



Board of Directors

February 10, 2010

Approve MOU with Community Design Recipients Receiving SACOG-Managed Funds

Issue: Should the Board approve the draft Memorandum of Understanding (MOU) with Community Design Program recipients that receive SACOG-managed funds, and authorize the Executive Director to negotiate and sign individual MOUs?

Recommendation: Land Use & Housing Committee unanimously recommended that the Board: (a) approve the draft MOU for projects receiving SACOG-managed funds (Attachment 1); and (b) authorize the Executive Director to negotiate and sign the MOU with each recipient.

Committee Action/Discussion: At its January 21 meeting, the SACOG Board of Directors approved the list of Community Design Projects for funding in the 2009 through 2011 cycle. The vast majority of the \$17.5 million in funding awarded will be programmed with federal transportation funds, such as CMAQ, RSTP, and STP-TE. However, some of the projects with the smallest awards were intended to receive “SACOG-managed” funds, which are non-federalized. The chief advantage for using SACOG-managed funds for these projects is to reduce the amount of required paperwork. These SACOG-managed funds are intended to be used for the non-competitive Category #3 “\$100,000” projects in Community Design. Five projects were awarded funding in Category #3. One competitive project in Category #1, the Sacramento County Fair Oaks Village project, is also being recommended by staff to receive SACOG-managed funds, mainly due to its relatively small award size of \$136,200, and the complexity of making it federal aid eligible.

The six projects that staff recommends for SACOG-managed funds are:

- City of Galt, Deadman Gulch Trail Connection (\$100,000)
- Sacramento County, Fair Oaks Village Streetscape Design (\$136,200)
- Sutter County, Bike Pedestrian Master Plan (\$100,000)
- City of Winters, Pedestrian Connections Project (\$100,000)
- Yolo County, General Plan Smart Growth Implementation Project (formerly Climate Action Plan) (\$100,000)
- Yuba City, Highway 20 Revitalization Strategy (\$100,000)

The additional 12 projects awarded in the Community Design Program will receive federalized funds, as addressed in another item that will be submitted to the Board this month. The six SACOG-managed fund recipients must sign an MOU with SACOG to receive funds. A proposed MOU template is attached for the Board’s review and approval. Also, staff seeks Board approval to allow the Executive Director the power to negotiate and sign individual MOUs with the recipients. This is a process that has worked well in the past for the efficient administration of the Community Design MOUs.

Approved by:

Mike McKeever
Executive Director

MM:GC:sb
Attachment

Key Staff: Rebecca Sloan, Director of External Affairs and Member Services, (916) 340-6224
Greg Chew, Senior Planner, (916) 340-6227

SACOG Community Design Funding Program 2009-2011

Draft Memorandum of Understanding (“MOU” or “Agreement”)
Between the Sacramento Area Council of Governments (“SACOG”) and the
_____ (“Recipient”)
For the Project known as “_____”

(Draft January 21, 2010)

1. Introduction; Project Description and Scope of Work

- a. Program Description: The SACOG Community Design Funding Program (henceforth referred to as “Program”) is intended to provide financial assistance to local governmental agencies that are planning or constructing projects that are consistent with the SACOG Blueprint Project Principles. Local agencies submit project applications to SACOG and SACOG awards funding by a regional competitive process. [*Insert Full Project Name*] (referred to as “Project”) was awarded funding through the Program. This document serves as the memorandum of understanding between SACOG and _____ (referred to as “Recipient”).

The Project is receiving funds from SACOG-managed local funding sources, meaning these funds bring no requirement to federalize the Project. As such, the Project is not subject to administrative review by the California Department of Transportation (“CalTrans”), but rather by SACOG. SACOG must approve of the Project scope of work, milestones, deliverables and timelines, and shall review and approve all invoices before the Recipient will be reimbursed.

The Program is set up as a reimbursable program, meaning Recipient will be reimbursed for eligible Project costs after SACOG receives, reviews, and approves invoices covering those expenditures. In signing this agreement, Recipient certifies that it can fund the project on its own until it seeks reimbursement from SACOG. The Recipient shall carry the expenses until it invoices SACOG for expenditures. SACOG will reimburse the Recipient within 45 days of receiving an invoice that is determined to meet the terms of this MOU..

- b. Recipient Project Manager and SACOG Program Manager: The following persons shall serve as the point of contact for all communications unless mutually agreed in writing that another individual may represent either the Recipient or SACOG.

The Recipient’s officially designated Project Manager is the person identified in the Recipient’s application as the Federal Aid Manager or who otherwise meets the requirements of Section 2.b.1. below, who is:

Name
Title

Address
Phone #
Fax #

SACOG's Program Manager is
Gregory Chew
Community Design Program Manager
Sacramento Area Council of Governments
1415 L Street, Suite 300
Sacramento, CA 95814
Phone 916.340.6227
Facsimile 916.321.9551

- c. Project Application and Amount: Recipient submitted an application to SACOG for funding under the Program (hereinafter "Application") and a copy of the Application is attached and incorporated herein as Exhibit "A". The Application was evaluated through a competitive regional selection process and has been awarded \$ _____, to be provided under the terms and conditions of this Agreement. The Recipient has pledged \$_____ in matching funds, and certified these funds are available to complete the Project scope. If Recipient incurs costs and expenses beyond the awarded amount, Recipient is responsible to cover those costs and expenses.
- d. Project Description: Based on the submitted Project application, the Project's general purpose and scope is [*Insert Brief General Description of Project*]. Exhibit "B" to this Agreement, attached and incorporated herein, sets forth the detailed scope of work for the Project.
- e. Scope of Work, Deliverables, Milestones and Timeline: Exhibit "B" describes the detailed scope of work to be performed by Recipient as well as the Project milestones, deliverables, and timeline for the Project. SACOG, in reviewing invoices, will verify the work completed and deliverables against the terms of Exhibit "B."
- f. Payment: As the work is satisfactorily performed and funds are available, SACOG will reimburse Recipient for Project costs approved by SACOG. Recipient shall not be paid in advance of work completed. Conditions for reimbursement are identified in Section 3 below.

2. Performance

- a. Notice to Proceed: The Recipient may not start reimbursable Project activities until this agreement is signed by both SACOG and Recipient. SACOG's Program Manager shall issue a written Notice to Proceed ("NTP") (e-mail acceptable) to Recipient's Project Manager after this Agreement is fully signed. The NTP shall contain the effective date for reimbursable activities, which date shall coincide

with the date on which the NTP is issued.

- b. Recipient Accountability Duties: Recipient shall comply with the following accountability duties. Recipient acknowledges that a failure to perform these duties may result in the DISQUALIFICATION of Recipient from receiving future funding through SACOG as further specified below. It is incumbent upon Recipient, particularly the Recipient Project Manager, to understand these accountability duties and perform them throughout the term of the MOU or until the Project is completed, whichever comes first. SACOG will NOT remind Recipient to perform these duties.

- 1. Staff Requirements - A Recipient staff person who is familiar with the contents of Recipient's Application and has been assigned to oversee the delivery of this Project. Recipient acknowledges that if it does not maintain an assigned, qualified staff person or consultant to manage the delivery of the Project pursuant to the Recipient's Application, SACOG reserves the right to withdraw funding for this Project.

- 2. Funding Cycle Deadline - The Project as set forth in the Application, including the scope, timeline and deliverables, must be delivered no later than the current Community Design funding cycle deadline of September 30, 2013. Recipient acknowledges that, if it does not deliver the specified Project on the agreed to timeline and prior to the funding cycle deadline, Recipient may be penalized in future funding cycles of SACOG's four regional funding programs, in particular, the Community Design Program.

3. Status Reports – Following issuance of the NTP, Recipient shall provide the SACOG Community Design Program Manager with a brief, written (e-mail acceptable) quarterly status report on the Project. The due date for each is the first day of January, April, July and October of each year that the project has started until its completion or the termination of this MOU. This status report may be as brief as one or two paragraphs, depending upon the complexity and status of the particular Project. If Recipient's designated Project Manager changes during the course of the Project, it is the responsibility of Recipient to convey this status report requirement and all other requirements of this MOU to the new Project Manager. Recipient acknowledges that a failure to provide quarterly Project status reports to SACOG may result in Recipient failing to qualify for future funding cycles of SACOG's regional funding programs, in particular, the Community Design Program. The responsibility of submitting the brief status report to SACOG lies solely with Recipient's identified Project Manager listed above.

- c. Overall Performance: Recipient recognizes that SACOG considers Recipient's performance on this Project a factor in qualifying Recipient for proposed future projects for any other current or future SACOG's funding program (e.g., Community Design, Bicycle/Pedestrian, Air Quality programs).

d. Recipient Responsibilities:

After the NTP has been issued the Recipient is required to perform the accountability requirements in Section 2.b., including, but not limited to, submission of a brief quarterly Project status report.

(1) Recipient shall complete the Project, in accordance with Exhibit “B”, by no later than the expiration of this Agreement.

e. SACOG Responsibilities: SACOG shall:

(1) Review progress reports and invoices promptly, and contact Recipient in a timely manner to discuss any issues. Invoices will not be approved until issues have been satisfactorily resolved.

(2) Remit invoice for payment promptly after approving invoices.

(3) Verify final Project completion as appropriate to close out final completion and payment.

3. Reimbursement

a. Invoices and Payments: Recipient shall submit regular Project invoices to the SACOG Program Manager for reimbursement following issuance of the NTP, but shall submit such invoices no more frequently than once a month and no less frequently than once a quarter. Each invoice shall contain a one-page progress report narrative (bullet format acceptable) of work completed to date along with reference to the scope of work, timeline, milestones, and deliverables in Exhibit “B.” Recipient shall clearly identify which of the activities have been performed in the period for which reimbursement is being requested. Recipient may include copies of any deliverables or photographs of physical construction, as applicable, to provide documentation of work completed.

b. Evaluation of Invoices: SACOG will review invoices in the order received from all Program projects. Upon the review of each invoice received, SACOG will evaluate the degree of progress being made in comparison to the scope of work in Exhibit B, and may ask Recipient to provide additional information to support an invoice. SACOG may withhold payment of a full or partial invoice amount if it believes insufficient evidence has been provided to justify the amount requested.

c. Methods of Payment: After the SACOG Program Manager has approved an invoice, it will be submitted to the SACOG Finance Department for processing. Reimbursement will be made within 45 days of invoice approval and will be made by check, unless an electronic fund transfer arrangement has been made in advance.

- d. Retention and Completion: SACOG reserves the right to withhold up to 10% of the awarded amount until it can verify the Project is completed as described in Exhibit “B” and approved by SACOG.

4. **Completion; Termination**

- a. Agreement Expiration Date: All reimbursable expenses must be incurred before July 31, 2013. The expiration date of this Agreement is September 30, 2013, which is the final date for submitting invoices to SACOG, and the date when all projects funded in the 2009-11 Community Design Program funding cycle must be completed. Reimbursement will be made as outlined in Section 1.a. and Section 3.
- b. Extensions: This MOU may be extended by written agreement of the parties, but such written agreement by SACOG may only occur by one of two ways. First, SACOG may agree to an extension in the event that a delay is caused by SACOG, Caltrans or state or federal agencies regarding the funding, programming or regulatory review of this project and such delay is deemed “abnormally longer than usual” by the SACOG/Caltrans Review Team (comprised of staff people from both agencies). Second, SACOG may agree to an extension for any other reason only by direct approval of the SACOG Board of Directors.
- c. Termination by Recipient: The Recipient may terminate this Agreement upon 30 days written notice to SACOG identifying the reason for termination. Within 10 working days of the notice, Recipient shall submit an invoice which shall be paid according to the conditions in Section 3.
- d. Termination by SACOG: Recipient’s failure to perform any material obligation hereunder is a material breach of this Agreement. SACOG shall provide Recipient with written notice of any such failure and specify a reasonable opportunity to cure. If Recipient fails to cure a material breach after SACOG provides written notice thereof and a reasonable opportunity to cure, SACOG may terminate this Agreement upon 10 days written notice to the Recipient identifying the reason for termination. Upon receipt of the notice of termination, Recipient shall immediately cease its own reimbursable activities on the Project and shall give notice to any third party working on the Project to immediately cease its reimbursable activities on the Project. Within 30 working days of receipt of the notice of termination, Recipient shall submit an invoice for work done through the date of termination. Reasons for termination may include, but are not limited to:
 - (1) failure by the Recipient to submit a progress report or invoice for two consecutive quarters after the Notice to Proceed;
 - (2) if the Project falls more than 6 months behind the timeline in Exhibit B and the Recipient fails to timely inform the SACOG Program Manager;or

- (3) the Recipient does not respond in a timely manner to repeated requests by SACOG's Project Manager for information.

Reimbursable funding for the Project shall cease upon the effective date of the termination notice.

5. General Provisions

- a. 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.
- b. Indemnity: Recipient and SACOG are each responsible for its own acts and omissions. Further, each party agrees to indemnify, defend, and hold harmless the other party, its governing body, officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses, including reasonable attorney's fees and costs, damages, and liabilities, resulting from the negligent acts or omissions or willful misconduct of the indemnifying party. The provisions of this Section shall survive the expiration or termination of this Agreement.
- c. Audit; Records: SACOG shall have the right to audit, or have audited by a representative agent, Recipient's use of Project funds. Recipient shall maintain books, records, documents and other evidence (collectively "Records") pertinent to Project work performed under this Agreement in accordance with generally accepted accounting principles and practices for a minimum of three years following completion of the Project. Recipient shall make the Records available to SACOG or its agents upon request.
- d. Notices: All notices required or provided for under this Agreement shall be in writing and delivered in person or by first class U.S. mail, postage prepaid, to the Project Managers identified in Section 1.b.
- e. Integration: This Agreement represents the entire understanding of SACOG and Recipient 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 5.a.
- f. 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.
- g. 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.

- h. 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.
- i. Dispute Resolution: Each party hereto will notify the other party promptly of any matters that may cause disputes arising out of their respective rights and obligations under this Agreement and will make every reasonable effort to settle such disputes by prompt and diligent negotiations. If the parties are unable to resolve the dispute through negotiation, the dispute will be sent to mediation administered by a mediator acceptable to both parties prior to the initiation of legal action, unless delay in initiating legal action would irrevocably prejudice one of the parties. All expenses of the mediation will be borne by the parties equally; however, each party will bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs.

6. Signatories

The following parties are the authorized signatories representing their respective agencies to sign this MOU:

Sacramento Area Council of Governments

(Recipient Agency)

Mike McKeever
Executive Director

(Name)
(CEO title)

Date

Date

Approved as to form:

Miller, Owen & Trost
Legal Counsel to SACOG

Exhibit “A” – Recipient Application for Funding

Exhibit “B” - Scope of Work, Deliverables, Milestones, and Timeline