



Item #08-8-5
Consent

SACOG Board of Directors

August 13, 2008

Contract for Transit Planning Technical Assistance for Yuba Sutter Transit

Issue: To authorize the Executive Director to negotiate and execute a contract with Yuba Sutter Transit (YST) for SACOG to provide technical assistance services to Yuba Sutter Transit on a number of transit planning, technical assistance, project management, and marketing activities.

Recommendation: The Government Relations & Public Affairs Committee recommends that the Board authorize the Executive Director to negotiate and execute a contract with Yuba Sutter Transit to provide technical assistance services to YST.

Committee Action/Discussion: Yuba Sutter Transit has requested that SACOG provide transit technical assistance to YST for a number of transit planning, project management and marketing services in support of the YST transit program. The services provided under this agreement are at a level above and beyond those normally provided by SACOG in its on-going work with the regions transit operators. The scope of services include the full range of transit planning, technical assistance, project management and transit marketing activities and other related activities that assist YST in the operation of their transit programs.

The contract is for \$65,000 and the term of the agreement runs through June 30, 2009. Attached is a draft contract for these services that is being reviewed by YST staff and SACOG. The hourly rates in this agreement will be modified to reflect the current billable rates.

Approved by:

Mike McKeever
Executive Director

MM:JEB:ts

Attachment

Key Staff: Karen Wilcox, Director of Finance, (916) 340-6210
James E. Brown, Supervising Senior Planner, (916) 340-6221

**YUBA-SUTTER TRANSIT AUTHORITY
AGREEMENT FOR TRANSIT TECHNICAL ASSISTANCE**

THIS AGREEMENT, is made and entered into this _____ day of _____ 2008, by and between the Yuba-Sutter Transit Authority, a joint powers authority, (hereinafter "YST") and the Sacramento Area Council of Governments, a joint powers agency (hereinafter "SACOG").

RECITALS:

1. SACOG represents that it is specially trained and/or has the experience and expertise necessary to competently perform the services set forth in this Agreement; and
2. SACOG is willing to perform the services and work described in this Agreement under the terms and conditions set forth in this Agreement; and
3. YST desires to contract with SACOG to perform the services and work described in this Agreement under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Time of Performance: SACOG shall commence work upon execution of this Agreement and in accordance with the Scope of Work, attached hereto as Exhibit "A" and incorporated herein. SACOG shall complete work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work. Work shall be completed and this Agreement shall expire on June 30, 2009, unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties.
2. Scope of Work: SACOG agrees to fully perform the work described in Exhibit "A" - Scope of Work. In the event of any inconsistency between Exhibit "A" and other terms and conditions of this Agreement, Exhibit "A" shall control. YST reserves the right to review and approve all work to be performed by SACOG in relation to this Agreement. Any proposed amendment to the Scope of Work must be submitted to YST in writing for prior review and approval by YST's Transit Manager. Approval shall not be presumed unless such approval is made by YST in writing.
3. Standard of Quality: All work performed by SACOG under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in SACOG's field of expertise.
4. Compliance with Laws: SACOG shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders and decrees.
5. Consideration: Payment to SACOG by YST shall be made as set forth in Exhibit "A". The amount to be paid to SACOG under this Agreement shall not exceed sixty-five

thousand dollars (\$65,000), unless expressly authorized in writing by the YST Transit Manager. In no instance shall YST be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs. SACOG shall be paid at the times and in the manner set forth in this Agreement.

- a. SACOG agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., (any subcontractors and subrecipients shall refer to the *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*) shall be used to determine the allowability of individual items of cost.
- b. SACOG 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."
- c. Any costs for which payment has been made to SACOG 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, 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 SACOG to YST. Disallowed costs must be reimbursed to YST within sixty (60) days unless YST approves in writing an alternative repayment plan.
- d. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of Sections 5 (a) through (c) above.

6. Reporting and Payment: SACOG shall submit monthly billings in arrears to YST no later than the 15th of each month and in accordance with the Scope of Work. SACOG shall be notified within fifteen (15) working days following receipt of its invoice by YST of any circumstances or data identified by YST in SACOG's written billing which would cause withholding of approval and subsequent payment. SACOG shall be paid within thirty (30) days after YST's approval of each billing. Said billings shall indicate the number of hours worked by each of SACOG's personnel and reimbursable costs incurred to the date of such billing since the date of the preceding billing, if any. The billings shall include documentation of reimbursable expenses and billed items sufficient for YST, in its opinion, to substantiate billings. YST reserves the right to withhold payment of disputed amounts.

7. Independent Contractor: SACOG, and the agents and employees of SACOG, in the performance of this Agreement, shall act as and be independent contractors and not officers or employees or agents of YST. YST, and the agents and employees of YST, in the performance of this Agreement, shall act as and be independent contractors and not officers or employees or agents of SACOG. SACOG has and shall retain the right to exercise full control of the supervision of the services and work and over the employment, direction, compensation and discharge of all persons assisting SACOG in the performance of services under this Agreement.

SACOG shall be solely responsible for all matters relating to the payment of its employees, including but not limited to compliance with social security and income tax withholding, workers' compensation insurance and all regulations governing such matters.

8. Termination:

- a. Either party shall have the right to terminate this Agreement for any reason, with or without cause, at any time, by giving the other party thirty (30) calendar days advance written notice. The notice shall 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 the recipient party at the address indicated in Section 17.
- b. If YST issues a notice of termination:
 - (1) SACOG shall deliver to YST copies of all Writings completed for work actually performed in accordance with Exhibit "A" through the date of termination.
 - (2) YST shall pay SACOG for work actually performed up to the effective date of termination and for any uncanceled obligations, subject to the limitations in Section 5.

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

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

11. Time: Time is of the essence in this Agreement.

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

13. Contractors and Subcontractors: SACOG shall not subcontract any portion of the work without the prior express written authorization of YST. If YST consents to a subcontract, SACOG shall be fully responsible for all work performed by the subcontractor.

- a. YST 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 sub-contract shall 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, and Drug-Free Workplace, and *Office of Management and Budget Circular A-87, 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 SACOG or any subcontractor in performing work associated with this Agreement or any part of it.
- (4) Retain all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of 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 YST and/or its designees, upon reasonable notice, unrestricted access to any or all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
- (6) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 29, Disadvantaged Business Enterprise Participation.

14. **Indemnity:** SACOG shall indemnify, defend and hold YST, its officers, employees and agents, harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of SACOG, its officers, agents, or employees.

YST shall indemnify, defend and hold SACOG, its officers, employees and agents, harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of YST, its officers, agents, or employees.

The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

15. Insurance Requirements: SACOG hereby warrants that it carries and shall maintain, at its sole cost and expense, in full force and effect during the full term of this Agreement and any extensions to this Agreement, all applicable insurance coverages including, but not limited to general liability, worker's compensation, comprehensive automobile, and errors and omission coverage.

Certified Copies of Policies: Upon request by YST, SACOG shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

16. Audit, Retention and Inspection of Records:

- a. YST or its designee shall have the right to review, obtain, and copy 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 subcontractors, for the purpose of monitoring, auditing, or otherwise examining the Records. SACOG agrees to provide YST or its designees with any relevant information requested and shall permit YST 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 to determine compliance with any applicable federal and state laws and regulations. SACOG further agrees to maintain such Records for a period of four (4) years after final payment under the Agreement or four (4) 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 YST upon expiration of this Agreement, the SACOG shall cause all Records to be delivered to YST as depository.

17. Project Managers: YST's project manager for this Agreement is Keith Martin unless YST otherwise informs SACOG. Any notice, report, or other communication required by this Agreement shall be mailed by first-class mail to the SACOG Project Manager at the following address:

Keith Martin
Transit Manager
Yuba Sutter Transit
2100 B Street
Marysville, CA 95901

SACOG's project manager for this Agreement is James Brown. No substitution of SACOG's project manager is permitted without the prior written agreement of YST, which agreement shall not be unreasonably withheld. With the exception of notice pursuant to Section

8 (a) above, any notice, report, or other communication to SACOG required by this Agreement shall be mailed by first-class mail to:

James Brown
Supervising Senior Planner
Sacramento Area Council of Governments
1415 L Street, Suite 300
Sacramento, California 95814

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

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

20. National Labor Relations Board Certification: SACOG, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against SACOG within the immediately preceding two-year period because of SACOG's failure to comply with an order of a federal court which orders SACOG to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

21. Americans with Disabilities Act (ADA) of 1990: By signing this Agreement, SACOG assures YST 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.

22. Non-discrimination Clause:

a. During the performance of this Agreement, SACOG and its subcontractors shall 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. SACOG and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SACOG and its subcontractors shall comply with 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. SACOG

and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b. SACOG shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

23. Drug-Free Certification: By signing this Agreement, SACOG hereby certifies under penalty of perjury under the laws of the State of California that SACOG 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 SACOG who works under this Agreement shall:
 - (1) Receive a copy of SACOG's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of SACOG's Statement as a condition of employment on this Agreement.

24. Debarment, Suspension, and Other Responsibilities: SACOG certifies and warrants that no director, officer, or principal of SACOG, nor any person in a position with management responsibility or responsibility for the administration of funds:

- a. Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency.
- b. Has within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery,

falsification or destruction of records, making false statements, or receiving stolen property.

- c. Is presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph "b" above.
- d. Has within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

25. Political Reform Act Compliance: SACOG is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). SACOG agrees that any of its officers or employees deemed to be "consultants" under the Act by YST, as provided for in the Conflict of Interest Code for YST, shall promptly file economic disclosure statements for the disclosure categories determined by YST, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.

26. 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.

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

28. Integration: This Agreement represents the entire understanding of YST and SACOG 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.

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

30. 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.

31. 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.

32. Ownership: SACOG agrees that all work products, including but not limited to, notes, designs, drawings, reports, memoranda, and all other tangible personal property produced in the performance of this Agreement, shall be the sole property of YST, provided that SACOG may retain file copies of said work products. SACOG shall provide said work products to YST upon request.

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

DRAFT

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

SACRAMENTO AREA COUNCIL OF GOVERNMENTS

MIKE MCKEEVER
Executive Director

APPROVED AS TO FORM:

Miller, Owen & Trost
Legal Counsel to SACOG

RECOMMENDED BY:

Director

YOLO SUTTER TRANSIT AUTHORITY

Name, Title

EXHIBIT "A"
Scope of Work

SACOG shall be available on an on-call basis, and be capable of performing the following services requiring specialized transit related knowledge or skills, but only to the extent such services do not conflict with the interests of other SACOG member agencies:

1. Assist in transit budget forecasting and monitoring.
2. Assist in developing the YST transit facilities project and management of the consultant engaged to work on the project.
3. Monitor and report on transit service contractor's contract compliance and quality of service.
4. Assist in preparation of transit grant applications for federal and state funds, including but not limited to FTA and PTIMSEA grants.
5. Monitor and report on transit grant status and opportunities.
6. Prepare memoranda and technical supporting documents to support YST transit positions in relationships with other agencies (except other SACOG member agencies) and reporting to policy boards.
7. Assist in developing an interim transit Capital Improvement Program (CIP) and CIP priorities until Short Range Transit Plan (SRTP) is completed.
8. Assistance in implementing the transit CIP and the acquisition of necessary vehicles and equipment.
9. Develop and assist in implementing an improved marketing and outreach program in association with YST, cities, and transit service contractor.
10. In association with SRTP and Performance Audit Process, conduct a thorough evaluation of current system, operations, administration, management, maintenance and overall organization.
11. Develop and assist in implementing a transition plan from current organization structure to that which is agreed upon and adopted in the SRTP.
12. Develop a Request For Proposal (RFP) for a transit management and operations contract including specific performance criteria; assist in management of RFP process and development of recommendations to policy boards.
13. Provide support in developing input to other planning processes requiring specialized transit related knowledge including but not limited to MTP, MTIP, annual FTA 5309 lobbying process, etc.
14. Representing and/or assisting YST at specialized transit meetings with other public agencies, (except other SACOG member agencies).

COMPENSATION

SACOG shall be compensated for labor at the hourly rates set forth in the table below and shall also be reimbursed for all hard costs in accordance with Section 6 of the Agreement, but not to exceed a total amount of Sixty Five Thousand Dollars pursuant to Section 5 of the Agreement.

SACOG PROJECT TEAM BILLABLE RATES

Transit Team Member	Billable Rate
James Brown	\$124.47
Robert McCrary	\$122.69
Barbara VaughanBechtold	\$94.83
Gary Taylor	\$91.88
Edward Coviello	\$81.93
David Ghiorso	\$122.73
Administrative Support	\$69.90
Graphic Artist Support	\$102.80
GIS Support	\$99.18