

**RESOLUTION NO. 2010-88**

**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 USE OF ENERGY EFFICIENCY  
AND CONSERVATION BLOCK GRANT FUNDS SUB-GRANTED TO ENHANCE THE  
SACRAMENTO REGIONAL ENERGY ALLIANCE**

**WHEREAS**, on February 17, 2009, the Federal government signed into law the Federal American Recovery and Reinvestment Act authorizing the Department of Energy (DOE) to grant Energy Efficiency and Conservation Block Grants (EECBG) to local municipalities; and

**WHEREAS**, the City was awarded \$1,160,800 in EECBG funds by adopting Resolution No. 2009-109, and the City Council of the City of Elk Grove authorized staff to pursue EECBG funds for, and award a sub-grant of \$100,000 to Sacramento Municipal Utilities District (SMUD), for the implementation of the Sacramento Regional Energy Alliance (SREA) to promote the energy efficiency and conservation goals of the City, the State of California, the DOE, SMUD and the Sacramento Region; and


**WHEREAS**, the City reallocated a portion of SREA's sub-grant towards the CaliforniaFirst statewide AB 811 program through Resolution No. 2009-256, leaving a total of \$75,000 sub-granted directly to SMUD for SREA purposes.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the a Memorandum of Understanding with the Sacramento Municipal Utilities District regarding the use of Energy Efficiency and Conservation Block Grant funds sub-granted to enhance the Sacramento Regional Energy Alliance attached hereto as Exhibit A.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 12<sup>th</sup> day of May 2010.

  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:

  
SUSAN COCHRAN, CITY ATTORNEY

**EXIHIBIT A**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF ELK GROVE  
AND  
SACRAMENTO MUNICIPAL UTILITY DISTRICT  
FOR SUBGRANT OF EECBG FUNDS**

This Memorandum of Understanding (“MOU”), entered into and made effective on this \_\_\_\_ day of \_\_\_\_\_, 2010 (“Effective Date”), by and between The City of Elk Grove (the “City”), and Sacramento Municipal Utility District (“SMUD”), with principal offices located at 8401 Laguna Palms Way, Elk Grove, CA 95758 (each a “Party” and, collectively, the “Parties”), states the nature and extent of the agreement between the Parties.

**1. GRANT PURPOSE**

The City, as recipient of Energy Efficiency and Conservation Block Grant (EECBG) funds provided by federal grant agreement funding number DE-SC0003095, will sub award SMUD \$75,000 in EECBG funds for the purpose of SMUD using those funds to provide energy efficiency performance-based rebates to City residents.

**2. SCOPE OF PROGRAM**

The EECBG sub award funds will be used to provide energy efficiency rebates for residential electrical customers of SMUD within the City’s jurisdiction. Specifically, funding will be used to provide customer rebates for the SMUD Home Performance Program (the “Program”) for both the performance and prescriptive levels to promote measurable and deep energy savings through investment in envelope and system improvements.

SMUD will implement the Program designed to promote deep energy efficiency retrofits in existing residential buildings. As part of the Program, SMUD will develop a prescriptive level. This level will improve the quality of specialty contractor work and the performance of a home’s envelope with measures such as the following: air sealing, weather stripping, attic insulation, hot water system insulation and carbon monoxide/smoke alarm. Customers will receive an estimated \$500 incentive for participation at this level. A licensed specialty contractor trained in envelope and combustion safety, hired by the homeowner, will conduct a blower door test, install the measures and perform a combustion safety test. A Home Energy Rating System Phase I (HERSI) auditor will verify that measures which require third party verification as per Title 24 were done properly. SMUD’s Administrator will also QA 15% of these installations. In the event of any deficiency, the contractor will remedy the situation at their cost.

In addition to a prescriptive level covering envelope improvements, Home Performance will promote a performance level including consultant and contractor Home Performance with ENERGY STAR (HPwES) models. The performance level will cover envelope and systems improvements: air sealing, weather stripping, attic insulation, hot water system insulation, carbon monoxide/smoke alarm and/or thermal barrier, ducts, wall and floor insulation, air conditioner, furnace, water heater, cool roof, radiant barrier, windows, watersense toilets, showerheads, landscape irrigation, etc. Customers will receive a performance-based incentive for participation at this level (average incentive is estimated to be \$2,750; customers will get existing incentives until HERSII ratings are available). A HERSII auditor or a Building Performance Institute (BPI) trained contractor will conduct the home diagnostic test in. In the case of the HERSII, consultant model, specialty contractors chosen by the home owner will do the work, and the auditor will come back to do the home diagnostic test out and provide a rating that will be used to set the incentive level.

SMUD shall comply with all terms and conditions of the EEBCG funds as outlined in Attachment A – Special Terms and Conditions. SMUD shall also provide all necessary information for the purpose of complying with the reporting requirements for the American Recovery and Reinvestment Act of 2009.

### **3. TERM OF MOU**

**The term of the MOU shall commence on the Effective Date and shall expire on November 3, 2012, unless extended in by mutual written agreement of the parties or terminated in accordance with the terms of this MOU. In accordance with EEBCG requirements, SMUD shall obligate the funds by May 3, 2011 and fully expend the funds by November 3, 2012, unless extended by mutual written agreement of the parties.**

### **4. INDEMNIFICATION**

SMUD, by execution of this MOU, specifically agrees to assume the defense of, indemnify and hold harmless, the City, its officers, employees, and agents from and against all actions, damages, claims, penalties, losses, or expenses of every type and description which they may incur or be subjected to, arising out of or related in any way to the acquisition or use of the EEBCG funds or the performance of this MOU, and excepting only such loss, expense, attorney fees or claims of injury or damage as may be caused by the intentional acts or gross negligence of the City.

### **5. INSURANCE**

During the entire term of this MOU, SMUD shall maintain the insurance coverage described in this Section 5.

Full compensation for all premiums that SMUD is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by SMUD under this MOU. No additional compensation will be provided for SMUD's insurance premiums.

It is understood and agreed by SMUD that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by SMUD in connection with this MOU.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of SMUD.

No automobile liability insurance shall be required if SMUD completes the following certification:

“I certify that a motor vehicle will not be used in the performance of any work or services under this MOU.” \_\_\_\_\_ (SMUD initials)

- (3) Workers’ Compensation Insurance with statutory limits, and Employers’ Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker’s Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the City by selecting the option below:

\_\_\_\_\_ Workers’ Compensation waiver of subrogation in favor of the City is required for all work performed by SMUD.

No Workers’ Compensation insurance shall be required if SMUD completes the following certification:

“I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers’ Compensation insurance.” \_\_\_\_\_ (SMUD initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of SMUD, products and completed operations of SMUD, and premises owned, leased or used by SMUD. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the City by selecting the option below:

\_\_\_\_\_ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) SMUD's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of SMUD's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- (3) Coverage shall state that SMUD's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the City Risk Management Division in writing prior to execution of this MOU.

E. Verification of Coverage

- (1) SMUD shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative named in Exhibit A. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The City may withdraw its offer of contract or cancel this MOU if the certificates of insurance and endorsements required have not been provided prior to execution of this MOU. The City may withhold payments to SMUD and/or cancel the MOU if the insurance is canceled or SMUD otherwise ceases to be insured as required herein.

F. Subcontractors

SMUD shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

**6. FORCE MAJEURE**

Any delay or failure of either party to perform its obligations shall be excused if SMUD is unable to deliver, as the result of an event or occurrence beyond the reasonable control of SMUD and without SMUD's fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than 10 days thereafter). During the period of such delay or failure to perform by SMUD, the City, at its option, may purchase goods and services from other sources and reduce its schedules to SMUD by such quantities, without liability to SMUD, or have SMUD provide the goods and services from other sources in quantities and at times requested by the City of Elk Grove, and at the price set forth in this MOU. If requested by the City, SMUD shall, within 10 days, provide adequate assurances that the delay shall not exceed 30 days. If the delay lasts more than 30 days or SMUD does not provide adequate assurance that the delay will cease within 30 days, either party may immediately terminate this MOU without liability.

**7. TERMINATION FOR BREACH OR NONPERFORMANCE; SALE OF ASSETS OR CHANGE IN CONTROL**

The Parties recognize that this MOU is for distribution of block grants pursuant to a Federal Government agreement. The City reserves the right to terminate all or any part of this MOU, without liability to SMUD, if SMUD: (a) repudiates or breaches any of the terms of this MOU,

including SMUD's warranties; (b) fails to perform services or deliver goods as specified by the City; (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods; and does not correct such failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from the City specifying such failure or breach. In addition, the City may terminate this MOU upon giving at least 60 business days notice to SMUD, without liability to SMUD, if SMUD (i) sells, or offers to sell, a material portion of its assets, or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock that effects a change in the control of SMUD. Both Parties hereby agree to make themselves available to discuss a remedy to the alleged breach.

## **8. TERMINATION FOR CONVENIENCE**

Either party to this MOU may terminate this MOU upon sixty (60) business days prior written notice of such termination. In the event of such termination, the parties shall cease work hereunder as requested in said notice and each shall prepare and invoice the other, as applicable for costs and recoverable expenses incurred in the performance of that party's obligations hereunder as provided by the payment terms and conditions set forth elsewhere herein. However, each party agrees to waive any and all claims for damage, including indirect and consequential damages and loss of anticipated profit that may result from termination under this provision.

## **9. CONFIDENTIAL INFORMATION**

9.1 All proprietary and other information received from SMUD by City, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to SMUD of any request for the disclosure of such information. SMUD shall then have five (5) days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. SMUD shall have sole responsibility for defense of the actual "trade secret" designation of such information.

9.2 The parties understand and agree that any failure by SMUD to respond to the notice provided by City and/or to enter into an agreement with City, in accordance with the provisions of subsection 7.1, above, shall constitute a complete waiver by SMUD of any rights regarding the information designated "trade secret" by SMUD, and such information shall be disclosed by City pursuant to applicable procedures required by the Public Records Act.

## **10. INDEMNIFICATION**

If SMUD performs any work on City's premises or uses the property of the City, whether on or off the City's premises, SMUD shall indemnify and hold the City harmless from and against any liability, claims, demands or expenses (including attorney's and other professional fees) for

damages to the property of or injuries (including death) to the City, its employees or any other person arising from or in connection with SMUD's performance of work or use of City property, except for such liability, claim, or demand arising out of the sole negligence of City.

If City performs any work on SMUD's premises or uses the property of SMUD, whether on or off SMUD's premises, City shall indemnify and hold SMUD harmless from and against any liability, claims, demands or expenses (including attorney's and other professional fees) for damages to the property of or injuries (including death) to SMUD, its employees or any other person arising from or in connection with City's performance of work or use of SMUD's property, except for such liability, claim, or demand arising out of the sole negligence of SMUD.

#### **11. PROPERTY**

SMUD agrees that all its subcontractors, vendors, suppliers and/or sub recipients shall comply with the respective Subpart of 10 CFR 600 applicable to its subcontractor, vendor, supplier, and/or sub recipient. relating to equipment purchased with DOE funds.

#### **12. COMPLIANCE WITH LAWS; EMPLOYMENT/BUSINESS PRACTICES**

SMUD, and any goods or services supplied by SMUD, shall comply with all applicable laws, rules, regulations, orders, conventions, ordinances, required permitting or standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. SMUD further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this MOU.

At City's request, SMUD shall certify in writing its compliance with the foregoing. SMUD shall indemnify and hold City harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to SMUD's noncompliance.

#### **13. NO IMPLIED WAIVER**

The failure of either party at any time to require performance by the other party of any provision of this MOU shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this MOU constitute a waiver of any succeeding breach of the same or any other provision.

#### **14. NON-ASSIGNMENT**

Unless otherwise specifically prohibited by applicable law, SMUD may not assign or delegate its rights or obligations under this MOU without City's prior written consent, whose consent will not be unreasonably withheld.

#### **15. RELATIONSHIP OF PARTIES**



City and SMUD are independent contracting parties and nothing in this MOU shall make either Party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.

#### **16. GOVERNING LAW; JURISDICTION**

This MOU is to be construed according to the laws of the State of California, excluding the conflict of law provisions that would require application of another choice of law. The Parties agree that the forum and venue for any legal or equitable action or proceeding arising of, or in connection with this MOU will lie in the appropriate federal or state courts in the State of California.

#### **17. SEVERABILITY**

If any term(s) of the MOU is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this MOU shall remain in full force and effect.

#### **18. SUBAWARD AND/OR CONTRACT TO FEDERAL AGENCY**

SMUD shall not sub-grant or sub-contract any part of the approved MOU to any Federal Department, Agency or Instrumentality, without the prior written approval of the Department of Energy and the City.

#### **19. ACCOUNTING SYSTEM**

SMUD shall have and maintain an established accounting system which complies with the cost principles applicable to 10 C.F.R. 600.220. SMUD shall further ensure that appropriate arrangements have been made for receiving, distributing and accounting for all funds received and used by SMUD under this MOU.

All cost sharing or matching contributions, including cash and third-party in-kind, shall satisfy all criteria of 10 C.F.R. 600.224, including but not limited to the following:

- a. Are verifiable from recipient's records.
- b. Are not included as contributions for any other federally assisted project or program.
- c. Are necessary and reasonable for proper and efficient accomplishment of the project or program objectives.
- d. Are allowable under the applicable cost principles.
- e. Are not paid by the federal government under another award, except where authorized by federal statute to be used for cost sharing or matching.
- f. Are provided for in the approved budget when required by the federal awarding agency.
- g. Accounting Records of SMUD. During performance of this MOU and for a period of three (3) years after completion of this MOU, SMUD shall maintain all accounting and financial records related to this MOU, including, but not limited to, records of SMUD's performed under this MOU and records of SMUD's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the City upon reasonable written notice.

## **20. REPRESENTATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

SMUD represents to the best of its knowledge and belief, obtained after appropriate due diligence that SMUD and its subcontractors or suppliers under this MOU:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any agency of the United States Government or the City;
- b. Have not within a three (3)-year period preceding this MOU been convicted of or had a civil judgment rendered against them 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 under a public transaction; 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. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (18)(b) of this certification;
- d. Have not within a three (3)-year period preceding the awarding of this MOU had one or more public transactions (federal, state, or local) terminated for cause or default; and
- e. Will immediately notify City in the event any of the conditions recited within subparagraphs (a) through (e) occurs during the period of SMUD's performance under this MOU.

The certification set forth within this Section 18 constitutes a material part of this MOU.

## **21. LOBBYING RESTRICTION**

By accepting funds under this MOU, SMUD agrees that none of the funds obligated under this MOU shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 19 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## **22. INCORPORATION OF CERTAIN PROVISIONS**

SMUD acknowledges that as a Party providing service on behalf of City, SMUD is obligated to comply with all provisions of the DOE Agreement Funding Number DE-SC0003095 applicable to the work that SMUD is to perform under the MOU.

SMUD is bound by the terms of the MOU including all the clauses that are in place at that time or any changes that are required by law.

Without limiting the generality of the foregoing, SMUD agrees to fulfill any other requirements recited in the references set forth below, each of which is incorporated herein by reference, with the same force and effect as if they were given in full text:

- a. All portions of the United States Department of Energy Assistance Regulations set forth in 10 C.F.R. 200 as applicable to State and Local Governments.
- b. 48 CFR Part 31: Cost Principles for Contracts with State, local, and federally recognized Indian tribal governments.

SMUD further agrees to incorporate these provisions, suitably modified, in any agreement, or other legally binding lower-tier relationship established by SMUD as an element of the efforts identified herein, as applicable.

SMUD shall invoice City on a monthly basis in order to receive disbursements of the funding. Invoices shall state the address of City residents to whom rebates have been made and the amount of each rebate. SMUD shall send invoices to the address provided below:

Dept: Finance Department

Attention: Andrew Keys

Street/Box/MS: 8401 Laguna Palms Way

City/State/Zip: Elk Grove, CA 95758

SMUD shall reimburse the City for any amounts of the EECBG funding expended by SMUD that is in violation of the terms and conditions of Attachment A or of this MOU.

SMUD's primary contact is: Alexandra Crawford, Project Manager, 916-732-5676.  
 The City's primary contact is: Andrew Keys, Finance Analyst 916-478-2273, 8401 Laguna Palms Way, Elk Grove, CA 95758.

**IN WITNESS WHEREOF**, the Parties have caused this MOU to be executed the day and year first above written.

**City of Elk Grove**

**SMUD**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Laura S. Gill

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

Title: City Manager

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

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

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

**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2010-88**

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


***I, Jason Lindgren, Interim 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 May 12, 2010 by the following vote:***

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

**NOES:            COUNCILMEMBERS:        *None***

**ABSTAIN :        COUNCILMEMBERS:        *None***

**ABSENT:         COUNCILMEMBERS:        *Cooper***

  
\_\_\_\_\_  
**Jason Lindgren, Interim City Clerk  
City of Elk Grove, California**