



TOM TINDALL
Director

County of Los Angeles
INTERNAL SERVICES DEPARTMENT

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"To enrich lives through effective and caring service"

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ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

August 17, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

16 August 17, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**APPROVE RETROFIT CALIFORNIA SUB-RECIPIENT AGREEMENT WITH
THE ASSOCIATION OF BAY AREA GOVERNMENTS, SACRAMENTO MUNICIPAL UTILITIES
DISTRICT, AND CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
(3 VOTES) (ALL DISTRICTS)**

SUBJECT

Request approval to negotiate and enter into Sub-Recipient Agreements with the Association of Bay Area Governments, the Sacramento Municipal Utilities District, and the San Diego-based California Center for Sustainable Energy to administer the \$30 million federal, competitive Energy Efficiency and Conservation Block Grant, which was awarded to the County and these sub-recipients under the State-wide Retrofit California grant application. Your Board authorized the Director of the Internal Services Department (ISD) to accept and execute this grant on May 25, 2010.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of ISD or his designee to execute a Sub-Recipient Agreement with the Association of Bay Area Governments, the Sacramento Municipal Utilities District, and the San Diego-based California Center for Sustainable Energy ("sub-recipients"), effective June 1, 2010, through June 2, 2013, in a form identical or substantially similar to the Attachment.
2. Delegate authority to the Director of ISD or his designee to approve any required time extensions, modifications, or amendments to the Sub-Recipient Agreement and execute all required documents with the sub-recipients.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On May 25, 2010, your Board authorized ISD to accept a \$30 million federal Energy Efficiency and Conservation Block Grant on behalf of the County and its sub-recipients for the Retrofit California program. The County accepted the block grant as both (1) the prime recipient and (2) the grant administrator on behalf of the sub-recipients. The proposed Sub-Recipient Agreements will memorialize the County's lead role, clarify that block grant terms, conditions, and other requirements "flow down" to the sub-recipients, and identify additional responsibilities of the sub-recipients.

Implementation of Strategic Plan Goals

These actions support Goal 1, Operational Effectiveness, by implementing measures to manage external funding which promotes environmentally responsible practices. These actions also support Goal 3, Community and Municipal Services, by providing a program that promotes energy efficiency and conservation, and enhances health and sustainable practices in the County.

FISCAL IMPACT/FINANCING

The United States Department of Energy (DOE) grant provided a total award of \$30 million to Los Angeles County and its sub-recipients throughout the State. Los Angeles County will have the role of prime recipient for the grant and act as lead agency to the DOE, including submitting grant progress reports, payment requests, and other documentation. Within the County, this responsibility has been assigned to ISD, which under the terms of the grant, will be compensated for administrative costs to manage the overall grant award, coordinate with the sub-recipients and help implement the grant programs. The block grant allocates approximately \$14 million for the County, with the remainder of the \$30 million grant award to be disbursed by the County to the sub-recipients.

There will be no impact to the County General Fund. Requests for future fiscal year activities will be submitted with the annual budget request.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On July 21, 2008, Assembly Bill No. 811 (AB 811) was signed into law as California Streets and Highways Code sections 5898.12 (amended), 5898.14 (added), 5898.20 (amended), 5898.21 (added), 5898.22 (amended), and 5898.30 (amended).

AB 811 authorizes California cities and counties to designate areas within which willing property owners can enter into contractual assessments to finance certain renewable energy and energy efficiency improvements through low-interest loans that would be paid as an item on the property owner's property tax bill.

Consistent with AB 811, on December 14, 2009, the County submitted a grant application to the DOE, seeking Energy Efficiency and Conservation Block Grant funds under the American Recovery and Reinvestment Act for a State-wide Retrofit California Program.

On April 21, 2010, DOE notified the County of its offer and intent to award \$30 million in ARRA block grant funds for Retrofit California.

On May 25, 2010, the County accepted the DOE award, in part as a direct recipient and in part as the lead agency/administrator on behalf of all Retrofit California sub-recipients.

As prime recipient, the County is responsible for overall program administration, which includes disbursement of all funding and reporting program status to the DOE. ISD will retain a portion of the block grant's allowable administrative costs (up to \$1.4 million) to perform these functions.

The Sub-Recipient Agreement clarifies that all terms and conditions of the block grant "flow down" to the sub-recipients and requires compliance with these terms and conditions. In addition the Sub-Recipient Agreement:

- Identifies the amount of the grant received by each sub-recipient;
- Provides indemnification for the County and termination conditions of the Sub-Recipient Agreement by the County;
- Defines additional recourse for the County in the event of sub-recipient non-performance;
- Defines County and sub-recipient responsibilities under any DOE audits.

The Sub-Recipient Agreements will reflect an effective date of June 1, 2010, to ensure compliance with DOE requirements related to this grant program. The Sub-Recipient Agreement has been approved as to form by County Counsel (Attachment).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of these actions will facilitate widespread implementation of the Los Angeles County Energy Program to reduce greenhouse gases, reduce total energy use and improve energy efficiency throughout the County in a cohesive and comprehensive manner. This program will help the State achieve the goal of creating substantial, sustainable, and measurable energy savings, as well as new jobs, and other economic stimulus benefits.

CONCLUSION

The Executive Office of the Board of Supervisors is requested to return one copy of the approved Board letter to the Director of ISD.

Respectfully submitted,

A handwritten signature in dark ink that reads "Tom Tindall". The signature is written in a cursive, slightly slanted style.

TOM TINDALL
Director

TT: HC: AD

Enclosures

c: Chief Executive Officer
Executive Office, Board of Supervisors
County Counsel

Retrofit California

Sub-Recipient Agreement

This Sub-Recipient Agreement is made and entered into as of the Effective Date by and between the County of Los Angeles, a political subdivision of the State of California ("County") and _____ ("Sub-Recipient").

RECITALS

R1. On July 21, 2008, Assembly Bill No. 811 was signed into law as California *Streets and Highways Code* sections 5898.12 (amended), 5898.14 (added), 5898.20 (amended), 5898.21 (added), 5898.22 (amended), and 5898.30 (amended);

R2. AB 811 authorizes California cities and counties to designate areas within which willing property owners can enter into contractual assessments to finance certain renewable energy and energy efficiency improvements through low-interest loans that would be paid as an item on the property owner's property tax bill;

R3. Per AB 811, on December 14, 2009, the County submitted grant application number DE-FOA-0000148 (the "Grant Application") to the United States Department of Energy ("DOE"), seeking Energy Efficiency and Conservation Block Grant funds under the American Recovery and Reinvestment Act for a state-wide *Retrofit California* Program;

R4. On April 21, 2010, DOE notified the County of its offer and intent to award \$30 million in ARRA block grant funds for *Retrofit California* (the "DOE Award");

R5. On May 25, 2010, the County accepted the DOE Award, in part as a direct recipient and in part as the lead agency/administrator on behalf of all *Retrofit California* sub-recipients. The DOE Award allocates approximately \$14 million for the County, and the remainder for disbursement by the County to various sub-recipients; and

R6. The County and this Sub-Recipient desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for Sub-Recipient's participation in *Retrofit California* and the DOE Award.

NOW THEREFORE, based upon the foregoing recitals, the County and Sub-Recipient further agree as follows:

1.0 APPLICABLE DOCUMENTS

1.1 This base document, along with the DOE Award documents listed below, collectively form, and are referred to as, the "Sub-Recipient Agreement." The following are attached hereto and incorporated herein by this reference:

- 1.1.2 Exhibit 1 Assistance Agreement
- 1.1.3 Exhibit 2 Intellectual Property Provisions (NDR-1003)
- 1.1.4 Exhibit 3 DOE Federal Assistance Reporting Checklist and Instructions
- 1.1.5 Exhibit 4 Special Terms and Conditions

1.2 This Sub-Recipient Agreement is the complete and exclusive statement of understanding between County and the Sub-Recipient, and supersedes any all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this Sub-Recipient Agreement.

2.0 DEFINITIONS

The terms and phrases in this Section 2.0, in quotes and with initial letter(s) capitalized, shall have the meanings whenever used in this base document.

2.1 “Award Agreement” is the agreement between DOE and County for the DOE Award, and consists of the documents itemized at Section 2 (Award Agreement Terms and Conditions) of Exhibit 4 (Special Terms and Conditions).

2.2 “DOE Award” is defined in recital R4.

2.3 “Holdback” is defined in section 4.3

2.4 “Sub-Award Sum” is defined in section 4.1.

3.0 TERM OF AGREEMENT

This Agreement shall commence as of June 1, 2010 (the “Effective Date”) and continue for three (3) years, or until DOE finds and certifies that Sub-Recipient is in full compliance with the DOE Award requirements and issues final award approval, whichever is later.

4.0 MAXIMUM SUB-AWARD SUM

4.1 The maximum sub-award sum to be funded by the DOE and disbursed through the County to Sub-Recipient shall be _____ dollars (US\$ _____) (the “Maximum Sub-Award Sum”).

4.2 The Maximum Sub-Award Sum is inclusive of Sub-Recipient’s administrative costs and expenses, the aggregate of which shall not exceed ten percent (10%) of the Maximum Sub-Award Sum.

4.3 Sub-Recipient understands and agrees that the County may retain a holdback from disbursement of up to ten percent (10%) of the Maximum Sub-Award Sum as security against disallowances pending final award approval by DOE (the "Holdback").

5.0 COUNTY OBLIGATIONS

County shall administer the *Retrofit California* program and disburse DOE Award funds as required or permitted by the Award Agreement. Notwithstanding the foregoing, the County is not obligated to disburse any funds to Sub-Recipient unless and until such are authorized and disbursed from DOE to County.

6.0 SUB-RECIPIENT WARRANTIES & REPRESENTATIONS

Sub-Recipient warrants and represents as follows:

6.1 Sub-Recipient is, and at all times shall continue to be, in full compliance with the terms and conditions in the Award Agreement. Sub-Recipient understands and agrees that for purposes of the foregoing, any requirements imposed upon County as "Recipient[s]" in the Award Agreement are hereby passed-through and adopted as obligations of Sub-Recipient to the maximum extent allowable by law.

6.1.1 Without limiting the foregoing 6.1, Sub-Recipient shall strictly comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of DOE Award funds; and

6.1.2 Without limiting the foregoing 6.1, Sub-Recipient shall submit timely reports to County and/or DOE as required by DOE, including but not limited to progress reports (monthly, quarterly, annual, and as required), special status reports, financial reporting, and property certification.

6.2 Sub-Recipient shall not cause the County to be in violation of the Award Agreement, whether by act or omission.

6.3 Sub-Recipient shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time. Any such laws, rules, regulations, ordinances, and directives required thereby to be included in this Sub-Recipient Agreement are incorporated herein by reference.

7.0 INDEMNIFICATION & INELIGIBLE CLAIMS

7.1 Notwithstanding any provision to the contrary, whether expressly or by implication, Sub-Recipient agrees to indemnify, defend, and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability resulting from Sub-Recipient's act(s)

and/or omission(s) arising from and/or relating to the DOE Award and/or this Agreement, and as such would be imposed in the absence of *Government Code* section 895.2.

7.2 Without limiting the scope of section 9.1, such liability includes but is not limited to the following: any funding disallowance; audits; demands; claims; actions; liabilities; damages; fines; fees, costs, and expenses, including attorney, auditor, and/or expert witness fees.

7.3 Sub-Recipient understands and agrees that it is solely responsible for any and all its amounts found by the DOE to be ineligible under the Award Agreement. Immediately upon request by DOE or County, the Sub-Recipient shall return any funds that have been disbursed to the extent that their use has been disallowed.

8.0 TERMINATION FOR CONVENIENCE

The County may terminate this Sub-Recipient Agreement, in whole or in part, when the County, in its sole discretion, deems it to be in its best interest.

9.0 TERMINATION FOR DEFAULT

9.1 The County may, by written notice to Sub-Recipient, terminate this Sub-Recipient Agreement, in whole or in part, as follows:

9.1.1 Upon instruction and/or demand from the DOE;

9.1.2 If Sub-Recipient materially breaches this Sub-Recipient Agreement;

9.1.3 If Sub-Recipient fails to timely or satisfactorily perform any obligation under this Sub-Recipient Agreement and fails to cure; or

9.1.4 If Sub-Recipient fails to demonstrate a high probability of timely fulfillment of its obligations under this Sub-Recipient Agreement and fails to cure.

9.2 If the County issues written notice under sections 9.1.3 or 9.1.4, Sub-Recipient must cure or demonstrate convincing progress toward a cure within five (5) calendar days (or such longer period as the County may authorize in writing) after receipt of written notice from the County.

9.3 The County's Principal Investigator is authorized to make and service any notice under sections 8.0 and/or 9.1.

9.4 The rights and remedies of the County provided in this Section 9.0 are not exclusive, and are in addition to any other rights and remedies provided under this Sub-Recipient Agreement and/or by law.

10.0 NOTICES & ADMINISTRATIVE CONTACTS

10.1 All notices or notifications under this Sub-Recipient Agreement shall be in writing addressed to the persons set forth in this section 10.0

10.2 All notices or notifications to the County shall be sent to:

Howard Choy, Principal Investigator
Los Angeles County – Internal Services Department
1100 N. Eastern Avenue, Executive Suite 200
Los Angeles, CA 90063-3200
HChoy@isd.lacounty.gov

10.3 All notices or notifications to the Sub-Recipient shall be sent to:

11.0 AMENDMENTS & CHANGES

This Sub-Recipient Agreement may be changed only by a written amendment duly signed by the County and Sub-Recipient. Notwithstanding the foregoing, any changes to the Award Agreement imposed by DOE, as well as any terms and conditions of the DOE Award program, shall be effective and binding upon Sub-Recipient immediately and without any amendment hereto.

12.0 ASSIGNMENT AND DELEGATION

Sub-Recipient shall not assign its rights or delegate its duties under this Sub-Recipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this Sub-Recipient Agreement.

13.0 GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. Sub-Recipient further agrees and consents that the venue of any action brought between Sub-Recipient and County shall be exclusively in Los Angeles.

14.0 VALIDITY AND SEVERABILITY

If any provision of this Sub-Recipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Sub-Recipient

Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

15.0 NO WAIVER

No waiver by the County of any event of breach and/or breach of any provision of this Sub-Recipient Agreement shall constitute a waiver of any other event of breach and/or breach. The County's non-enforce at any time, or from time to time, of any provision of this Sub-Recipient Agreement shall not be construed as a waiver thereof.

16.0 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

16.1 Sub-Recipient shall maintain accurate and complete financial records of its activities and operations relating to this Sub-Recipient Agreement in accordance with the Award Agreement and generally accepted accounting principles.

16.2 Sub-Recipient agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Sub-Recipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Sub-Recipient and shall be made available to the County during the term of this Sub-Recipient Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time.

16.3 All such material shall be maintained by the Sub-Recipient at a location in Los Angeles County or shall provide all materials specified by the County to a location to be determined by the County. Sub-Recipient shall bear its own costs and expenses in this regard.

16.4 If an audit of the Sub-Recipient is conducted specifically regarding this Sub-Recipient Agreement by any Federal or State auditor, or by any auditor or accountant employed by the Sub-Recipient or otherwise, then the Sub-Recipient shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Sub-Recipient's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Sub-Recipient Agreement.

16.5 Failure of Sub-Recipient to comply with this Section 16.0 shall constitute a material breach of this Sub-Recipient Agreement, upon which the County may terminate or suspend under section 9.0 (Termination for Default).

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17.0 AUTHORIZATION WARRANTY

Sub-Recipient represents and warrants that the person executing this Sub-Recipient Agreement on its behalf is an authorized agent who has actual authority to bind Sub-Recipient to each and every term, condition, and obligation herein.

END OF BASE DOCUMENT
SIGNATURE PAGE TO FOLLOW

Retrofit California
Sub-Recipient Agreement

* * * * *

Authorized Signatures

IN WITNESS WHEREOF, Sub-Recipient has duly executed this Agreement, or caused it to be duly executed, and the County of Los Angeles, by order of its Board of Supervisors, has caused this Contract to be duly executed on its behalf.

SUB-RECIPIENT:

By _____
Name

Title

COUNTY OF LOS ANGELES

By _____
Tom Tindall,
Director – Internal Services Department

ATTEST:
Executive Officer-Clerk
of the Board of Supervisors

By _____

APPROVED AS TO FORM:
County Counsel

By _____
Principal Deputy County Counsel