided by SACOG.
- d. Subrecipient will be notified within ten (10) business days following receipt of its invoice by SACOG of any circumstances or data identified by SACOG in Subrecipient's invoice that would cause withholding of approval and subsequent payment. Subrecipient's invoice will include documentation of reimbursable expenses and billed items sufficient for SACOG, in its opinion, to substantiate billings. SACOG reserves the right to withhold payment of disputed amounts.
- e. SACOG will make reimbursement payment to Subrecipient promptly. Under no circumstances will SACOG be required to pay any amounts to Subrecipient prior to receipt of funds from Department of Finance, nor will SACOG pay more than the amount in the approved grant from Caltrans. SACOG will not reimburse any expenses incurred before the date of approval for the California State Budget authorizing the funds.
- f. Subrecipient agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., (any subcontractors and subrecipients will refer to the Office of Management and Budget Circular A-87, Revised "Cost Principles for State, Local, and Indian Tribal Governments") will be used to determine the allowability of individual items of cost.
- g. Subrecipient also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- h. Any costs for which payment has been made to Subrecipient that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; Office of Management and Budget Circular A-87, Revised "Cost Principles for State, Local, and Indian Tribal Governments"; or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Subrecipient to SACOG.

- i. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, will contain all of the provisions of Subsections 6 (e) through 6 (g) above.

7. Independent Contractor: The Subrecipient, and the agents and employees of the Subrecipient, in the performance of this Agreement, will act as and be independent contractors and not officers or employees or agents of SACOG. Subrecipient, its officers, employees, agents, and subcontractors, if any, will have no power to bind or commit SACOG to any decision or course of action, and will not represent to any person or business that they have such power. Subrecipient has and will retain the right to exercise full control of the supervision of the work and over the employment, direction, compensation and discharge of all persons assisting Subrecipient in the performance of work funded by this Agreement. Subrecipient will be solely responsible for all matters relating to the payment of its employees and contractors, including but not limited to compliance with all laws, statutes, and regulations governing such matters.

8. Termination:

- a. SACOG will have the right to terminate this Agreement for any reason, with or without cause, at any time, by giving Subrecipient fifteen (15) days written notice. The notice will be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to Subrecipient at the address indicated in Section 16 below.
- b. If SACOG issues a notice of termination, SACOG will reimburse Subrecipient for work actually performed up to the effective date of the notice of termination, subject to the limitations in Section 6 and less any compensation to SACOG for damages suffered as a result of Subrecipient's failure to comply with the terms of this Agreement.
- c. Subrecipient will have the right to terminate this Agreement in the event SACOG is unable to make required payments, including, without limitation, a failure of Caltrans to appropriate funds. In such event, Subrecipient will provide SACOG with seven (7) days written notice of termination. The notice will be deemed served and effective on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to SACOG at the address indicated in Section 16. SACOG will make payment to Subrecipient through the date of termination, subject to the provisions of Section 6 above including, but not limited to, the provisions of Subsection 6.d.

9. Assignment: The parties understand that SACOG entered into this Agreement based on the Project proposed by Subrecipient. Therefore, without the prior express written consent of SACOG, this Agreement is not assignable by the Subrecipient either in whole or in part.

10. Binding Agreement: This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.

11. Time: Time is of the essence in this Agreement and will follow the timeline set forth in Exhibit “A”, unless modified pursuant to Section 2.

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

13. Contractors and Subcontractors: Subrecipient will be fully responsible for all work performed by its contractors and subcontractors.

- a. SACOG reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.
- b. Any contract or subcontract to be funded in whole or in part using funds provided under this Agreement will require the contractor and its subcontractors, if any, to:
  - (1) Comply with applicable state and federal requirements that pertain to, among other things, labor standards, non-discrimination, the Americans with Disabilities Act, Equal Employment Opportunity, Drug-Free Workplace, and Office of Management and Budget Circular A-87, Revised “Cost Principles for State, Local and Indian Tribal Governments.”
  - (2) Maintain at least the minimum state-required Workers’ Compensation Insurance for those employees who will perform the work or any part of it.
  - (3) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Subrecipient or any subcontractor in performing work associated with this Agreement or any part of it.
  - (4) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of three (3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
  - (5) Permit SACOG and/or its representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
  - (6) Further, for all federal funding provided to Subrecipient hereunder, the Subrecipient will comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 28.

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

15. Audit, Retention and Inspection of Records:

- a. SACOG or its designee will have the right to review, obtain, copy, and audit all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to performance of this Agreement, including any Records in the possession of any contractors or subcontractors. Subrecipient agrees to provide SACOG or its designee with any relevant information requested and will permit SACOG or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such Records for the purpose of determining compliance with any applicable federal and state laws and regulations. Subrecipient further agrees to maintain such Records for a period of three (3) years after final payment under the Agreement or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
- b. If so directed by SACOG upon expiration of this Agreement, the Subrecipient will cause all Records relevant to the Scope of Work to be delivered to SACOG as depository.
- c. Subrecipient will ensure an annual audit of the PTMISEA funded projects. This may be part of the annual Transportation Development Act audit. A copy of the certified audit report shall be submitted to SACOG with any required Caltrans transmittal form(s) or other agency form, to be provided by SACOG.
- d. Subrecipient shall allow SACOG staff, representatives, or agents access to the project site or purchased equipment for the purpose of verifying the project deliverables, and compliance with the schedule.

16. Project Managers: SACOG's Project Manager for this Agreement is James E. Brown, unless SACOG otherwise informs Subrecipient. With the exception of notice of termination sent by certified mail pursuant to Section 8 (c) above, any notice, report, or other communication required by this Agreement will be mailed by first-class mail to the SACOG Project Manager at the following address:

James E. Brown  
Sacramento Area Council of Governments  
1415 L Street, Suite 300  
Sacramento, California 95814  
Telephone: (916) 340-6221

Subrecipient's Project Manager for this Agreement is \_\_\_\_\_. No substitution of Subrecipient's project manager is permitted without prior written agreement by SACOG, which agreement will not be unreasonably withheld. With the exception of notice of termination sent by certified mail pursuant to Section 8 (a) above, any notice, report, or other communication to Subrecipient required by this Agreement will be mailed by first-class mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

17. Successors: This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.

18. Waivers: No waiver of any breach of this Agreement will be held to be a waiver of any prior or subsequent breach. The failure of SACOG to enforce at any time the provisions of this Agreement or to require at any time performance by the Subrecipient of these provisions, will in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of SACOG to enforce these provisions.

19. Litigation: Subrecipient will notify SACOG immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or SACOG, and will take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of SACOG.

20. Americans with Disabilities Act (ADA) of 1990: By signing this Agreement, Subrecipient assures SACOG that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

21. Non-discrimination Clause:

- a. During the performance of work funded by this Agreement, Subrecipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability, mental disability, medical condition, age or marital status. Subrecipient and its subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Subrecipient and its contractors will comply with all applicable federal and state employment laws and regulations including, without limitation, the provisions of

the Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Subrecipient and its contractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b. Subrecipient will include the non-discrimination and compliance provisions of this clause in all contracts to perform work funded under this Agreement.

22. Drug-Free Certification: By signing this Agreement, Subrecipient hereby certifies under penalty of perjury under the laws of the State of California that Subrecipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The person's or the organization's policy of maintaining a drug-free workplace;
  - (3) Any available counseling, rehabilitation, and employee assistance programs; and
  - (4) Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee of Subrecipient who works under this Agreement will:
  - (1) Receive a copy of Subrecipient's Drug-Free Workplace Policy Statement; and
  - (2) Agree to abide by the terms of Subrecipient's Statement as a condition of employment on this Agreement.

23. Union Organizing: By signing this Agreement, Subrecipient hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement.

- a. Subrecipient will not assist, promote, or deter union organizing by employees performing work on this Agreement.

- b. No funds received from SACOG under this Agreement will be used to assist, promote, or deter union organizing.
  - c. Subrecipient will not, for any business conducted under this Agreement, use any public property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the public property is equally available to the general public for holding meetings.
  - d. If Subrecipient incurs costs, or makes expenditures to assist, promote, or deter union organizing, Subrecipient will maintain records sufficient to show that no reimbursement from SACOG funds has been sought for these costs, and Subrecipient will provide those records to SACOG upon request.
24. Prohibition of Expending State or Federal Funds for Lobbying:
- a. Subrecipient certifies, to the best of his or her knowledge or belief, that:
    - (1) No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
    - (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal Agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - b. This certification is a material representation of fact upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - c. Subrecipient also agrees by signing this Agreement that he or she will require that the language of this certification be included in all lower tier contracts and subcontracts.

25. Prevailing Wage and Labor Requirements.

- a. Should Subrecipient award any construction contracts utilizing Federal funds under this Agreement, Subrecipient agrees to comply with all pertinent statutes, rules and regulations promulgated by the federal government including, but not limited to, (i) prevailing wage requirements of the Davis Bacon Act (40 U.S.C. §276a, *et seq.*) and related regulations (29 CFR Part 5); (ii) anti-kick back and payroll records requirements of the Copeland “Anti-Kickback” Act (40 U.S.C. §276c and 18 U.S.C. §874) and related regulations (29 CFR Part 3); and (iii) workweek computation and overtime requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-333) and related regulations (29 CFR Part 5).
- b. Should Subrecipient award any “public work” contract, as defined by California Labor Code Section 1720, utilizing State funds under this Agreement, Subrecipient agrees to comply with all pertinent California statutes, rules, and regulations including, but not limited to, prevailing wage provisions of Labor Code Section 1771.
- c. Any contract or subcontract entered into as a result of this Agreement will contain all of the provisions of this section.

26. Disadvantaged Business Enterprise (DBEs) Participation: For all federal funding provided to Subrecipient hereunder, such funding is subject to Title 49, Part 26 of the Code of Federal Regulations (CFR) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs.” DBE’s and other small businesses, as defined in Title 49 CFR Part 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds; however, DBE participation is not a condition of award. Subrecipient agrees to complete a SACOG DBE Information Form so that SACOG may compile statistics for federal reporting purposes. The SACOG DBE Information Form is attached hereto as Exhibit “B” and incorporated herein by this reference.

- a. Non-Discrimination; Compliance with Requirements: Subrecipient will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Each contract issued by Subrecipient under this Agreement must include an assurance that the contractor and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract or subcontract. Subrecipient will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Subrecipient to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SACOG may deem appropriate.
- b. Prompt Payments of Withheld Funds to DBE and Non-DBE Subcontractors: Subrecipient will pay to contractor(s) all moneys withheld in retention from the contractor within thirty (30) days from receiving payment from SACOG for work satisfactorily completed, even if other work is not completed and has not been

accepted in conformance with the terms of the contract. This requirement will not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Subrecipient or contractor in the event of a dispute involving late payment or non-payment to the Subrecipient or deficient contract performance or noncompliance by a contractor.

- d. Records: Subrecipient will maintain records of all contracts and subcontracts entered into with certified DBE's and records of materials purchased from certified DBE suppliers. The records will show the name and business address of each DBE contractor, subcontractor, or vendor and the total dollar amount actually paid each DBE contractor, subcontractor, or vendor. The records will show the date of payment and the total dollar figure paid to all firms. Upon completion of the contract, a summary of these records will be prepared and submitted to SACOG.
  
- e. Termination of a DBE: In conformance with Federal DBE regulation Section 26.53(f)(1) and 26.53(f)(2), Part 26, 49 CFR, Subrecipient will not:
  - (1) Terminate for convenience a listed DBE contractor and then perform that work with its own forces (personnel), or those of an affiliate, unless Subrecipient has received prior written authorization from the Project Manager of SACOG to perform the work with other forces (other than Subrecipient's own personnel) or to obtain materials from other sources; and
  - (2) If a DBE contractor is terminated or fails to complete its work for any reason, Subrecipient will be required to make good faith efforts to replace the original DBE contractor with another DBE contractor.
  - (3) Noncompliance by Subrecipient with the requirements of this paragraph is considered a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedies for a breach of this Agreement as SACOG deems appropriate.
  
- f. DBE Certification and Decertification: If a DBE contractor or subcontractor is decertified during the life of the contract, the decertified contractor or subcontractor will notify Subrecipient in writing with the date of decertification. If a contractor or subcontractor becomes a certified DBE during the life of the contract, the contractor or subcontractor will notify Subrecipient in writing with the date of certification. Subrecipient will then provide to the Project Manager of SACOG written documentation indicating the DBE's existing certification status.

Any contract entered into by Subrecipient as a result of this Agreement shall contain all of the provisions of this section.

27. Non-Liability of SACOG: SACOG shall not be liable to Subrecipient or any third party for any claim for loss of profits or consequential damages. Further, SACOG shall not be liable to Subrecipient or any third party for any loss, cost, claim or damage, either direct or

consequential, allegedly arising from a delay in performance or failure to perform under this Agreement.

28. Debarment Responsibilities: For all federal funding provided to Subrecipient hereunder, the Subrecipient agrees that it will comply with the provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or placement in ineligibility status.

29. Costs and Attorneys' Fees: If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

30. Governing Law and Choice of Forum: This Agreement will be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement will be brought in the Superior Court of Sacramento County.

31. Integration: This Agreement represents the entire understanding of SACOG and Subrecipient 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 12.

32. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance will, 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, will not be affected thereby, and each term and provision of this Agreement will be valid and will 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.

33. 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.

34. Authority: Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

35. Ownership; Permission: Subrecipient represents and warrants that all materials used in the performance of the Project work, including, without limitation, all computer software materials and all written materials, are either produced and owned by Subrecipient or that all required permissions and license agreements have been obtained and paid for by Subrecipient. Subrecipient will defend, indemnify and hold harmless SACOG and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

36. Counterparts: This Agreement may be executed in multiple counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument.

37. Amendments Required by Federal or State Agencies: If the FTA, FHWA, Caltrans, or any other federal or state agency having jurisdiction, requires a change to the terms of this Agreement, the parties will amend this Agreement as necessary, or will terminate it immediately.

38. Ambiguities: The parties have each carefully reviewed this Subrecipient Agreement and have agreed to each term and condition herein. No ambiguity will be construed against either party.

39. Press Releases: Subrecipient will obtain SACOG's prior written approval of any press releases, or other public outreach materials, that include any reference to SACOG or depiction of the SACOG logo.

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

**SACRAMENTO AREA COUNCIL  
OF GOVERNMENTS**

**SUBRECIPIENT**

\_\_\_\_\_  
MIKE McKEEVER  
Executive Director

\_\_\_\_\_  
[Name and Title]

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
MILLER, OWEN & TROST  
Legal Counsel to SACOG

\_\_\_\_\_  
[Name and Title]

RECOMMENDED BY:

\_\_\_\_\_  
Director

## **EXHIBIT “A”**

### **SCOPE OF WORK**

For purposes of this Agreement, the Subrecipient is considered to be the project sponsor.

As the project sponsor for this project(s), the Subrecipient will comply with the SACOG Guidelines for Distribution of PTMISEA Regional Funds as approved by the SACOG Board on March 20, 2005. In addition, the Subrecipient will comply with the Caltrans PTMISEA Guidelines published February 28, 2008, or as may be amended.

The project sponsor shall provide project management to ensure the project(s) proceed according to the schedule, the work or equipment meet quality standards, and the associated costs are accounted for accurately.

The project sponsor shall complete the project(s) and notify SACOG of completion of eligible expenses. Project sponsor completes the Project Closure Report following the reporting format identified by Caltrans, to be provided by SACOG. Unused funds allocated to the project will be re-allocated to other PTMISEA projects based on the competitive process as described in the SACOG Guidelines for Distribution of PTMISEA Funds, or as may be amended.

Any requests for additional PTMISEA funds for the project(s) will follow the competitive process as described in the SACOG Guidelines for Distribution of PTMISEA Funds, or as may be amended. Any change in the Scope of Work greater than ten percent will also follow the competitive process as described in the SACOG Guidelines for Distribution of PTMISEA Funds, or as may be amended. The project sponsor is fully responsible for ensuring availability of funds to complete the project(s).

SACOG will review the progress toward completion for the project(s). PTMISEA Regional Funds allocated to a project that is not progressing toward completion may be reallocated to other PTMISEA projects based on the competitive process as described in the SACOG Guidelines for Distribution of PTMISEA Funds, or as may be amended. Funds not encumbered within one year of the grant award may be reallocated to other PTMISEA projects.

## EXHIBIT "B"

### **DISADVANTAGED BUSINESS ENTERPRISE INFORMATION FORM**

#### Background

The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR). It is the policy of the Sacramento Area Council of Governments (SACOG), the California Department of Transportation ("Caltrans"), and the U.S. Department of Transportation that DBE's have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal transportation funds. A certified DBE may participate in the performance of SACOG contracts as a contractor, subcontractor, joint venture partner, or as a vendor of material or supplies.

#### Requirements and Purpose of Form

The awardee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Even if no DBE participation will be reported, the awardee will check the "No DBE Participation" option below (Option #1), and sign and return this form to SACOG.

#### Resources

The California Unified Certification Program (CUCP) may be used for DBE certification and to identify firms eligible to participate as DBE's. The CUCP database may be accessed on-line at <http://www.californiaucp.com> If you believe a firm is certified but cannot locate it in the CUCP database, you may contact the CalTrans Office of Certification toll free number 1-866-810-6346 for assistance. If you do not have internet access, you may order a written directory of certified DBE firms from the CalTrans Division of Procurement and Contracts/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

#### **DBE Participation Information**

*(Awardee must check Option #1 or #2 below, provide required information regarding certified DBE's, and sign this Information Sheet on page 2)*

\_\_\_\_\_ **Option #1 - No Certified DBE participation proposed for this contract.**

\_\_\_\_\_ **Option #2 - It is proposed that the following DBE(s) be used on this contract:**

*(Please attach an additional sheet if necessary)*

\_\_\_\_\_  
**Name of Certified DBE**

\_\_\_\_\_  
DBE Certification No.

\_\_\_\_\_  
DBE Address  
\_\_\_\_\_

\_\_\_\_\_  
DBE Telephone No.  
\_\_\_\_\_  
DBE E-Mail Address

\_\_\_\_\_  
Capacity of DBE (*e.g., contractor, subcontractor, vendor*)

\_\_\_\_\_  
\$ Amount DBE Participation

\_\_\_\_\_  
Description of services or materials to be provided by DBE

\_\_\_\_\_  
**Name of Certified DBE**

\_\_\_\_\_  
DBE Certification No.

\_\_\_\_\_  
DBE Address  
\_\_\_\_\_

\_\_\_\_\_  
DBE Telephone No.  
\_\_\_\_\_  
DBE E-Mail Address

\_\_\_\_\_  
Capacity of DBE (*e.g., contractor, subcontractor, vendor*)

\_\_\_\_\_  
\$ Amount DBE Participation

\_\_\_\_\_  
Description of services or materials to be provided by DBE

**Submitted by:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name and Title**

\_\_\_\_\_  
**Name of Awardee Agency**