

Meeting Date: 2/24/2015

Report Type: Consent

Report ID: 2015-00155

Title: Downtown/Riverfront Streetcar Transit Project (S15131800) - Appropriation of Funds and Subrecipient Agreement with SACOG

Location: District 4

Recommendation: Pass a Resolution 1) appropriating \$493,314 from the Fair Share Fund account (Fund 2032) to the Downtown/Riverfront Streetcar project (S15131800); and 2) entering into a Subrecipient Agreement with Sacramento Area Council of Governments (SACOG) for the Downtown/Riverfront Transit Project.

Contact: Fedolia "Sparky" Harris, Principal Planner, (916) 808-2996; Hector Barron, City Traffic Engineer (916) 808-2669, Department of Public Works

Presenter: None

Department: Public Works Department

Division: Transportation Division

Dept ID: 15001911

Attachments:

1-Description/Analysis

2-Background

3-Resolution

4-Contract

City Attorney Review

Approved as to Form
Gerald Hicks
2/18/2015 9:21:15 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 2/9/2015 1:08:45 PM

Description/Analysis

Issue: The owners of the Entertainment and Sports Center contributed \$493,314.30 as mitigation to lessen the cumulative mainline traffic impacts caused by new development located within the I-5 Freeway Corridor. The mitigation fee was collected based upon the square footage of the building permit for the Arena. This funding is intended to be used toward the development of the streetcar project. Appropriation of the funds to the Downtown/Riverfront Streetcar Project (S15131800) is necessary in order to use the funds for the project.

The City needs to enter into a Subrecipient agreement with the Sacramento Area Council of Governments (SACOG) with respect to the funding agreement for the Downtown Riverfront Streetcar Project.

Policy Considerations: The following Sacramento 2030 General Plan policies support the analysis proposed to be completed by the recommendation:

M 1.2.1 Multimodal Choices - The City shall promote development of an integrated, multi-modal transportation system that offers attractive choices among modes including pedestrian-ways, public transportation, roadways, bikeways, rail, waterways, and aviation and reduces air pollution and greenhouse gas emissions.

M 3.1.3 Variety of Transit Types - The City shall consider a variety of transit types including high speed rail, inter-city rail, regional rail, light rail transit, bus rapid transit, trolleys (streetcars), enhanced buses, express buses, local buses, neighborhood shuttles, pedi-cabs, and jitneys to meet the needs of residents, workers, and visitors.

M 3.1.14 Streetcar Facilities - The City shall support the development of streetcar lines in the Central City and other multi-modal districts.

The action requested is also consistent with the City's Strategic Plan goal to make Sacramento a safer place for residents, businesses and visitors.

The action requested is also consistent with Goal #1 of the City's 2013 Economic Development Strategy, specifically Action 1.13: Continue planning, outreach and design efforts with partner agencies for the Downtown/Riverfront Streetcar Project in order to pursue funding and construction of this West Sacramento to Downtown and Midtown connector.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): California Environmental Quality Act (CEQA): Appropriation of funds are not subject to the provisions of CEQA under the general rule (Section 15061) in that CEQA only applies to projects that have the potential for causing a significant effect on the environment. The requested action is not a project under CEQA. Future projects funded with these revenues will be subject to individual CEQA review.

Sustainability Considerations: The recommended action supports the Climate Action Plan goal to create a connected multi-modal transportation network that increases the use of sustainable modes of transportation (e.g., walking, biking, transit) and reduces dependence on automobiles.

Rationale for Recommendation: The Downtown/Riverfront Streetcar is an eligible project in the Subregional Improvement Plan and funds were contributed as mitigation for the Entertainment and Sports Complex (ESC) with the intent of funding further development of the Streetcar project. Execution of an Agreement with SACOG is necessary to advance the project.

Financial Considerations: The Downtown/Riverfront Streetcar Project (S15131800) has a total budget of \$1,538,750 as of February 5, 2015. Appropriation of \$493,313 (Fund 2032) will bring the total budget to \$2,032,063, allowing the City to meet its current funding commitments toward the Streetcar project.

Local Business Enterprise (LBE): Not applicable as any goods or services will be purchased by another agency under federal procurement requirements.

Background

In May of 2006, a Memorandum of Understanding (MOU) was approved which established a working relationships among the City of Sacramento, the City of West Sacramento, Regional Transit and the Yolo County Transit District (the "Parties") to promote streetcar service between downtown Sacramento and West Sacramento. The Parties completed a feasibility study, conceptual engineering and environmental analysis for a rail transit project from downtown Sacramento to the City of West Sacramento. The MOU expired in 2008.

A revised MOU was approved in 2009 to continue work on the Downtown/Riverfront Streetcar Project, to extend the term of the partnership, and to outline the roles and responsibilities of each Local Agency. Another revision to the MOU was approved by Council on September 27, 2012 to extend the term of the previous MOU and to make minor modifications to the voting structure and quorum requirements for the Policy Steering Committee established by the MOU and to add the Sacramento Area Council of Governments (SACOG) as the Project Manager.

An appropriation of \$38,750 from the Transportation Systems Management Fund (Fund 2012) was made in 2012 to cover staff time and expenses associated with the work being performed by the Project Management Team. The Policy Steering Committee (PSC) was made aware of the project schedule necessary to begin collecting revenue in late 2017 as well as the budget necessary to complete Project Development. The PSC was advised that \$13-15 million would be necessary to get the project through project development. That number has been revised down due to the ability to shift approximately \$3 million for vehicle procurement out of project development and into a separate vehicle procurement process reducing the project development cost estimate to \$12,000,000. The share of project development expenses for City of Sacramento was set at \$2,000,000.

An appropriation of \$1,500,000 from the Sheraton MOPA Project Fund (Fund 2030) was approved in 2014 bringing the City's commitment total to \$1,538,750 leaving a balance of \$461,250 to be appropriated.

SACOG submitted a letter of intent to begin Project Development with the Federal Transit Administration (FTA) with \$11.6 million identified by the Participating Agencies to complete the project development work. SACOG was informed by the FTA on May 1, 2014, that the Downtown Riverfront Streetcar Project ("Project") was successful in providing information sufficient to enter the Project Development Phase.

A Subrecipient Agreement with SACOG is necessary to document the availability of City funding in the amount of \$2,000,000 to FTA.

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROPRIATION OF FUNDS FOR FOR THE DOWNTOWN/RIVERFRONT STREETCAR TRANSIT PROJECT (S15131800) AND EXECUTION OF SUBRECIPIENT AGREEMENT WITH THE SACRAMENTO AREA COUNCIL OF GOVERNMENTS

BACKGROUND

- A. The City has been working in cooperation with the City of West Sacramento, the Sacramento Regional Transit, the Yolo County Transportation District, and the Sacramento Area Council of Governments to complete the engineering, environmental analysis, and special studies necessary to seek grant funding through the Federal Transit Administration (FTA) to help fund the Downtown/Riverfront Streetcar Starter Line.
- B. The City, Sacramento Area Council of Governments (SACOG), and other participating agencies adopted Downtown/Riverfront Transit Project Underlying Principles and Roles and Responsibilities;
- C. One of the goals of the Principles was for the participating agencies to work together to submit a Federal Transit Administration (FTA) funding application;
- D. A Subrecipient Agreement is needed to document the availability of City funding toward project completion to FTA.
- E. As a mitigation requirement, the Entertainment and Sports Complex (ESC) paid \$493,314.30 when the building permit for the Arena was issued in November 2014.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The FY 14/15 Capital Improvement Program budget is amended by appropriating \$493,314 from the Fair Share Fund account (Fund 2032) to the Downtown/Riverfront Streetcar Transit Project (S15131800) for the purposes of funding the Transit Federal Funding Small Starts Grant application.

Section 2. The City Manager or his designee is authorized to sign a Subrecipient Agreement with the Sacramento Area Council of Governments for the Downtown/Riverfront Transit Project.

**CITY OF SACRAMENTO
SUBRECIPIENT AGREEMENT
with**

**the Sacramento Area Council of Governments
for the Downtown/Riverfront Transit Project**

THIS SUBRECIPIENT AGREEMENT is made and entered into effective May 30, 2014, by and between **CITY OF SACRAMENTO**, a political subdivision of the State of California (“City”) and the **SACRAMENTO AREA COUNCIL OF GOVERNMENTS**, a California joint powers agency (“Subrecipient”).

WHEREAS, City, Subrecipient and other Participating Agencies adopted “Downtown/Riverfront Transit Project Underlying Principles and Roles & Responsibilities (“Principles”); and

WHEREAS, one of the goals of the Principles was for the Participating Agencies to work together to submit a Federal Transit Administration (“FTA”) funding application; and

WHEREAS, Sacramento City Council approved a resolution on February 25, 2015 to appropriate \$1,500,000 from the Sheraton Master Owner Participation Agreement (“MOPA”) Project Fund (Fund 2030) to the Project; and

WHEREAS, City intends to commit \$500,000 in mid-2014 from fees collected via the development agreement between the City and the Entertainment and Sports Complex (“ESC”) developers towards the Project; and

WHEREAS, Subrecipient has submitted a letter of intent to begin Project Development with the Federal Transit Administration (FTA) with \$11.6 million identified by the Participating Agencies to complete the project development work including a pledge of \$2,000,000 from City; and

WHEREAS, Subrecipient was informed by the FTA on May 1, 2014 that the Downtown Riverfront Streetcar Project (“Project”) was successful in providing information sufficient to enter the Project Development Phase; and

WHEREAS, the parties wish to enter into this Subrecipient Agreement (“Agreement”) to document the availability of City funding in the amount of \$2,000,000 for Subrecipient appropriation to be used exclusively for the completion of Project Development associated with the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Scope of Work: Subrecipient shall utilize the funding exclusively for tasks associated with the completion of Project Development for the Project.

2. Time of Performance:

- a. Subrecipient will continue work with Participating Agencies 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.
- b. All work will be completed and this Agreement will expire on December 31, 2015, unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties, which written agreement is subject to approval by the FTA, FHWA, Caltrans, or any other federal or state agency having jurisdiction.

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, 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 \$2,000,000. In no instance will City be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs.

- f. 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.”
- g. 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 City.
- h. 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.

5. 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 City. Subrecipient, its officers, employees, agents, and subcontractors, if any, will have no power to bind or commit City 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.

6. Termination:

- a. Either party may terminate this Agreement for any reason, with or without cause, at any time, by giving the other party 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 either party issues a notice of termination, Subrecipient will reimburse City 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 City is unable to make required payments. In such event, Subrecipient will provide City 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 City at the address indicated in Section 16. City 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.

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

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

9. Time: Time is of the essence in the performance of this Agreement.

10. 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.

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

- a. City 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 City 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) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 28.

12. Indemnity: Contractor specifically agrees to indemnify, defend, and hold harmless City, its directors, officers, members, agents, and employees (collectively the “Indemnitees”) from and against any and all actions, claims, demands, losses, costs, expenses, including reasonable attorneys’ fees and costs, damages, and liabilities (collectively “Losses”) arising out of or in any way connected with the performance of this Agreement, excepting only Losses caused by the sole, active negligence or willful misconduct of an Indemnitee. Contractor shall pay all costs and expenses that may be incurred by City in

enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

13. Audit, Retention and Inspection of Records:

- a. City 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 City or its designee with any relevant information requested and will permit City 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 City upon expiration of this Agreement, the Subrecipient will cause all Records relevant to the Scope of Work to be delivered to City as depository.

14. Project Managers: Subrecipient's Project Manager for this Agreement is Kirk Trost, 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 Subrecipient Project Manager at the following address:

Kirk Trost
Sacramento Area Council of Governments
1415 L Street, Suite 300
Sacramento, California 95814
Telephone: (916) 340-9000

City's Project Managers for this Agreement is Fedolia Harris and Denise Malvetti. No substitution of City's project managers is permitted without prior written agreement by City, 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:

Fedolia Harris
915 I Street, 2nd Floor
Sacramento, CA 95814
Telephone: (916) 808-2996

Denise Malvetti
915 I Street, 2nd Floor
Sacramento, CA 95814
Telephone: (916) 808-7064

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

16. 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 City 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 City to enforce these provisions.

17. Litigation: Subrecipient will notify City immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or City, 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 City.

18. Americans with Disabilities Act (ADA) of 1990: By signing this Agreement, Subrecipient assures City 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.

19. Compliance with Non-discrimination and Equal Employment Opportunity Laws:

It is City's policy to comply with state and federal laws and regulations including Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990 (ADA) and other federal discrimination laws and regulations, as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act, and other California State discrimination laws and regulations. City does not discriminate on the basis of race, color, sex, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, sexual orientation or gender identity in conducting its business. City prohibits discrimination by its employees, subrecipients, contractors and consultants.

Subrecipient assures City that it complies with, and that Subrecipient will require that its contractors and subcontractors comply with, the following non-discrimination and equal opportunity laws. Any failure by Subrecipient to comply with these provisions shall constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City may deem appropriate.

- a. Subrecipient and its contractors and subcontractors shall comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., with U.S. D.O.T. regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. Part 21, and with any applicable implementing federal directives that may be issued.
- b. Subrecipient and its contractors and subcontractors shall comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. §§ 2000e, implementing federal regulations, and any applicable implementing federal directives that may be issued. Subrecipient and its contractors and

subcontractors shall ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.

- c. Subrecipient and its contractors and 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 contractors and 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 and subcontractors will comply with all applicable federal and state employment laws and regulations including, without limitation, the provisions of the California 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 and subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- d. Subrecipient and its contractors will include the non-discrimination and equal employment opportunity provisions of this section (provisions a. through c. above) in all contracts to perform work funded under this Agreement.

20. 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.

21. Union Organizing: By signing this Agreement, Subrecipient hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

- a. Subrecipient will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
- b. Subrecipient will not meet with employees or supervisors on City or state property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.

22. 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.

23. 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.

24. 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.

25. Debarment Responsibilities: 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.

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 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.

28. 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.

29. 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.

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; 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.

33. 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.

34. 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.

35. 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.

36. Press Releases: Each party will obtain other party's prior written approval of any press releases, or other public outreach materials, that include any reference to such other party or such other party's logo.

37. FFATA Requirements: Subrecipient agrees that it will comply with the requirements of the Federal Funding Accountability and Transparency Act (FFATA), including U.S. OMB guidance, "Reporting Subaward and Executive Compensation Information," 2 C.F.R. Part 170, [75 Fed. Reg. 55670 - 55671, September 14, 2010]. Subrecipient's compliance shall include the reporting, record retention, and access requirements set forth in Exhibit "E," attached hereto and incorporated herein.

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

**SACRAMENTO AREA COUNCIL
OF GOVERNMENTS**

CITY OF SACRAMENTO

MIKE McKEEVER
Chief Executive Officer

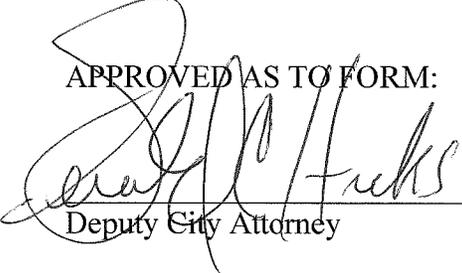
JERRY WAY
Director of Public Works

For:
JOHN SHIREY
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

MILLER & OWEN
Legal Counsel to SACOG



Deputy City Attorney

RECOMMENDED BY:

Kirk Trost
Chief Operating Officer/Chief Legal Counsel

EXHIBIT A

SCOPE OF WORK

The cities of Sacramento and West Sacramento have worked cooperatively with Sacramento Regional Transit District (RT) and the Yolo County Transportation District (YCTD) since 2006 to complete the preliminary concept for a streetcar line linking the two cities across the Sacramento River. This work has also been done in partnership with Sacramento Area Council of Governments (SACOG) and the California Department of Transportation (Caltrans). The 3.3-mile initial line that was identified extends from the West Sacramento Civic Center to the Midtown entertainment and retail district in the City of Sacramento. On March 21, 2014, SACOG requested entry into Project Development (PD) phase under FTAs Small Starts program. On May 1, 2014 FTA authorized entry into the PD phase.

Based upon the advancement of the preliminary engineering activities associated with the completion of the environmental studies the PD phase will include: Update of the project cost estimate, preliminary engineering and final design. Critical information needed for the update of the cost estimates will include utility analysis, traction power and substations requirements, railroad signaling requirements, CPUC coordination, master planning and conceptual building design for vehicle maintenance and storage facility, station amenities and fare collection system design.

Other work will consist of development of a financing plan which will identify available state and local funding resources; create a capital project budget and analyze appropriate finance structures for the Streetcar Project; establish the governance structure and prepare a Project Management Plan. The work will be completed in coordination with partner agencies along with a comprehensive outreach program. The outreach program will Plan and promote public participation and disseminate pertinent information regarding the Project. It also will include liaison services between the community, involved agencies, the Project Management Team, consultants, contractors, and all other stakeholders.

SACOG Staff Work

Since April 2012, SACOG has been the overall project manager and sponsoring agency for the Downtown-Riverfront Transit (Streetcar) Project.

Key activities include, but are not limited, to the following:

- Complete the Subrecipient Agreements for the project with the four participating agencies (City of Sacramento, City of West Sacramento, Sacramento Regional Transit District, and Yolo County Transportation District). Each of these agencies actively serve on a Project Management Team, along with Caltrans that serves in an ex-officio member capacity;
- Facilitate the quarterly Policy Steering Committee (PSC) meetings and bi-weekly Project Management Team (PMT) meetings;
- Prepare agenda packets for the PSC meetings in coordination with the prime consultant;
- Serve as the primary liaison with FTA for environmental coordination , grant management activities and the preparation of quarterly progress reports;

- Serve as the administrative lead for activities with the SACOG Board, including contract preparations and execution, and amendments to administrative documents including the Metropolitan Transportation Improvement Program (MTIP) and Overall Work Program (OWP);
- Serve as the primary point of contact for media inquiries and support for information requests regarding the Project to public officials and general stakeholders.
- Serve as the primary point of contact for funding negotiations with the State of California and Sacramento County.

Overall Project Budget

The current budget available for the Project is \$11,570,000, which is comprised of \$5,000,000 in federal funds and \$6,700,000 in local funds which exceeds the 11.47% federal funds match requirement. Three of the Participating Agencies provide the local match in the following amounts: City of West Sacramento: \$3,000,000; City of Sacramento: \$2,000,000 and Sacramento Regional Transit District \$1,570,000.

In the event that the cost to complete the project development phase increases, amendments to this document will be required to address the funding of such project work. Sponsoring and Participating Agencies will be partially compensated for staff time spent on technical and professional service roles. The compensation for the overall administrative responsibilities shall not exceed 10% of the total