

**RESOLUTION NO. 2009-259**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF  
UNDERSTANDING BETWEEN THE CITY OF ELK GROVE AND THE SACRAMENTO  
MUNICIPAL UTILITIES DISTRICT REGARDING THE PROPOSED STATE ENERGY  
PROGRAM APPLICATION**

**WHEREAS**, on December 9, 2009, the City Council of the City of Elk Grove adopted Resolution No. 2009-258 authorizing the Sacramento Municipal Utilities District ("SMUD") to apply for and accept funding from the California Energy Commission's (the "CEC") State Energy Program (the "SEP") funding on behalf of the City and Resolution No. 2009-261 authorizing the Mayor to sign a letter of commitment to SMUD's application to the CEC; and

**WHEREAS**, SMUD has made the determination that CEC requires all supporting entities to enter into a Memorandum of Understanding (the "MOU") with the lead agency on any SEP application;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the MOU attached hereto as Exhibit A.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 9<sup>th</sup> day of December 2009.



PATRICK HUME, MAYOR of the  
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

## EXHIBIT A

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, entered into and made effective on this 9<sup>th</sup> day of December, 2009, by and between Sacramento Municipal Utility District, with principal offices located at 6201 S Street, Sacramento CA 95817 ("Prime Contractor") and The City of Elk Grove, with principal offices located at 8401 Laguna Palms Way, Elk Grove, CA 95758 ("Team Member") (each a "Party" and, collectively, the "Parties"), states the nature and extent of the agreement between the Parties to develop and submit a proposal to the California Energy Commission (hereinafter referred to as the "Agency") in response to Solicitation No. 400-09-403 ("Solicitation") for the California Comprehensive Building Retrofit Program ("Program").

**WHEREAS**, Prime Contractor intends to submit a proposal in response to the Solicitation ("Proposal") as Prime Contractor to the Agency for the Program, and Team Member desires to participate with Prime Contractor as a Team Member in the Proposal submittal;

**WHEREAS**, Team Member shall contribute leveraged funds and in-kind support in regard to the Program which would be valuable to the Program within those areas identified below;

#### **Rebate Support**

Contribution from EECBG for performance-based rebates

#### **2 Year Value**

\$75,000

#### **Marketing Support**

Link to HP web portal from The City of Elk Grove website

Inclusion in utility bill package twice/year for two years

Direct mail to residents once/year for two years

#### **Other Support**

Distribution of brochures at public meetings in conjunction with preparation of:

Climate Action Plan

Sustainability General Plan Element

**WHEREAS**, Team Member desires to contribute its expertise to the development of the Proposal;

**WHEREAS**, Prime Contractor desires to engage Team Member under the anticipated Prime Contract ("Prime Contract") for the Program, and Team Member intends to accept such engagement under a Cooperative Agreement ("Cooperative Agreement") following all OMB and 10 CFR 600 requirements, as applicable, and any Terms and Conditions flowed down to the Prime to fulfill commitments of the American Recovery and Reinvestment Act if the Proposal for the Program is accepted by the Agency and a Prime Contract is awarded to Prime Contractor as a consequence of the Proposal;

**NOW, THEREFORE BE IT RESOLVED** that, in consideration of the mutual promises set forth, Prime Contractor and Team Member agree as follows:

1. Proposal Activities. Prime Contractor shall be responsible for overall Proposal and Program management. Prime Contractor shall prepare and submit the Proposal, which incorporates a supporting contribution from Team Member responsive to the requirements of the Solicitation.

- a. Each Party shall bear all expenses which it incurs in connection with the Proposal and Cooperative Agreement Proposal, any negotiations which may follow, and all other efforts under this Memorandum of Understanding. Neither Party shall have any right to reimbursement or compensation of any kind from the other in connection with this Memorandum of Understanding and the activities pursued thereunder.
- b. Each Party agrees to use its best efforts to cause a Prime Contract to be awarded to the Prime Contractor as a consequence of the Proposal.
- c. Team Member agrees to provide to the Prime Contractor Proposal development support as outlined herein and further agrees that it will not support or otherwise participate in the development of a proposal of any other offeror with respect to the Solicitation without notifying the Prime Contractor.
- d. Prime Contractor agrees not to use any other Team Member for the work described herein.

2. Award of Prime Contract and Cooperative Agreement. If a Prime Contract is awarded to the Prime Contractor as a consequence of the Proposal submitted to the Agency, the Prime Contractor shall award the Team Member a Cooperative Agreement in accordance with this Agreement which Cooperative Agreement shall contain such other terms and conditions as are (1) required by the Agency and (2) mutually agreeable to the Parties. In that regard, it is agreed that all applicable clauses required by the Prime Contract and applicable laws and regulations shall be included in any such Cooperative Agreement. If prior consent to or approval of the Cooperative Agreement is required by the Agency, the Prime Contractor shall exert its best efforts to secure such approval.

The Cooperative Agreement shall provide that the Prime Contractor shall direct, supervise and manage the activities of the Team Member, that the Team Member shall report to the Prime Contractor, and that the Team Member shall communicate with and deliver its performance to the Agency through the Prime Contractor.

3. Scope of Agreement. This Memorandum of Understanding shall relate only to the Solicitation, and nothing herein shall be deemed to:

- a. Confer any right or impose any obligation or restriction on either Party with respect to any other program effort or marketing activity at any time undertaken by either Party which does not pertain to the Solicitation; or
- b. Preclude either Party from independently soliciting or accepting any prime contract or Cooperative Agreement not resulting from the Solicitation; or
- c. Limit the rights of either Party to independently promote, market, sell, lease, license, or otherwise dispose of its standard products or services apart from the Solicitation.

4. Confidential Information. During the term of this Memorandum of Understanding, the Prime Contractor and Team Member may exchange Confidential Information as is required for each to perform its obligations hereunder. To ensure the ability of the Parties to maintain the confidential nature of such information, the Parties shall execute a Non-Disclosure Agreement which is attached hereto as Attachment A, and incorporated herein by this reference.

If this Proposal effort is unsuccessful, the receiving Party shall return the disclosing Party's Confidential Information to the disclosing Party no later than within 60 days of the award notice or final result under any protest of the award, whichever is later, including continuation of the procurement process as a result of a protest. If this Memorandum of Understanding terminates for any other reason, the receiving Party shall return the disclosing Party's Confidential Information to the disclosing Party no later than within sixty (60) days after the effective date of termination.

5. Inventions, Patents, and Copyrights. Except for such rights as may accrue to the Agency under the terms of the Solicitation, all know-how, inventions, trademarks, patents and copyrights ("Intellectual Property") resulting solely from work of employees or contractors, as the case may be, of the Prime Contractor shall belong exclusively to the Prime Contractor, and all Intellectual Property resulting solely from work of employees or contractors, as the case may be, of the Team Member shall belong solely to Team Member. Except as provided in this paragraph or as set forth in paragraph 4 hereof, nothing contained in this Memorandum of Understanding shall be deemed, by implication, estoppel, or otherwise, to grant any right or license to Team Member in respect of any Intellectual Property owned by Prime Contractor, or to Prime Contractor in Intellectual Property owned by Team Member. Prime Contractor and Team Member shall jointly own Intellectual Property developed under the Prime Contract, consistent with the terms of the Solicitation and the Prime Contract.

6. Relationship of the Parties. This Memorandum of Understanding does not constitute, create, or give effect to a partnership, joint venture, affiliation, or any

agency between the Parties. The rights and obligations of the Parties shall be limited to those expressly set forth herein. Neither Party is the agent of the other and neither may bind the other except as required by the proposal listed herein for the purpose of committing resources to the Project.

7. **Applicable Law.** Each Party shall comply with all applicable federal, state or local laws, regulations, or ordinances in effect or hereafter adopted. This Memorandum of Understanding shall be governed by and construed and interpreted in accordance with the substantive laws of the State of California.

8. **Assignment.** This Memorandum of Understanding or any interest herein shall not be transferred or assigned, in whole or in part, by either Party without the prior written consent of the other.

9. **Term and Termination.** Except as expressly provided in paragraph 4 hereof, this Memorandum of Understanding and all rights, duties, and obligations provided for herein shall automatically terminate without any further action of either Party upon the earliest occurrence of any of the following:

- a. Written notice from the Agency that the Solicitation has been cancelled or, the award of a prime contract under the Solicitation to a Party other than the Prime Contractor;
- b. Written agreement of both Parties to terminate this Memorandum of Understanding;
- c. Execution of a Cooperative Agreement between the Parties;
- d. Refusal of the Agency to approve Team Member as a Team Member to Prime Contractor for the Solicitation, provided that the Prime Contractor did nothing to effect such a result and made its best efforts to have the Team Member approved as a Team Member; or

10. **Severability.** In the event any portion of this Memorandum of Understanding is deemed invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining portions of this Memorandum of Understanding shall remain in full force and effect.

11. **Changes.** No modification or amendment to this Memorandum of Understanding shall be binding upon the Parties unless made in writing and signed by a duly authorized official of both Parties. In the event of a conflict between this Memorandum of Understanding and either the Prime Contract and/or the Cooperative Agreement, the Prime Contract shall take first precedence followed by the Cooperative Agreement.

12. **Notices.** Any notice or other writing required or permitted by this Memorandum of Understanding shall be deemed to have been sufficiently given either when personally delivered or mailed by certified or registered United

States mail with postage prepaid to the individual representatives and addresses of the Parties specified herein. The individuals designated below shall, unless and until otherwise specified in writing by another authorized representative of the Party, be the only individuals eligible to receive any and all written notices under this Memorandum of Understanding:

For Prime Contractor:  
Name: Ali Crawford  
Address: 6301 S Street  
Sacramento, CA 95718

Telephone: (916) 732-5676

For Team Member:  
Name: Laura S. Gill  
Address: 8401 Laguna Palms  
Way  
Elk Grove, CA 95758  
Telephone: (916) 683-7111

13. Disputes. Disputes under this Memorandum of Understanding shall be first resolved by attempted negotiation at the highest executive levels between the Parties. In the event such executive negotiation is unsuccessful, the dispute or disputes may be resolved by resort to a court of competent jurisdiction applicable to the Parties. Enforcement may include the remedies of injunctive relief, specific performance and monetary damages, in addition to such other relief as the court may order. Additional remedies and dispute resolution procedures may be included in the Cooperative Agreement and/or Prime Contract.

14. Entire Agreement. This Memorandum of Understanding constitutes the entire, complete, final understanding and agreement between the Parties concerning the Solicitation and supersedes any previous understandings, commitments, or agreements, oral or written. Each Party covenants that there is no agreement between itself and any other person, firm, or corporation which would impair the full force and effect of this Memorandum of Understanding.

15. Termination for Convenience. Any termination for convenience in the Prime Contract will be amended, at a minimum, to apply only if the Prime Contract is terminated.

**IN WITNESS WHEREOF**, the Parties hereto have, through duly authorized representatives, executed this Memorandum of Understanding effective as of the day and year indicated in the preamble.

**IN WITNESS WHEREOF**, the parties have caused this MOU to be executed by their duly authorized representatives as of the date set forth below.

**PRIME CONTRACTOR**

**TEAM MEMBER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Laura S. Gill

Title: \_\_\_\_\_

Title: City Manager, City of Elk Grove

Date: \_\_\_\_\_

Date: December 9, 2009

**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2009-259**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )


*I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 9, 2009 by the following vote:*

**AYES :**        **COUNCILMEMBERS:**     *Hume, Scherman, Cooper, Davis, Detrick*

**NOES:**       **COUNCILMEMBERS:**     *None*

**ABSTAIN :**   **COUNCILMEMBERS:**     *None*

**ABSENT:**    **COUNCILMEMBERS:**     *None*



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**Susan J. Blackston, City Clerk  
City of Elk Grove, California**