

**SECTION 5310 FUND TRANSFER PROGRAM**

**FUND TRANSFER AGREEMENT  
BETWEEN THE SAN DIEGO ASSOCIATION OF GOVERNMENTS  
AND **SUBRECIPIENT NAME****

**AGREEMENT NO. INSERT NUMBER**

This Fund Transfer Agreement No. **Insert Number** (AGREEMENT), executed as of the date of the last signature shown on the signature page, is between the San Diego Association of Governments, 401 B Street, Suite 800, San Diego, California 92101 (SANDAG), and **Insert Subrecipient Name, Insert Subrecipient Address** (hereinafter referred to as "SUBRECIPIENT"). SANDAG and SUBRECIPIENT are also hereinafter collectively referred to as "the Parties."

**RECITALS**

- A.** SANDAG and SUBRECIPIENT, pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Fixing America's Surface Transportation Act (FAST Act), are authorized to enter into this AGREEMENT pertaining to federal funding committed for Section 5310 funding (collectively "Section 5310 funds") that SANDAG is responsible for allocating within its jurisdiction. Section 5310 funds are provided by the Federal Department of Transportation (DOT) agency known as the Federal Transit Administration (FTA) to SANDAG as the designated recipient, and therefore various federal requirements and certifications will apply to SUBRECIPIENT as part of this AGREEMENT.
- B.** SUBRECIPIENT has agreed to implement the Insert Name of Project Project (Project), subject to the terms and conditions of this AGREEMENT, which includes Project Description and Performance Measure attachments. The attached Project Description is inclusive of the Scope of Work, Project Schedule, and Project Budget.
- C.** A resolution acceptable to SANDAG, from SUBRECIPIENT's governing body, and which adopts the specific Project described above into SUBRECIPIENT's budget is attached as "SUBRECIPIENT Resolution." The SUBRECIPIENT Resolution authorizes SUBRECIPIENT to execute contracts to implement work elements specified in the Project Description.
- D.** All services performed by SUBRECIPIENT pursuant to this AGREEMENT shall be performed in accordance with all applicable federal, state, and local laws, ordinances, regulations and policies, including, but not limited to, SANDAG Board Policy No. 035 Competitive Grant Program Procedures, as amended. Board Policy No. 035 is attached to this AGREEMENT as "SANDAG Board Policy No. 035: Competitive Grant Program Procedures."
- E.** Project funding is as follows:

	<b>FUND SOURCE</b>	<b>DOLLAR AMOUNT</b>	<b>PERCENTAGE</b>
Section 5310 Fund Limit	MAP-21/FAST Act	\$	Fund Limit percentage with two digits after decimal (XX.XX%)
Matching funds	SUBRECIPIENT	\$	Match percentage with two digits after decimal (XX.XX%)

In consideration of the foregoing, and the mutual promises of the parties hereto, SUBRECIPIENT and SANDAG agree as follows:

## **AGREEMENT**

### **I. GRANT AWARD**

- A.** The total amount payable to SUBRECIPIENT pursuant to this AGREEMENT by SANDAG shall not exceed the amount shown on the first page of this AGREEMENT (Fund Limit).
- B.** It is agreed and understood that this Fund Limit is a ceiling and that SANDAG will only reimburse the allowable cost of services actually rendered in accordance with the AGREEMENT. The actual amount reimbursed by SANDAG may be less than the Fund Limit.

### **II. TERM OF AGREEMENT**

- A.** The effective date of this AGREEMENT is the last date on which a party executes this AGREEMENT. SANDAG authorizes RECIPIENT to begin working on the Project, and RECIPIENT agrees to undertake Project work, promptly after receiving a written Notice to Proceed from SANDAG. RECIPIENT shall not proceed with the Project, and shall not be eligible to receive payment for work performed, prior to SANDAG issuance of a written Notice to Proceed.
- B.** This AGREEMENT shall terminate on the date number of years years after the effective date unless it is amended in writing by the parties.

### **III. LOCAL MATCH FUNDS**

SUBRECIPIENT shall provide matching funds from a source other than federal funds, in the percentage shown on the first page of this AGREEMENT (Match Percentage) of the actual cost of the Project. If the full Fund Limit is paid by SANDAG, RECIPIENT's match amount is estimated to be the amount shown on the first page of this AGREEMENT. If the actual cost of the project exceeds the Fund Limit, RECIPIENT shall be responsible for 100 percent of the actual cost greater than the Fund Limit.

- A.** Except where expressly allowed in writing herein, reimbursement of credits for local matching funds will be made or allowed only for work performed on and after the Notice to Proceed date and prior to the termination date of this AGREEMENT, unless expressly permitted by SANDAG, in writing, as eligible local match expenditures made prior to the effective date of this AGREEMENT.
- B.** SUBRECIPIENT agrees to contribute at least the statutorily or other required Match Percentage (other than DOT funds or fare revenues), if any is specified within this AGREEMENT or in any attachment hereto, toward the actual cost of the services described in the Project Description, whichever is greater. The local matching funds may be in the form of in-kind contributions if included in the Project Description. RECIPIENT shall contribute no less than its required Match Percentage toward the services described herein on a proportional monthly or quarterly basis coinciding with its usual invoicing frequency.

### **IV. PROJECT COMPLETION AND USE OF FUNDS**

SUBRECIPIENT agrees to complete the Project as described in the Project Description and in accordance with the Performance Measures, using the awarded federal funds provided under the AGREEMENT and any matching funds committed to herein solely for the Project.

**V. NOTIFICATION OF PARTIES**

SUBRECIPIENT’s Project Manager is **Insert Subrecipient PM Name**.

The SANDAG Project Manager is .Zachary Rivera

All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

SANDAG: San Diego Association of Governments  
Attention: Zachary Rivera  
401 B Street, Suite 800  
San Diego, CA 92101  
Zachary.Rivera@sandag.org

SUBRECIPIENT: **Insert Subrecipient Name**  
Attention: **Insert Subrecipient PM Name**  
**Insert Subrecipient Address**  
**Insert Subrecipient Address**  
**Insert subrecipient PM email**

**VI. SCOPE OF PERFORMANCE**

- A.** This AGREEMENT was awarded based on the application submitted by SUBRECIPIENT with the intention that the awarded funds would be used to implement the Project as described in the Project Description. Any substantive deviation from the Project Description must be approved in advance by written amendment if grant funds are to be used for such changes. If SUBRECIPIENT believes substantive changes need to be made to the Project, SUBRECIPIENT will immediately notify SANDAG in writing. SANDAG will then determine whether the Project is still consistent with the overall objectives of the relevant federal funding program and whether the changes would have negatively affected the Project ranking during the grant application process. SANDAG reserves the right to have AGREEMENT funding withheld or refunded due to substantive Project changes.
- B.** SUBRECIPIENT shall make diligent and timely progress toward completion of the Project within the timeliness set forth in the Project Schedule, which is included in the Project Description. SUBRECIPIENT further agrees to the requirements and timeframes set forth in SANDAG Board Policy No. 035: Competitive Grant Program Procedures, and any amendments thereto.
- C.** In the event SUBRECIPIENT encounters or anticipates difficulty in meeting the Project Schedule, SUBRECIPIENT shall immediately notify the SANDAG Project Manager in writing and shall provide pertinent details, including the reason(s) for the delay in performance and the date by which SUBRECIPIENT expects to complete performance. SUBRECIPIENT’s notification shall be informational in character only and SANDAG’s receipt of it shall not be construed as a waiver by SANDAG of a project delivery schedule or date, or any rights or remedies provided by this AGREEMENT.

**VII. MONITORING AND COMPLIANCE**

SUBRECIPIENT’s performance shall be monitored for consistency with the Project Description. SANDAG will utilize the “SANDAG Grant Monitoring Checklist,” in substantially the same form as attached, to document compliance using both cost and non-cost performance indicators.

- A.** SUBRECIPIENT's performance will be measured against the Performance Measures during the term of this AGREEMENT. If the SUBRECIPIENT does not achieve minimum performance requirements, SANDAG will issue SUBRECIPIENT a written Notice to Complete a Recovery Plan. SUBRECIPIENT's Recovery Plan shall include a detailed description of how SUBRECIPIENT intends to come into compliance with its performance measure minimums. SUBRECIPIENT's Recovery Plan description must include an implementation schedule that reflects achievement of the performance measure minimums within six months following the issue date of the SANDAG Notice to Complete a Recovery Plan. SUBRECIPIENT must submit its Recovery Plan to the SANDAG Project Manager within 30 calendar days following the issue date of the SANDAG Notice to Complete a Recovery Plan. If SUBRECIPIENT's performance is inconsistent with that proposed in its Recovery Plan, SANDAG in its sole discretion may terminate this AGREEMENT.
- B.** SANDAG will utilize the SANDAG Grant Monitoring Checklist at regular site visits to verify compliance with provisions in this AGREEMENT and document compliance deficiencies. If SUBRECIPIENT does not comply with provisions in this AGREEMENT or meet the requirements in the Grant Monitoring Checklist, SANDAG will issue SUBRECIPIENT a written Notice to Complete a Recovery Plan. SUBRECIPIENT's Recovery Plan shall include a detailed description of how SUBRECIPIENT intends to come into compliance. SUBRECIPIENT's Recovery Plan description must include an implementation schedule that reflects compliance within three months following the issue date of the SANDAG Notice to Complete a Recovery Plan. SUBRECIPIENT must submit its Recovery Plan to the SANDAG Project Manager within 30 calendar days of the identification of the compliance deficiency and issuance of the SANDAG Notice to Complete a Recovery Plan. If SUBRECIPIENT does not take corrective action or does not come into compliance with the provisions in this AGREEMENT and the Grant Monitoring Checklist, SANDAG in its sole discretion may terminate this AGREEMENT.
- C.** RECIPIENT shall comply with the most recently adopted version of the SANDAG Specialized Transportation Program Management Plan (PMP). A copy of the PMP can be obtained from [sandag.org/stgp](http://sandag.org/stgp) or the SANDAG Project Manager. In the case of a conflict between the PMP and this AGREEMENT, the AGREEMENT shall prevail.

#### **VIII. FUNDING REQUIREMENTS**

- A.** It is mutually understood between the parties that this AGREEMENT may have been written for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the AGREEMENT was executed only after ascertaining the availability and appropriation of funds.
- B.** This AGREEMENT is valid and enforceable only if sufficient funds are made available to SANDAG by the United States Government and/or the California State Legislature for the purpose of this Project. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the SANDAG Board of Directors, Congress or the State Legislature that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C.** It is mutually agreed that, if the Congress or the State Legislature does not appropriate sufficient funds for the program and Project, this AGREEMENT shall be amended to reflect any reduction in funds.
- D.** SANDAG has the option to void this AGREEMENT under the termination clause or to amend this AGREEMENT to reflect any reduction of funds. In the event of an unscheduled termination, SANDAG may reimburse or offset SUBRECIPIENT costs in accordance with the provisions of this AGREEMENT.

## **IX. ALLOWABLE COSTS FOR NON-VEHICLE PURCHASES**

- A.** The method of payment for this AGREEMENT will be based upon actual allowable costs. SANDAG will reimburse SUBRECIPIENT for expended actual allowable direct and indirect costs, including, but not limited to, labor costs, employee benefits, and travel and third-party contract costs incurred by SUBRECIPIENT in performance of the Project work, not to exceed the Fund Limit set forth in this AGREEMENT. Actual costs shall not exceed the estimated wage rates, labor costs, travel and other estimated costs and fees set forth in the Project Description without prior written agreement between SANDAG and SUBRECIPIENT. Overhead is reimbursable if the SUBRECIPIENT has a Federally Negotiated Indirect Cost Rate (FNICR) recognized by the federal government. SUBRECIPIENTS that have never received a FNICR, and will not receive \$35 million or more in direct federal funding in the fiscal year requested and each thereafter, may choose to use a 10 percent de minimis indirect cost rate per 2 CFR 200. The indirect cost rate to be used by SUBRECIPIENT is identified in the following attachment to this AGREEMENT: "Subaward Information." If SUBRECIPIENT is eligible to utilize the 10% de minimis indirect cost rate and has elected to do so, it must also execute the attached "Indirect Cost Rate Certification Form."
- B.** Reimbursement of SUBRECIPIENT expenditures will be authorized only for those allowable costs actually incurred by SUBRECIPIENT in the performance of the Project work. SUBRECIPIENT must have incurred the expenditures on or after receiving the SANDAG Notice to Proceed and before the Termination Date of this AGREEMENT, and also must have paid for those costs to claim any reimbursement.
- C.** Transportation and subsistence costs will be reimbursed shall at the actual costs incurred and supported by receipts, and shall not exceed the maximum amounts authorized for state employees, which are available at: <https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>.
- D.** SANDAG will reimburse SUBRECIPIENT for vehicle expenses claimed using a mileage reimbursement rate up to the current maximum allowable by the Internal Revenue Service (IRS). SANDAG will advise the SUBRECIPIENT of changes in the IRS rate. Subject to the conditions outlined in the next paragraph, the mileage reimbursement rate shall cover all vehicle expenses, with the exception of parking fees and roadway tolls. The vehicle expenses covered by the mileage reimbursement rate include, but are not limited to, items such as fuel, oil, repairs, wear items (e.g., tires, brakes, mufflers), preventative maintenance, parts, washing, license and registration fees, and insurance.

The mileage reimbursement will only be paid for mileage reflected in a SUBRECIPIENT-maintained mileage log. The mileage log must include the vehicle identification number, date and time of trip, trip purpose, beginning odometer, ending odometer and total trip mileage. Receipts are required for parking and tolls. SANDAG may, at its discretion, audit SUBRECIPIENT's mileage logs and require SUBRECIPIENT's submission of its mileage logs with any SUBRECIPIENT invoices seeking mileage reimbursement.

- E.** SUBRECIPIENT shall submit invoices no more frequently than monthly, and no less frequently than every 90 calendar days. SANDAG will reimburse SUBRECIPIENT for all allowable Project costs no more frequently than monthly, and no less frequently than every 90 calendar days, in arrears as promptly as SANDAG fiscal procedures permit upon receipt of itemized signed invoices. The standardized SUBRECIPIENT invoice and reporting forms will be provided by the SANDAG Project Manager. Invoices shall reference this AGREEMENT, and shall be signed and submitted to SANDAG at the following address or as may be otherwise indicated by SANDAG in the event it transitions to an electronic invoicing process:

San Diego Association of Governments  
Attention: **Insert SANDAG PM Name**  
401 B Street, Suite 800  
San Diego, CA 92101

## **X. COST PRINCIPLES**

- A.** SUBRECIPIENT agrees to comply with 2 CFR 200, including but not limited to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.
- B.** SUBRECIPIENT agrees that it, and will cause its third-party contractors to agree, that (a) Contract Cost Principles and Procedures and Federal Acquisition Regulations System under 2 CFR 200 shall be used to determine the allowability of individual Project cost items; and (b) all parties shall comply with federal administrative procedures in accordance with 2 CFR 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and the following attachments to this AGREEMENT: Standard Federal Provisions (Federal Transit Administration) and the Federal Provisions for the 5310 Program Enhanced Mobility of Seniors and Individuals with Disabilities.
- C.** Any Project costs for which SUBRECIPIENT has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200 are subject to repayment by SUBRECIPIENT to SANDAG by offset or other means approved by SANDAG. Should SUBRECIPIENT fail to reimburse moneys due SANDAG within 30 calendar days of discovery or demand, or within such other period as may be agreed to in writing between the Parties hereto, SANDAG is authorized to intercept and withhold future payments due SUBRECIPIENT from SANDAG.

## **XI. REPORTS AND DATA COLLECTION**

- A.** SUBRECIPIENT shall submit written progress reports no less frequently than quarterly to allow SANDAG to determine if SUBRECIPIENT is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed. Grant Progress Reports including Project data establishing SUBRECIPIENT's performance as compared to the Performance Measures shall be provided by SUBRECIPIENT to SANDAG no less frequently than quarterly. The standardized SUBRECIPIENT reporting forms will be provided by the SANDAG Project Manager.
- B.** SUBRECIPIENT shall provide any requested data regarding trips, populations served, or other data as may be needed to establish SUBRECIPIENT's performance and compliance with the AGREEMENT, including but not limited to any reports required by federal funding agencies such as the performance measure reporting set forth in FTA Circular 9070.1 G.
- C.** If SUBRECIPIENT expends \$750,000 or more in Federal awards in a federal fiscal year, SUBRECIPIENT must have a single audit conducted in accordance with the Office of Management and Budget (OMB) under 2 CFR 200 unless SUBRECIPIENT elects to have a program-specific audit. If the only Federal funds expended by SUBRECIPIENT are Section 5310 funds, SUBRECIPIENT may elect to have a program-specific audit. The federal CFDA Number for the 5310 Program is 20.513. If a single audit or program-specific audit is required, SUBRECIPIENT must submit the audit to SANDAG. SANDAG will issue a management decision within six months of receipt of the single audit if there are audit findings that relate to the Section 5310 award. SANDAG will state whether or not the audit finding is sustained, and if the SUBRECIPIENT has not yet completed the corrective action, a timetable for follow-up will be given.
- D.** If a vehicle was purchased with funding from this AGREEMENT, no fewer than 90 calendar days prior to the end of the useful life of a vehicle, SUBRECIPIENT and SANDAG shall meet to discuss any outstanding Project close-out matters of concern to either party. Written minutes from this Project close-out meeting shall be jointly created by SUBRECIPIENT and SANDAG and shall include any budget, schedule and/or scope of work adjustments to be completed by SUBRECIPIENT prior to the termination date of this AGREEMENT.

- E. In order to track the types of persons served by Subrecipients for Title VI, as well as provide information to SUBRECIPIENT to help it better serve its clients, SUBRECIPIENT will be required to provide client demographic information and other data to SANDAG annually, on a form to be provided by SANDAG. Data will be used to complete and annually submit the "Client Demographic Information Form".

## XII. INDEMNIFICATION AND LIABILITY

- A. Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties to this AGREEMENT or effect the legal liability of either party to the AGREEMENT by imposing any standard of care with respect to operation, maintenance, or repair different from the standard of care imposed by law or this AGREEMENT. In connection with the Project, SUBRECIPIENT agrees that SANDAG shall not be subject to any obligations or liabilities to any third-party contractor, or other person or entity that is not a party to this AGREEMENT. Notwithstanding that SANDAG may have concurred in or approved any third-party contract at any tier, SANDAG has no obligations or liabilities to any entity other than the SUBRECIPIENT, including any third-party contractor at any tier.
- B. Neither SANDAG nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by SUBRECIPIENT or its third-party contractor under or in connection with any work, authority, or jurisdiction arising from or related to this AGREEMENT. SUBRECIPIENT and its third-party contractor shall fully defend, indemnify, and save harmless SANDAG, its officers and employees from all claims, suits, or actions of every name, kind, and description occurring by reason of anything done or omitted to be done by SUBRECIPIENT and its third-party contractor under or in connection with any work, authority, or jurisdiction arising under this AGREEMENT.

## XIII. INSURANCE

SUBRECIPIENT shall procure and maintain, and shall cause its subrecipients and/or third party contractors to maintain, during the period of performance of this AGREEMENT, and for 12 months following the termination date of this AGREEMENT, policies of insurance from insurance companies authorized to do business in the State of California or the equivalent types and amounts of self-insurance, as follows:

- A. **General Liability.** Combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal and bodily injury, including death, and broad form property damage. The policy must include an acceptable "Waiver of Transfer Rights of Recovery Against Others Endorsement." The policy must name SANDAG as an additional insured in the endorsement. A deductible or retention may be utilized, subject to approval by SANDAG.
- B. **Automobile Liability.** For personal and bodily injury, including death, and property damage in an amount not less than \$1,000,000. Third-party contractor shall include SANDAG as a loss payee on its policy.
- C. **Workers' Compensation and Employer's Liability.** Policy must comply with the laws of the State of California. The policy must include an acceptable "Waiver of Right to Recover From Others Endorsement".

SUBRECIPIENT shall furnish satisfactory proof by one or more certificates that it has the foregoing insurance. These policies shall be primary insurance as to SANDAG so that any other coverage held by SANDAG shall not contribute to any loss under insurance procured and maintained by SUBRECIPIENT and/or its third-party contractor required under this Agreement. Each insurance policy shall contain a clause, which provides that the policy may not be canceled without first giving 30 days' advance written

notice to SANDAG. For purposes of this notice requirement, any material change in the policy prior to its expiration shall be considered a cancellation.

SUBRECIPIENT and its third-party contractor shall maintain sufficient insurance or a self-insurance program approved by SANDAG to cover all casualty losses and ensure the repair or replacement of federally funded Property. In the event a piece of Property is not replaced or repaired, SUBRECIPIENT agrees to transfer any insurance proceeds received to SANDAG for remitting the federal share to the FTA.

#### **XIV. Insurance Certificate Submittal**

SANDAG will use myCOI to track and verify insurance coverage. SUBRECIPIENT will receive an email from:certificaterequest@mycoisolution.com. SUBRECIPIENT shall follow the instructions contained in the email and complete the online registration. Upon completion of registration, myCOI will request proof of insurance directly from SUBRECIPIENT's insurance agents. SUBRECIPIENT shall include the AGREEMENT number on all insurance-related correspondence submitted to myCOI). SUBRECIPIENT shall not commence work and no payments shall be made to SUBRECIPIENT, unless SUBRECIPIENT is registered with myCOI and compliant Certificates of Insurances (COIs) have been received.

SUBRECIPIENT shall cause its insurance agents to comply with requests for updated information from myCOI on no less than an annual basis. SUBRECIPIENT is responsible for ensuring that its agents send SANDAG updated certificates of insurance throughout the term of this AGREEMENT via myCOI.

#### **XV. DISABLED ACCESS REVIEW**

Disabled access review by the Department of General Services (Office of State Architect) is required for the construction of all publicly funded buildings, structures, sidewalks, curbs, and related facilities. No construction contract will be awarded by SUBRECIPIENT unless SUBRECIPIENT plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations and the Americans With Disabilities Act (42 USC 12101, et seq.).

#### **XVI. NON-DISCRIMINATION**

- A.** During the performance of this AGREEMENT, SUBRECIPIENT and all of its third-party contractors, if any, shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age (over 40), gender identity or expression, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), medical condition, physical or mental disability, genetic information, sexual orientation, marital status, military or veteran status or any other category protected under federal, state or local law. SUBRECIPIENT and its third-party contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SUBRECIPIENT and its third-party contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by this reference and are made a part hereof as if set forth in full. SUBRECIPIENT and its third-party contractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B.** SUBRECIPIENT shall include the nondiscrimination and compliance provisions of this Section in all third-party contracts to perform work under this AGREEMENT.



- C. SUBRECIPIENT agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
1. Nondiscrimination in Federal Transit Programs. The SUBRECIPIENT agrees to comply, and assures the compliance of each third-party contractor at any tier under the Project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, religion, national origin, sex, age, and disability, and prohibit discrimination in employment or business opportunity.
  2. Nondiscrimination on the Basis of Disability. The SUBRECIPIENT agrees to comply, and assures the compliance of each third-party contractor at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
    - a. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients and subrecipients of federal financial assistance.
    - b. The ADA, as amended (42 U.S.C. 12101, et seq.), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
    - c. DOT regulations implementing Section 504 and the ADA include 49 CFR 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
    - d. Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regards to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
    - e. In addition, those who receive any AGREEMENT funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.
  3. Nondiscrimination-Title VI. SUBRECIPIENT agrees to comply, and assures the compliance of each third-party contractor at any tier of the Project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
    - a. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
    - b. U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,” 49 CFR part 21.

- c. FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides those who receive AGREEMENT funds with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR 21), and DOT Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, Dec. 14, 2005).
  - d. U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (December 14, 2005). This guidance clarifies the responsibilities of those receiving Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166.
  - e. FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides those receiving AGREEMENT funds with guidance and instructions necessary to carry out U.S. DOT Order 5610.2 to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice that describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.
  - f. U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities.
4. Equal Employment Opportunity. SUBRECIPIENT agrees to comply, and assures the compliance of each third-party contractor at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e et seq.), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue. Subrecipients and third-party contractors at any tier that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more transit-related employees must submit to SANDAG an EEO plan consistent with the requirements set forth in FTA Circular 4704.1A.
  5. Nondiscrimination on the Basis of Sex. SUBRECIPIENT agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681, et seq.), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
  6. Nondiscrimination on the Basis of Age. SUBRECIPIENT agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101, et seq.), and Department of Health and Human Services’ (DHHS’) implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” (45 CFR 90), which prohibit discrimination against individuals on the basis of age. In addition, SUBRECIPIENT agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR 1625), which prohibit employment discrimination against individuals on the basis of age.
  7. Disadvantaged Business Enterprise (DBE). To the extent required by Federal law, regulation, or directive, SUBRECIPIENT agrees to take the following measures to facilitate participation by DBEs:

- a. SUBRECIPIENT agrees and assures that it will comply with MAP-21 Section 1101(b) (23 U.S.C. 101 note), which directs the Secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBEs. This 10 percent national goal is aspirational and is used by the DOT to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities.
  - b. SUBRECIPIENT agrees and assures that it will comply with DOT regulation, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR 26. Among other provisions, this regulation requires certain SUBRECIPIENTS of DOT Federal financial assistance, including SUBRECIPIENT, to ensure that DBE firms have a level competitive playing field and opportunity to participate in DOT-assisted contracts.
  - c. SUBRECIPIENT agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin, in the award and performance of any third-party contract supported with Federal assistance derived from DOT, or in the administration of its DBE Program, and will comply with the requirements of 49 CFR 26. SUBRECIPIENT agrees to take all necessary and reasonable steps set forth in 49 CFR 26 to ensure nondiscrimination in the award and administration of all third-party contracts supported with Federal assistance derived from DOT. As required by 49 CFR 26 and approved by DOT, SANDAG's DBE Program is incorporated by reference and made part of this Agreement. The SUBRECIPIENT agrees that implementation of this DBE Program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification by DOT to SANDAG and notification by SANDAG to SUBRECIPIENT of a failure to implement its approved DBE Program, DOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, (31 U.S.C. 3801, et seq.).
  - d. In connection with the performance of this AGREEMENT, SUBRECIPIENT will cooperate with SANDAG in meeting its commitments and goals with regard to the maximum utilization of DBEs and other small businesses. It is SANDAG policy that DBEs and small businesses shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with FTA funds.
  - e. SUBRECIPIENT shall carry out applicable requirements of 49 CFR 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," (the Regulations) in the award and administration of this AGREEMENT.
- D.** SUBRECIPIENT shall sign and submit to SANDAG the following forms attached to this AGREEMENT, prior to, or concurrently with, this AGREEMENT: "Certificate of Nondiscrimination Assurances," and "Equal Employment Opportunity Certificate of Compliance." SUBRECIPIENT shall also submit the "Client Demographic Information Form", annually. In addition, SUBRECIPIENT shall submit documentation of its Disadvantaged Business Enterprise (DBE) status if subrecipient or any third-party contractors are certified as a DBE.

## **XVII. COMPLAINT PROCEDURES**

SUBRECIPIENT is required to record and track complaints made by employees, volunteers, clients or the general public, including complaints relating to Title VI, ADA, and service quality, or any other grievance pertaining to the Project. SUBRECIPIENT shall establish and implement procedures to ensure timely resolution of complaints, and sufficiently document steps taken to investigate and address complaints. SUBRECIPIENT shall make these records available to SANDAG for inspection during audits. Additionally, SUBRECIPIENT is required to report complaints to SANDAG on regularly submitted progress reports. If SUBRECIPIENT receives a Title VI-related or ADA-related complaint, SUBRECIPIENT must notify

SANDAG in writing within 72 hours of receiving the complaint so that SANDAG can determine whether it needs to carry out its own investigation.

## **XVIII. ELDER ABUSE REPORTING**

California Welfare and Institutions Code (WIC) §15630 provides in part: “Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation...is a mandated reporter.”

To the extent SUBRECIPIENT or a third-party contractor at any tier is a mandated reporter, SUBRECIPIENT agrees to comply, and assure the compliance of said third-party contractors, with the applicable provisions of the Elder Abuse and Dependent Adult Civil Protection Act (WIC §15600, et seq.). Additional information and training for mandated reporters can be found on the California Department of Social Services website: <https://www.cdss.ca.gov/inforesources/Adult-Protective-Services>.

## **XIX. PURCHASES BY SUBRECIPIENT**

### **A. All Purchases**

1. Prior authorization in writing by SANDAG shall be required before SUBRECIPIENT enters into any non-budgeted third-party contracts exceeding \$500 for supplies, equipment, or consultant services. SUBRECIPIENT shall provide an evaluation of the necessity or desirability of incurring such costs.
2. For the purchase of any item, service, or consulting work not covered in the Project Description and exceeding \$500, SUBRECIPIENT must competitively bid the work, or the absence of bidding must be adequately justified, and prior authorization must be obtained from SANDAG. SUBRECIPIENT shall maintain ownership of any real or personal property purchased using AGREEMENT funding (Property) and shall use such Property only for the purposes set forth in this AGREEMENT. The parties agree to meet and confer in good faith to ensure the continued use of the Property for the purposes intended.
3. The useful life of the Property will be specified in the Project Description.
4. SANDAG and SUBRECIPIENT agree that SUBRECIPIENT shall maintain each piece of Property in good operating order consistent with the purposes for which they were intended. SUBRECIPIENT agrees to make all maintenance records available to SANDAG and include as applicable in reports (see section entitled “Reports”, above).
5. SUBRECIPIENT shall maintain, or cause to be maintained, the Property at a high level of cleanliness, safety, and if applicable, mechanical soundness, under maintenance procedures, which SUBRECIPIENT must create and implement. SANDAG and the FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and proper maintenance of the Property.
6. Any Property purchased as a result of this AGREEMENT is subject to the following:
  - a. SUBRECIPIENT shall maintain an inventory record for each piece of non-expendable Property purchased or built with funds provided under the terms of this AGREEMENT.
  - b. The inventory record of each piece of such Property shall include, but not be limited to, the description, I.D. number, acquisition date, cost, grant-funded percentage, grant number, useful life, location, use and condition, disposition action, title holder, and/or any other information necessary to identify said Property. (2 CFR 200).

- c. Non-expendable Property so inventoried are those items of Property that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of Property costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to SANDAG upon request by SANDAG.
- 7. 2 CFR 200 requires a credit to Federal funds when participating Property with a fair market value greater than \$5,000 is credited to the Project.
- 8. SANDAG and SUBRECIPIENT agree that if a piece of Property is utilized for transportation services it shall be provided in a nondiscriminatory manner. SANDAG agrees to provide any necessary Title VI reporting to the federal government. SUBRECIPIENT agrees to provide such technical assistance and information as necessary for the development of that Title VI report (see also the section entitled “Non-Discrimination,” above).

**B. Vehicle Purchases [SUBSECTION USED FOR CAPITAL PROJECTS]**

- 1. The AGREEMENT calls for vehicle funding for SUBRECIPIENT. SUBRECIPIENT vehicles must be retained in service in accordance with useful life standards as set in FTA Circular 5010.1E. Subject to the section entitled “Allowable Costs for Non-Vehicle Purchases” above, SUBRECIPIENT shall be responsible at its sole cost for all normal maintenance and upkeep, insurance, taxes and registration fees related to the Property. SUBRECIPIENT also shall comply with the terms of the Vehicle Lease Agreement(s) for any vehicle purchases. Any Vehicle Lease Agreement(s) subsequently executed for the purpose of engaging a third-party contractor to operate the Vehicles purchased under this AGREEMENT is hereby incorporated by this reference.
- 2. On behalf of SUBRECIPIENT, SANDAG shall procure the Property in compliance with all federal requirements for competitive procurement, including, but not limited to the Buy America requirements applicable to vehicles pursuant to the Federal Transit Administration’s requirements. SUBRECIPIENT shall develop appropriate plans and specifications for each piece of Property to meet SUBRECIPIENT’s needs. SANDAG shall not be responsible for errors in plans or specifications provided by SUBRECIPIENT.
- 3. Due to FTA requirements that mandate that SANDAG maintain ownership and control of vehicles purchased with funds provided under this AGREEMENT, SUBRECIPIENT shall be required to enter into the Vehicle Lease Agreement(s) for the purchase of revenue or non-revenue vehicles. At the conclusion of the minimum useful life of the Property, or if this AGREEMENT is terminated, Property shall be disposed of consistent with FTA guidance and the terms of the Vehicle Lease Agreement(s).
- 4. SUBRECIPIENT agrees that a default under this AGREEMENT is a default under the Vehicle Lease Agreement with SANDAG and vice versa.
- 5. In the event a vehicle purchased pursuant to this AGREEMENT is damaged, lost, or stolen, and the insurance proceeds obtained by SUBRECIPIENT are insufficient to cover the loss, SUBRECIPIENT shall provide the additional funding needed to cover the difference, or forfeit the insurance proceeds to SANDAG and FTA and request an amendment to this AGREEMENT by SANDAG to reduce SUBRECIPIENT’s award amount and amend the Project Description and Performance Measures as may be needed.

**XX. DRUG AND ALCOHOL TESTING**

SUBRECIPIENT agrees to provide drug and alcohol testing of its drivers to the extent it is required by federal law.

## **XXI. THIRD-PARTY CONTRACTING**

- A.** SUBRECIPIENT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be completed by a third-party contractor without written authorization by SANDAG, unless expressly included (third-party contractor identified) in the Project Description. Any third-party contract entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this AGREEMENT to be applicable to SUBRECIPIENT's third-party contractor. By requesting approval from SANDAG for use of a third-party contractor, RECIPIENT will be asserting to SANDAG that it has an independent contractor relationship with that third-party contractor that meets the requirements for an independent contractor relationship under California law.
- B.** SUBRECIPIENT shall not award contracts over \$3,500 on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of SANDAG. Contracts awarded by SUBRECIPIENT, if intended as Match Percentage, must meet the requirements set forth in this AGREEMENT regarding local match funds.
- C.** SUBRECIPIENT shall execute and cause its third-party contractors to execute debarment and suspension certificates stating they have not been disqualified from doing business with the federal government. SUBRECIPIENT shall provide signed debarment and suspension certificates to SANDAG in advance of utilizing any third-party contractor.
- D.** Any third-party contract entered into by SUBRECIPIENT as a result of this AGREEMENT shall mandate that travel and per diem reimbursements and third-party contract reimbursements will be allowable as Project costs only after those costs are incurred and paid for by the third-party contractor.
- E.** If local match is a requirement of these funds, SUBRECIPIENT must ensure that local match funds used for the Project meet the requirements outlined in this AGREEMENT in the same manner as is required of all other Project expenditures.
- F.** Although SUBRECIPIENT may delegate any or almost all Project responsibilities to one or more third-party contractors at any tier, SUBRECIPIENT agrees that it, rather than any third-party contractor, is ultimately responsible for compliance with all applicable laws, regulations, and this AGREEMENT.

## **XXII. ETHICS**

- A.** SUBRECIPIENT agrees to maintain a written code of conduct or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of third-party contracts supported with funding provided under this AGREEMENT. SANDAG has established policies concerning potential conflicts of interest. These policies apply to SUBRECIPIENT.
- B.** For all awards by SANDAG or SUBRECIPIENT, any practices which might result in unlawful activity are prohibited including, but not limited to, rebates, kickbacks, or other unlawful considerations. SANDAG and SUBRECIPIENT staffs are specifically prohibited from participating in the selection process for a procurement when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG or SUBRECIPIENT if one of their respective board members or staff has a prohibited financial interest in the contract. Staff are also prohibited from soliciting or accepting gratuities from any organization seeking funding from SANDAG or SUBRECIPIENT. Neither SANDAG nor SUBRECIPIENT's officers, employees, agents, and board members shall solicit or accept gifts,

gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements.

- C. By signing this AGREEMENT, SUBRECIPIENT affirms that it has no knowledge of an ethical violation by SANDAG or SUBRECIPIENT staff. If SUBRECIPIENT has any reason to believe a conflict of interest exists with regard to the AGREEMENT or the Project, it should notify the SANDAG Office of General Counsel immediately.

### **XXIII. COMPLIANCE WITH LABOR AND OTHER LAWS**

- A. If this Project will result in the construction, alteration, modification, or maintenance of a "Public Work," as that term is defined in the Labor Code, then SUBRECIPIENT must conform to the provisions of the Labor Code applicable to Public Works as set forth in sections 1720 through 1815, all applicable regulations of the Department of Industrial Relations, and determinations of coverage as issued by the Director of Industrial Relations.
- B. SUBRECIPIENT shall include in all third-party contracts funded by this AGREEMENT which contemplate the actual construction of a Public Works project paid for by funds allocated under this AGREEMENT, a clause that requires each third-party contractor to comply with California Labor Code requirements that all workers employed on public works projects (as defined in California Labor Code 1720-1815) will be paid not less than the general prevailing wage rates predetermined by the Director of the State Department of Industrial Relations.
- C. RECIPIENT shall comply with all federal, state, and local laws and ordinances applicable to this AGREEMENT. This includes compliance with laws defining independent contractors, when applicable. Consultant shall pass all of the provisions in this section through to its third-party contractors at any tier.
- D. RECIPIENT shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are contemplated by this AGREEMENT.
- E. RECIPIENT represents and warrants to SANDAG that it has all necessary licenses, permits, qualifications and approvals, of whatever nature, that are legally required for it to operate legally. RECIPIENT further represents and warrants to SANDAG that it shall keep in effect at all times during the term of this AGREEMENT any licenses, permits, and approvals that are required for it to perform under this AGREEMENT.
- F. The State Fire Marshal adopts building standards for fire safety and panic prevention. When applicable, SUBRECIPIENT must assure that any relevant Project plans meet the standards of the State Fire Marshal to ensure consistency with fire protection standards.

### **XXIV. RECORDS RETENTION AND AUDITS**

- A. SUBRECIPIENT and its third-party contractors at any tier shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of SUBRECIPIENT, and its third-party contractors at any tier shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of SUBRECIPIENT and its third-party contractors at any tier connected with Project performance under this AGREEMENT shall be maintained for a minimum of three years from the date of the SANDAG final payment to SUBRECIPIENT and shall be held open to inspection, copying, and audit by representatives of SANDAG and auditors representing the federal

government. Copies thereof will be furnished by SUBRECIPIENT and its third-party contractors at any tier upon receipt of any request made by SANDAG or its agents.

- B.** For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of SUBRECIPIENT's third-party contracts, pursuant to Government Code section 8546.7, SUBRECIPIENT, SUBRECIPIENT's third-party contractors at any tier and SANDAG shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. SUBRECIPIENT and its third-party contractors at any tier shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three years from the date of the SANDAG final payment to SUBRECIPIENT under this AGREEMENT. SANDAG or any duly authorized representative of SANDAG or the DOT shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and SUBRECIPIENT shall furnish copies thereof upon SANDAG request.
- C.** SUBRECIPIENT and its third-party contractors at any tier will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by SANDAG for the purpose of any investigation to ascertain compliance with this AGREEMENT.

#### **XXV. MEDIA AND COMMUNITY OUTREACH COORDINATION**

- A.** SUBRECIPIENT agrees to keep SANDAG up-to-date on the Project and media and community outreach efforts, including presentations to community groups, other agencies, and elected officials. SUBRECIPIENT agrees to assist SANDAG with media or community events related to the grant-funded project.
- B.** As part of the reports submitted to SANDAG, SUBRECIPIENT agrees to provide Project information to support SANDAG media and communications efforts. This includes Project photos taken throughout the project at program events or as a part of Project tasks. The photos should be high resolution (at least 4 inches by 6 inches with a minimum of 300 pixels per inch) and contain captions with Project descriptions, dates, locations, and the names of those featured, if appropriate. SUBRECIPIENT agrees to submit at least one project photo of high quality to SANDAG no less frequently than on a quarterly basis for the duration of the project.
- C.** SANDAG reserves the right to use the information provided by SUBRECIPIENT for any combination of the following: social media posts, online photo albums, videos, press releases, PowerPoint presentations, web updates, newsletters, and testimonials. In submitting photos to SANDAG, SUBRECIPIENT agrees to release the rights of the photos to SANDAG for its use. In submitting photos to SANDAG, SUBRECIPIENT asserts that the photos have been obtained with the consent of all persons featured in the photo (or that of a parent or guardian of persons under the age of 18) using the SANDAG Photo and Testimonial Release form to be provided by the SANDAG Project Manager, or a similar release form developed by the grantee and agreed upon by SANDAG, and to release the rights of the photos to SANDAG for its use.
- D.** SUBRECIPIENT agrees to include the SANDAG logo on promotional materials for services funded by this AGREEMENT. SANDAG will provide SUBRECIPIENT with the logo upon request. The SANDAG logo may not be used for any purpose not expressly authorized by SANDAG.



## **XXVI. ENVIRONMENTAL CLEARANCE**

If applicable to Project, environmental clearance of Project by SUBRECIPIENT is required prior to requesting funds for right-of-way purchase or construction. No department or agency shall request funds nor shall any department/agency board or commission authorize expenditures of funds for any project, except feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied by an environmental impact report per California Public Resources Code section 21102, unless an exception in the law applies.

## **XXVII. CHANGES IN TERMS OR CONDITIONS**

- A.** This AGREEMENT may be amended or modified only by mutual written agreement of the Parties. SUBRECIPIENT agrees to notify SANDAG immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect SUBRECIPIENT's ability to perform the Project in accordance with the terms of this AGREEMENT. SUBRECIPIENT also agrees to notify SANDAG immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect SANDAG interests in the Project or SUBRECIPIENT's ability to carry out the Project; and agrees to inform SANDAG, also in writing, before naming SANDAG as a party to litigation for any reason, in any forum. At a minimum, SUBRECIPIENT agrees to send each notice to SANDAG required by this subsection to the SANDAG Office of General Counsel.
- B.** SANDAG is obligated to notify the FTA of any change in conditions, including changes in local law or litigation which would affect performance of the project. SUBRECIPIENT agrees that, in the event such circumstances occur, it will notify SANDAG, in writing, within ten calendar days.

## **XXVIII. DISPUTES**

- A.** Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be finally decided by the SANDAG Executive Director or delegate, who may or may not consider any written or verbal evidence submitted by SUBRECIPIENT, in the Executive Director's or delegate's sole discretion.
- B.** Neither the pendency of a dispute nor its consideration by SANDAG will excuse either party from full and timely performance in accordance with the terms of the AGREEMENT.

## **XXIX. EARLY TERMINATION OF THIS AGREEMENT**

- A.** This AGREEMENT may be terminated in whole or in part by either party for any reason by giving written notice to the other party at least 30 days in advance of the effective date of such termination. In the event of termination by said notice, funds reimbursed to SUBRECIPIENT will include authorized non-cancelable obligations and eligible costs incurred prior to receipt of the notice of termination. **[FOLLOWING SENTENCE USED FOR CAPITAL PROJECTS]** SUBRECIPIENT is still bound by the terms of the Vehicle Lease Agreement(s) as it pertains to the purchase and disposition of vehicles purchased under this AGREEMENT.
- B.** Notwithstanding the foregoing subsection, if the funds provided under this AGREEMENT are used by RECIPIENT to purchase a vehicle, and RECIPIENT is required or desires to return one more vehicles to SANDAG prior to termination of the AGREEMENT for any reason, RECIPIENT shall not be entitled to a return of any of its matching funds. RECIPIENT shall work with the SANDAG Project Manager on a plan for disposition of any such vehicle. Furthermore, RECIPIENT shall be responsible to SANDAG for paying for any storage, insurance, or other costs incurred by SANDAG to take early possession or dispose of the vehicle(s), unless otherwise agreed to in writing by SANDAG.

### **XXX. PROJECT CLOSE OUT**

The termination date of this AGREEMENT refers to the last date for SUBRECIPIENT to incur valid Project costs or credits. SUBRECIPIENT has 60 days after the termination date of this AGREEMENT to make final allowable payments to third-party contractors, prepare the Project Closeout Report, and submit the final invoice to SANDAG for reimbursement for allowable Project costs. Any unexpended Project funds invoiced after 90 days post the termination date of this AGREEMENT will be forfeited and will no longer be accessible by SUBRECIPIENT to reimburse for Project expenses.

### **XXXI. RELATIONSHIP OF PARTIES**

It is expressly understood that this AGREEMENT is executed by and between two independent entities and that this is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

### **XXXII. INTEGRATION AND SEVERABILITY**

This AGREEMENT represents the entire understanding of SANDAG and SUBRECIPIENT as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may not be modified or altered except in writing, signed by SANDAG. If any provision of the AGREEMENT is determined invalid, the remainder of the AGREEMENT shall not be affected if that remainder would continue to conform to the requirements of applicable laws or regulations. All Attachments to this AGREEMENT are hereby incorporated as though set forth in full herein.

### **XXXIII. FORCE MAJEURE**

Either party is excused from performance hereunder if such non-performance results from acts of God, epidemics, war, riots, acts of governmental authorities, or any other cause that could not have been overcome by the exercise of due diligence or planning by the non-performing party. In the event of the occurrence of a force majeure event, the party unable to perform shall promptly notify the other party within five calendar days and provide an explanation describing why the inability to perform is not due in whole or in part to its actions or inaction. It shall further pursue its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

### **XXXIV. SURVIVAL**

The rights, obligations and conditions set forth in the Sections of this AGREEMENT entitled Indemnification and Liability, Insurance, Notices, Cost Principles, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this AGREEMENT, shall survive until the last applicable statute of limitations expires.

### **XXXV. WAIVER**

Neither the SANDAG review, approval, or acceptance of, nor payment for, any of the work required under this AGREEMENT shall be construed to operate as a waiver of any rights under this AGREEMENT by SANDAG.

### **XXXVI. PROHIBITED INTERESTS**

As an FTA designated recipient, SANDAG is required to inform the SUBRECIPIENT of the following information:

No, member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this AGREEMENT or to any benefit arising therefrom.

### **XXXVII. FTA REQUIREMENTS**

Various certification forms are required as a result of the FTA monies that will be used to fund this AGREEMENT. These forms are included as attachments to this AGREEMENT and must be executed prior to, or concurrently with, this AGREEMENT by SUBRECIPIENT.

The federal government shall not be subject to any obligations or liabilities to any third-party contractor or any other person not a party to the agreement between SANDAG and FTA. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including SUBRECIPIENT or any other third-party contractor.

SUBRECIPIENT recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801, et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. 31, apply to its actions pertaining to this AGREEMENT. Accordingly, by signing the AGREEMENT, SUBRECIPIENT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the AGREEMENT. In addition to other penalties that may be applicable, SUBRECIPIENT also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on SUBRECIPIENT to the extent the federal government deems appropriate. SUBRECIPIENT also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with this AGREEMENT, the government reserves the right to impose on SUBRECIPIENT the penalties of 18 U.S.C. 1001, to the extent the federal government deems appropriate.

### **XXXVIII. ATTACHMENTS**

The following attachments are incorporated into and are made part of this AGREEMENT by this reference and attachment. In the event of conflicting provisions, the following order of precedence will apply: (1) Standard Federal Provisions (FTA); (2) Federal Provisions for the 5310 Program Enhanced Mobility of Seniors and Individuals with Disabilities (FTA); and (3) SANDAG Board Policy No. 35: Competitive Grant Program Procedures.

- Project Description (Scope of Work, Project Schedule, and Project Budget)
- Section 5310 Vehicle Procurement Schedule **[Remove if not applicable.]**
- Performance Measures
- SUBRECIPIENT Resolution
- SANDAG Board Policy No. 035: Competitive Grant Program Procedures
- Subaward Information
- Indirect Cost Rate Certification Form
- Standard Federal Provisions (Federal Transit Administration)
- Federal Provisions for Procurements in Excess of \$100,000

- Federal Provisions for the 5310 Program Enhanced Mobility of Seniors and Individuals with Disabilities
- Fiscal Year 2020 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements
- Certificate of Nondiscrimination Assurances
- Equal Employment Opportunity Certificate of Compliance
- Title VI Program Resolution
- Buy America Certificate (FTA)
- Grant Monitoring Checklist

**XXXIX. SIGNATURES**

The persons below assert that they are authorized to execute this AGREEMENT and have executed it as of the date of the last signature below. This AGREEMENT may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. The parties hereby agree to the use of electronic signatures to create mutually binding contractual agreements.

SAN DIEGO ASSOCIATION OF  
GOVERNMENTS

INSERT SUBRECIPIENT NAME

---

INSERT SIGNATORY NAME  
Insert Signatory Title

---

INSERT SIGNATORY NAME  
Insert Signatory Title

APPROVED AS TO FORM:

---

Office of General Counsel

**PROJECT DESCRIPTION  
(SCOPE OF WORK, PROJECT SCHEDULE, AND PROJECT BUDGET)**

To be inserted at time of AGREEMENT execution.

## SECTION 5310 VEHICLE PROCUREMENT SCHEDULE

[Remove if not applicable.]

Responsible Party	Action item	Timeframe	
SANDAG	Solicit and verify quote(s) for vehicle(s) based on specifications provided in the grant application	2 months prior to Notice to Proceed	
SANDAG	Confirm quote details and match amount with successful applicant	1 month prior to Notice to Proceed	
SANDAG	Send invoice for matching funds	Within 1 month after Notice to Proceed	
Grantee	Provide matching funds to SANDAG	Within 2 months after Notice to Proceed	
SANDAG	Issue Purchase Order(s)	Within 8 months after Notice to Proceed	
Grantee	Receive delivered vehicle(s)	Within 6 months after date of Purchase Order(s)	
SANDAG	Verify post-delivery requirements have been met	Within 7 months after Purchase Order(s)	
Grantee	Operate vehicle(s) in accordance with AGREEMENT for the minimum useful life of vehicle(s)	Light-duty vehicle (Minivan)	at least 4 years or 100,000 miles
		Medium-sized, light-duty transit bus (approx. 25'-35')	at least 5 years or 150,000 miles
		Medium-sized, medium-duty transit bus (approx. 25'-35')	at least 7 years or 200,000 miles
Grantee	Submit vehicle appraisal to SANDAG	Within 3 months from end of useful life of each vehicle	
SANDAG	Final disposition action	Within 6 months from end of useful life of each vehicle	

**PERFORMANCE MEASURES**

To be inserted at time of AGREEMENT execution.

## **SUBRECIPIENT RESOLUTION**

To be inserted at time of AGREEMENT execution.



**SANDAG BOARD POLICY NO. 035**  
**“COMPETITIVE GRANT PROGRAM PROCEDURES”**



**BOARD POLICY NO. 035**

**COMPETITIVE GRANT PROGRAM PROCEDURES**

**Applicability and Purpose of Policy**

This Policy applies to all grant programs administered through SANDAG, whether from *TransNet* or another source, including but not limited to the Smart Growth Incentive Program, Environmental Mitigation Program, Bike and Pedestrian Program, Senior Mini Grant Program, Federal Transit Administration grant programs, and Active Transportation Grant Program.

Nothing in this Policy is intended to supersede federal or state grant rules, regulations, statutes, or contract documents that conflict with the requirements in this Policy. There are never enough government grant funds to pay for all of the projects worthy of funding in the San Diego region. For this reason, SANDAG awards grant funds on a competitive basis that takes the grantees' ability to perform their proposed project on a timely basis into account. SANDAG intends to hold grantees accountable to the project schedules they have proposed in order to ensure fairness in the competitive process and encourage grantees to get their projects implemented quickly so that the public can benefit from the project deliverables as soon as possible.

**Procedures**

1. Project Milestone and Completion Deadlines
  - 1.1. When signing a grant agreement for a competitive program funded and/or administered by SANDAG, grant recipients must agree to the project delivery objectives and schedules in the agreement. In addition, a grantee's proposal must contain a schedule that falls within the following deadlines. Failure to meet the deadlines below may result in revocation of all grant funds not already expended. The final invoice for capital, planning, or operations grants must be submitted prior to the applicable deadline.
    - 1.1.1. Funding for Capital Projects. If the grant will fund a capital project, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary construction contract must be awarded within two years following execution of the grant agreement, and construction must be completed within eighteen months following award of the construction contract. Completion of construction for purposes of this policy shall be when the prime construction contractor is relieved from its maintenance responsibilities. If no construction contract award is necessary, the construction project must be complete within eighteen months following execution of the grant agreement.
    - 1.1.2. Funding for Planning Grants. If the grant will fund planning, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary consultant contract must be awarded within one year following execution of the grant agreement, and the planning project must be

complete within two years following award of the consultant contract. Completion of planning for purposes of this policy shall be when grantee approves the final planning project deliverable. If no consultant contract award is necessary, the planning project must be complete within two years of execution of the grant agreement.

1.1.3 Funding for Operations Grants. If the grant will fund operations, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary services contract for operations must be awarded within one year following execution of the grant agreement, and the operations must commence within six months following award of the operations contract. If no services contract for operations is necessary, the operations project must commence within one year of execution of the grant agreement.

1.1.4 Funding for Equipment or Vehicles Grants. If the grant will fund equipment or vehicles, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary purchase contracts for equipment or vehicles must be awarded within one year following execution of the grant agreement, and use of the equipment or vehicles for the benefit of the public must commence within six months following award of the purchase contract.

## 2. Project Milestone and Completion Deadline Extensions

2.1. Schedules within grant agreements may include project scopes and schedules that will identify interim milestones in addition to those described in Section 1 of this Policy. Grant recipients may receive extensions on their project schedules of up to six months for good cause. Extensions of up to six months aggregate that would not cause the project to miss a completion deadline in Section 1 may be approved by the SANDAG Executive Director. Extensions beyond six months aggregate or that would cause the project to miss a completion deadline in Section 1 must be approved by the Policy Advisory Committee that has been delegated the necessary authority by the Board. For an extension to be granted under this Section 2, the following conditions must be met:

2.1.1. For extension requests of up to six months, the grantee must request the extension in writing to the SANDAG Program Manager at least two weeks prior to the earliest project schedule milestone deadline for which an extension is being requested. The Executive Director or designee will determine whether the extension should be granted. The Executive Director's action will be reported out to the Board in following month's report of delegated actions.

2.1.2. A grantee seeking an extension must document previous efforts undertaken to maintain the project schedule, explain the reasons for the delay, explain why the delay is unavoidable, and demonstrate an ability to succeed in the extended time frame the grantee proposes.

2.1.3. If the Executive Director denies an extension request under this Section 2, the grantee may appeal within ten business days of receiving the Executive Director's

response to the responsible Policy Advisory Committee by sending the appeal to the SANDAG Program Manager.

2.1.4. Extension requests that are rejected by the Policy Advisory Committee will result in termination of the grant agreement and obligation by the grantee to return to SANDAG any unexpended funds within 30 days. Unexpended funds are funds for project costs not incurred prior to rejection of the extension request by the Policy Advisory Committee.

3. Project Delays and Extensions in Excess of Six Months

3.1. Requests for extensions in excess of six months, or that will cause a project to miss a completion deadline in Section 1 (including those projects that were already granted extensions by the Executive Director and are again falling behind schedule), will be considered by the Policy Advisory Committee upon request to the SANDAG Program Manager.

3.2. A grantee seeking an extension must document previous efforts undertaken to maintain the project schedule, explain the reasons for the delay, explain why the delay is unavoidable, and demonstrate an ability to succeed in the extended time frame the grantee proposes. The grantee must provide the necessary information to SANDAG staff to place in a report to the Policy Advisory Committee. If sufficient time is available, and the grant utilized *TransNet* funds, the request will first be taken to the Independent Taxpayer Advisory Committee (ITOC) for a recommendation. The grantee should make a representative available at the meeting to present the information to, and/or answer questions from, the ITOC and Policy Advisory Committee.

3.3. The Policy Advisory Committee will only grant an extension under this Section 3 for extenuating circumstances that the grantee could not have reasonably foreseen.

4. Resolution and Execution of the Grant Agreement

4.1. Two weeks prior to the review by the Policy Advisory Committee of the proposed grants, prospective grantees must submit a resolution from their authorized governing body that includes the provisions in this Subsection 4.1. Failure to provide a resolution that meets the requirements in this Subsection 4.1 will result in rejection of the application and the application will be dropped from consideration with funding going to the next project as scored by the evaluation committee. In order to assist grantees in meeting this resolution deadline, when SANDAG issues the call for projects it will allow at least 90 days for grant application submission.

4.1.1. Grantee governing body commits to providing the amount of matching funds set forth in the grant application.

4.1.2. Grantee governing body authorizes staff to accept the grant funding and execute a grant agreement if an award is made by SANDAG.

4.2. Grantee's authorized representative must execute the grant agreement within 45 days from the date SANDAG presents the grant agreement to the prospective grantee for

execution. Failure to meet the requirements in this Subsection 4.2 may result in revocation of the grant award.

5. Increased Availability of Funding Under this Policy

- 5.1. Grant funds made available as a result of the procedures in this Policy may be awarded to the next project on the recommended project priority list from the most recent project selection process, or may be added to the funds available for the next project funding cycle, at the responsible Policy Advisory Committee's discretion. Any project that loses funding due to failure to meet the deadlines specified in this Policy may be resubmitted to compete for funding in a future call for grant applications.

Adopted: January 2010

Amended: November 2014

## SUBAWARD INFORMATION

**A.** Subaward Identification:

- (1) Subrecipient Name:
- (2) Subrecipient unique entity identifier (e.g., D-U-N-S Number):
- (3) Federal Award Identification Number:
- (4) Federal Award Date:
- (5) Subaward Period of Performance-Start and End Dates:
  - Start:
  - End:
- (6) Amount of Federal Funds Obligated by this action:
- (7) Total Amount of Federal Funds Obligated to Subrecipient:
- (8) Total Amount of the Federal Award Committed to Subrecipient:
- (9) Federal Award Project Description:
- (10) Name of:
  - a. Federal Awarding Agency:
  - b. Pass-Through Entity:
  - c. Contact information for the awarding official:
    - Project Manager Name
    - SANDAG
    - 401 B Street, Suite 800
    - San Diego, CA 92101
    - Insert Phone Number
    - Insert Email Address
- (11) CFDA Number and Name:
- (12) R&D Project?
- (13) Indirect Cost Rate:

**B.** All requirements imposed by SANDAG on the subrecipientis so that the Federal award is used in accordance with Federal statues, regulations and terms and conditions of the Federal award:

Standard Federal Provisions (Federal Transit Administration), Federal Provisions for Procurements in Excess of \$100,000 (Federal Transit Administration), and Federal Provisions for the Section 5310 Program Enhanced Mobility of Seniors and Individuals with Disabilities; all are attachments to this AGREEMENT.

- C. Any additional requirements that SANDAG imposes on the subrecipient in order for SANDAG to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports:

AGREEMENT

- D. An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between SANDAG and the subrecipient, or de minimis indirect cost rate (10%).

Specify the type of indirect cost rate or insert "Not Applicable"

- E. A requirement that the subrecipient permits SANDAG and auditors to have access to the subrecipient's records and financial statements as necessary in accordance with the

AGREEMENT sections entitled "Compliant Procedures", "Purchases by Subrecipient", and "Records Retention", and Standard Federal Provisions (Federal Transit Administration) sections entitled "Title VI Civil Rights Act of 1964", "Reporting", "Record Retention", "Access", "Drug and Alcohol Program", and "Compliance with Executive Order 11246".

- F. Appropriate terms and conditions concerning closeout of subaward:

AGREEMENT section entitled "Early Termination of this Agreement".

## INDIRECT COST RATE CERTIFICATION FORM

### Indirect Rate Cost Certification Form for Agencies Using the 10% de minimus Rate on Grant Agreements with Federal Funding

#### CERTIFICATION OF ELIGIBILITY

I, the undersigned, certify that SUBRECIPIENT is eligible to use the 10% de minimis indirect cost rate as we have:

- Never received a negotiated indirect cost rate.
- Received less than \$35 million in direct federal funding for the fiscal year requested and each fiscal year thereafter.

#### Certification of Financial Management System

I, the undersigned, certify that SUBRECIPIENT has a financial management system that accumulates and segregates direct costs (*costs that can be specifically identified to a final cost objective [e.g., a project, program, or other direct activity of an organization]*) from indirect costs (*Costs incurred for a common or joint purpose benefitting more than one final cost objective e.g. administrative costs such as clerical support, human resources, accounting, payroll, financial audits, rent, utilities, supplies, vehicle expense, executive management, etc. that is not readily assignable to the final cost objectives specifically benefitted, without effort disproportionate to the results achieved*) and by project/activity, that are allowable in accordance with Title 2 Code of Federal Regulations Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance).

**I certify the SUBRECIPIENT's financial management system has the following attributes:**

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts.
- Ability to accumulate and segregate allowable direct, indirect and unallowable costs into different cost accounts.
- Ability to accumulate and segregate allowable direct costs by project, funding source, and type of cost (e.g.: labor, consulting, pass-thru, or other).
- Internal controls to maintain integrity of financial management system.
- Ability to consistently record and report costs as described in the Uniform Guidance.
- Ability to ensure costs billed are in compliance with the Uniform Guidance.
- Ability to ensure costs billed reconcile to general ledgers and job costing ledgers.
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

**I also certify that the types of records that are used to support the existence of these attributes include the following:**

- General ledger and job costing ledgers.
- Subsidiary general ledgers.
- Chart of accounts.
- Financial statements.
- Time keeping records.
- Documents supporting actual costs (e.g. invoices, canceled checks).
- Accounting policy and procedure manuals specific to the SUBRECIPIENT.

**Finally, I understand:**

1. The de minimis rate of 10% is to be applied to modified total direct costs which means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). Modified total direct cost excludes equipment, capital expenditures, rental costs, and the portion of each subaward in excess of \$25,000.
2. Costs must be consistently charged as either indirect or direct but may not be double charged or inconsistently charged as both.
3. The proper use and application of the de minimis rate is the responsibility of SUBRECIPIENT and SANDAG may perform an audit on SUBRECIPIENT to ensure compliance with the Uniform Guidance and agreements with SANDAG. If it is determined we are inconsistently charging costs, or not in compliance with the Uniform Guidance we may be required to reimburse SANDAG for any identified overbillings.
4. SUBRECIPIENT's schedule of expenditures of federal awards must include a note on whether it elected to use the 10% de minimis cost rate in accordance with the Uniform Guidance.

I declare that the foregoing is true and correct.

Subrecipient \_\_\_\_\_

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

Name of Official\*:

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

Telephone No.: \_\_\_\_\_ E-mail: \_\_\_\_\_

*\*(Must be executive, financial officer, or equivalent of Subrecipient)*



## **STANDARD FEDERAL PROVISIONS (FEDERAL TRANSIT ADMINISTRATION)**

As a Federal Transit Administration (FTA) grantee, the San Diego Association of Governments (SANDAG) is required to inform the SUBRECIPIENT of these Standard Federal Provisions as provided herein. Any third-party contract entered into by SUBRECIPIENT as a result of the Section 5310 Fund Transfer Program AGREEMENT (Agreement) with SANDAG, shall contain all of these Standard Federal Provisions.

### **I. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES - APPLICABLE TO ALL CONTRACTS**

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the relevant Grant Agreement or Cooperative Agreement between SANDAG and FTA in connection with the performance of this Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation or third-party contract, the federal government continues to have no obligations or liabilities to any party, including SUBRECIPIENT or any other third-party contractor.

### **II. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - APPLICABLE TO ALL CONTRACTS**

The SUBRECIPIENT recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801, et seq., and United States Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 C.F.R. 31, apply to its actions pertaining to this Agreement. Accordingly, by signing the Agreement, the SUBRECIPIENT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Agreement. In addition to other penalties that may be applicable, the SUBRECIPIENT also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the SUBRECIPIENT to the extent the federal government deems appropriate. The SUBRECIPIENT also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 U.S.C. 5307, the government reserves the right to impose on the SUBRECIPIENT the penalties of 18 U.S.C. 1001 to the extent the federal government deems appropriate.

### **III. ENERGY EFFICIENCY - APPLICABLE TO ALL CONTRACTS**

SUBRECIPIENT agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

### **IV. PROHIBITED INTERESTS - APPLICABLE TO ALL CONTRACTS**

No member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

If SUBRECIPIENT will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, Consultant will be required to submit a statement to SANDAG certifying that SUBRECIPIENT has no financial or other interest in the outcome of the Project. [40 C.F.R. 1506.5(c)].

## V. TITLE VI CIVIL RIGHTS ACT OF 1964 - APPLICABLE TO ALL CONTRACTS

During the performance of this Agreement, the SUBRECIPIENT, for itself, its assignees and successors in interest (hereinafter referred to as the "SUBRECIPIENT"), agrees as follows:

- A.** Compliance with Regulations. The SUBRECIPIENT and any third-party contractors shall comply with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; 49 U.S.C. 5332 and DOT Regulations, "Non-Discrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. 21, and any implementing requirements FTA may issue, as they may be amended from time-to-time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- B.** Nondiscrimination. The SUBRECIPIENT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, or age, or national origin in the selection and retention of third-party contractors, including procurements of materials and leases of equipment. The SUBRECIPIENT shall not participate either directly or indirectly in the discrimination prohibited by Section 21 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- C.** Solicitations for third-party contractors, including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiations made by the SUBRECIPIENT for work to be performed under a third-party contract, including procurements of materials or leases of equipment, each potential third-party contractor or supplier shall be notified by the SUBRECIPIENT of the SUBRECIPIENT's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- D.** Information and Reports. The SUBRECIPIENT shall provide all information and reports required by the regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SANDAG (Recipient) or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required or a SUBRECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, the SUBRECIPIENT shall so certify to SANDAG or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E.** Sanctions for Noncompliance. In the event of noncompliance, SANDAG shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

  - Withholding of payments to the SUBRECIPIENT under the Agreement until the SUBRECIPIENT complies, and/or
  - Cancellation, termination or suspension of the Agreement, in whole or in part.
- F.** Incorporation of Provisions. The SUBRECIPIENT shall include the provisions of sections A through E of this Section in every third-party contract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The SUBRECIPIENT shall take such action with respect to any third-party contract or procurement as SANDAG or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance provided; however, in the event a SUBRECIPIENT becomes involved, or is threatened with litigation with a third-party contractor or supplier as a result of such direction, the SUBRECIPIENT may request SANDAG to enter into such litigation to protect the interests of SANDAG and, in addition, the SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.

## VI. EMPLOYEE PROTECTIONS

### A. Construction Activities

#### Applicable to Construction Contracts Exceeding \$2,000

For construction activities exceeding \$2,000 performed in connection with the Project, the SUBRECIPIENT shall comply with the following construction employee protection requirements:

1. Davis-Bacon Act, as amended (APPLICABLE TO CONSTRUCTION CONTRACTS EXCEEDING \$2,000). The SUBRECIPIENT shall comply and assure compliance with the requirements of 49 U.S.C. 5333(a), the Davis-Bacon Act, 40 U.S.C. 3141 et seq. , and implementing U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. 5. In addition to other requirements that may apply:
  - a. The SUBRECIPIENT shall pay wages to laborers and mechanics performing third-party contract work at a rate not less than the minimum wages specified in a wage determination issued by the United States Secretary of Labor and not less frequently than once a week. SANDAG agrees to furnish the bidder a copy of the current prevailing wage determination issued by the United States Department of Labor (DOL) for third-party contract work under the Project upon request, and agrees to refrain from awarding any affected third-party contract until the third-party contractor agrees to the required wage determination.
  - b. SANDAG shall report to FTA every suspected or reported violation of the Davis-Bacon Act or its federal implementing regulations.
2. Contract Work Hours and Safety Standards Act, as amended

The SUBRECIPIENT shall comply and assures compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. –3702-3708; and implementing DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. 5; and DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. 1926. In addition to other requirements that may apply:

- a. In accordance with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3702-3708, the SUBRECIPIENT shall assure that, for the Project the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker shall be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The SUBRECIPIENT shall ensure that determinations pertaining to these requirements will be made in accordance with applicable DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. 5.
- b. In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3700 et seq., the SUBRECIPIENT shall assure that no laborer or mechanic working on a construction contract shall be required to work in

surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. 1926.

- c. The requirements of this Subsection do not apply to third-party contracts for the purchase of supplies, materials or articles ordinarily available on the open market.

3. Copeland "Anti-Kickback" Act, as amended

The SUBRECIPIENT shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874 and 40 U.S.C. 3145, and DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. 3. In addition to other requirements that may apply:

- a. The SUBRECIPIENT will not induce, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
- b. SANDAG shall report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its federal implementing regulations to FTA.

**B. Activities Not Involving Construction - Applicable to Nonconstruction Contracts Exceeding \$2,500**

For nonconstruction activities exceeding \$2,500 performed in connection with the Project, the SUBRECIPIENT shall comply with the following employee protection requirements:

1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3702-3708, SUBRECIPIENT shall assure that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. SUBRECIPIENT agrees that determinations pertaining to these requirements will be made in accordance with the applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. 5.
2. The requirements of this Subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinary available on the open market.

**C. State and Local Government Employees**

SUBRECIPIENT shall ensure that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. 206 - 207, apply to employees performing work involving commerce, including such state and local government employees as public transit authority employees, participating in the Project. Consequently, each participant that is a state or local government agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the Project.

**D. Transit Employee Protective Arrangements - Applicable to Each Contract for Transit Operations Performed by Employees of a SUBRECIPIENT Recognized by FTA to be a Transit Operator**

The SUBRECIPIENT shall comply with the following requirements applicable to transit operations performed in connection with the Project:

1. Standard Transit Employee Protective Arrangements. To the extent that transit operations are involved, the SUBRECIPIENT shall carry out the Project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and to meet the requirements of 49 U.S.C. 5333(b), and U.S. guidelines at 29 C.F.R. 215, and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The SUBRECIPIENT shall carry out the Project in compliance with the conditions stated in that U.S. DOL certification. That the DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection, however, do not apply to formula assistance Projects for the elderly and persons with disabilities authorized by 49 U.S.C. 5310(a)(2) or to formula assistance Projects for nonurbanized areas authorized by 49 U.S.C. 5311.
2. Transit Employee Protective Arrangements for Projects Authorized by 49 U.S.C. 5310(a)(2) for the Elderly and Persons with Disabilities. If the Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. 5333(b) are necessary or appropriate for public body SUBRECIPIENTs under the Project, the SUBRECIPIENT shall carry out the Project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), and DOL guidelines at 29 C.F.R. 215, and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The SUBRECIPIENT shall carry out the Project in compliance with the conditions stated in the DOL certification. The DOL certification and any documents cited there in are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.
3. Transit Employee Protective Arrangement for Projects Authorized by 49 U.S.C. 5311 in Nonurbanized Areas. The SUBRECIPIENT shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by DOL or any revision thereto.

**VII. CARGO PREFERENCE - APPLICABLE TO ALL PROCUREMENTS INVOLVING EQUIPMENT, MATERIALS, OR COMMODITIES, WHICH MAY BE TRANSPORTED BY OCEAN VESSELS**

46 U.S.C. 55305 and 46 C.F.R. 381 which imposes the United States cargo preference requirements on the shipment of foreign made goods shall apply to this procurement.

- A. The SUBRECIPIENT shall utilize privately owned United States-flagged commercial vessels to ship at least 50 percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
- B. The SUBRECIPIENT shall furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean

bill-of-lading in English for each shipment of cargo described in paragraph (A) above to the Recipient (through the prime Contractor in the case of third-party contractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the Project.

The SUBRECIPIENT shall insert the substance of the provisions of this clause in all third-party contracts issued pursuant to this Agreement.

### **VIII. REPORTING, RECORD RETENTION, ACCESS - APPLICABLE TO ALL CONTRACTS**

- A.** Reports. At a minimum, the SUBRECIPIENT agrees to provide SANDAG and the FTA those reports required by U.S. DOT's grant management rules and any other reports SANDAG or the federal government may require.
- B.** Record Retention. The SUBRECIPIENT shall, during the course of the Project and for five years thereafter, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as SANDAG or the federal government may require for the Project.
- C.** Access to Records. Upon request, the SUBRECIPIENT shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the SUBRECIPIENT and its third-party contractors pertaining to the Project. In accordance with 49 U.S.C. 5325(a), the SUBRECIPIENT shall require each third-party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third-party contract and to audit the books, records, and accounts involving that third-party contract as it affects the Project.

### **IX. SEISMIC SAFETY - APPLICABLE TO ALL CONSTRUCTION CONTRACTS FOR NEW BUILDINGS OR ADDITIONS TO EXISTING BUILDINGS**

The SUBRECIPIENT agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. 41, and will certify to compliance to the extent required by the regulation. The SUBRECIPIENT also agrees to ensure that all work performed under this Agreement including work performed by a third-party contractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

### **X. FEDERAL CHANGES - APPLICABLE TO ALL CONTRACTS**

The SUBRECIPIENT shall at all times comply with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the relevant Grant Agreement or Cooperative Agreement (Form FTA MA (6) dated October, 1999) between SANDAG and the FTA, as they may be amended or promulgated from time-to-time during the term of this Agreement. SUBRECIPIENT's failure to so comply shall constitute a material breach of this Agreement.

### **XI. DISADVANTAGED BUSINESS ENTERPRISES**

- A.** SANDAG is a designated recipient of FTA funds. In conformance with 49 C.F.R. 26 is required to implement a Minority-Conscious Disadvantaged Business Enterprise (DBE) program of limited application. The minority-conscious component of the SANDAG FTA DBE program includes all six

DBE groups: (1) African American; (2) Hispanic American; (3) Subcontinental Asian American; (4) Asian Pacific Islander; (5) Native American; and (6) Women.

**B.** This Agreement is subject to 49 C.F.R. 26.13(b) which states:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.”

SUBRECIPIENT shall take necessary and reasonable steps to ensure that DBEs have an opportunity to participate in the Agreement (49 C.F.R. 26).

**C.** To ensure there is equal participation of the DBE groups specified in 49 C.F.R. 26.5, SANDAG may have specified a goal for DBEs. When FTA funding is utilized, a DBE goal will be met through the utilization of DBE firms.

**D.** Although FHWA, FRA, and the FTA are DOT agencies, they have different DBE programs and requirements and SANDAG has separate goals for the three programs. SUBRECIPIENT will be required to comply with all applicable requirements. These Standard Federal Provisions contain the SANDAG DBE program requirements for the FTA only. FHWA and FRA DBE program requirements, if any, are set forth in a separate exhibit to the Agreement.

**E.** SUBRECIPIENT must make work available to DBEs and select work parts consistent with available DBE third-party contractors and suppliers. It is the SUBRECIPIENT’s responsibility to verify that the DBE firm is certified as a DBE at date of proposal submittal. For a list of DBEs certified by the California Unified Certification Program, at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

**F.** DBE Certification

SANDAG requires all DBEs listed by SUBRECIPIENT for participation to be certified as eligible DBEs at the time of submittal of its proposal for this Agreement. Only participation by DBEs certified under the DOT regulations published 49 C.F.R. 26, or any updated version thereof, may be credited towards the SUBRECIPIENT’s minority-conscious DBE attainment. It is the responsibility of the SUBRECIPIENT to verify the DBE certification status of all listed DBEs.

SANDAG is participating as a Non-Certifying Member in the California Unified Certification Program (CUCP). Therefore, SANDAG will accept DBE certification from the certifying member agencies, which certify the eligibility of DBEs in accordance with 49 C.F.R. 26, under the CUCP or pursuant to the interstate certification process set forth in 49 C.F.R. 26.85. Listings of certifying member agencies, as well as a listing of DBEs certified by the CUCP, are available on the Caltrans Civil Rights Department website, which can be accessed at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

## G. DBE Crediting Provisions

1. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto. Please note that Title 49 was amended in 2011 and the personal net worth limit for a small business concern has been raised under 49 C.F.R. 26.67.
2. DBEs may participate as a prime contractor, subcontractor, joint venture partner, supplier, or trucker. A proposed DBE must be responsible for a commercially useful function (i.e., a distinct element of the actual scope of work) and must carry out its responsibility by actually performing, managing, and supervising such work; in order to be credited toward DBE participation.
3. Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials, and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the third-party contractor purchases and/or leases from the SUBRECIPIENT or its affiliate may be counted.
4. When a DBE subcontracts part of its contract work to another firm, the value of the subcontracted work may be counted only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm cannot be credited. A DBE shall perform at least 30 percent of the total cost of its contract with its own workforce.
5. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the Agreement that the DBE performs with its own forces towards DBE participation.
6. SUBRECIPIENT must calculate credit for participation of DBE vendors of equipment, materials, and supplies, as follows:
  - a. Sixty percent of expenditures(s) for equipment, materials, and supplies required under the Agreement, obtained from a Regular Dealer; or
  - b. One hundred percent of expenditure(s) for equipment, materials, and supplies obtained from a DBE Manufacturer.

For purposes of this section, a DBE Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

A DBE Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

Credit for materials or supplies purchased from a DBE which is neither a Manufacturer nor a Regular Dealer will be limited to the entire amount of the fees or commission charged for assistance in the procurement of the materials and supplies or fees or transportation charges for the delivery of the materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services. The cost of materials or supplies is not counted in this instance.



7. SUBRECIPIENT may count expenditures to trucking firms, provided that the firm is a DBE and meets the following conditions:
  - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of crediting DBE participation.
  - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - c. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
  - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
  - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
  - f. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. The following types of fees or commissions paid to DBE subcontractors, brokers, and packagers may be counted, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work including:
  - a. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the Agreement.
  - b. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the Manufacturer of, or a Regular Dealer in, the material and supplies.
  - c. Fees and commissions charged for providing any insurance specifically required for performance of the Agreement.

## **XII. CONTRACTOR'S DBE REPORTING REQUIREMENTS (POST-AWARD)**

SUBRECIPIENT shall complete and submit the following DBE reporting forms and/or documents at the times specified:

- A. SUBRECIPIENT is advised not to count the participation of DBE third-party contractors until the amount being counted toward the DBE participation has been paid to the DBE.
- B. If third-party contractor is a DBE and is decertified during the life of the Agreement, the decertified third-party contractor shall notify the SUBRECIPIENT in writing of the date of the decertification. If a third-party contractor becomes a certified DBE during the life of the Agreement, the third-party contractor shall notify the SUBRECIPIENT in writing of the date of the certification. The SUBRECIPIENT shall furnish the written documentation to SANDAG in a timely manner using Disadvantaged Business Enterprises Certification Status Change Form CEM\_2403(F), provided by SANDAG upon request.
- C. Upon completion of the Agreement, SUBRECIPIENT must submit to SANDAG a Final Report – Utilization of Underutilized/Disadvantaged Business Enterprises (U/DBE) and Small Business (SB), First Tier Subcontractor Form, provided by SANDAG upon request, and certified correct by the SUBRECIPIENT's authorized representative, and shall be furnished to SANDAG. The form shall be furnished to SANDAG within 90 days from the date of completion of the Scope of Work. The amount of up to \$10,000 may be withheld from final payment to SUBRECIPIENT until a satisfactory form is submitted.
- D. Failure to submit required DBE reports may result in the delay of processing SUBRECIPIENT's invoices for payment.
- E. DBE Goal

In order to ascertain whether the SANDAG agency-wide FTA DBE goal is being achieved, SANDAG is tracking DBE participation on all of its Federal-aid contracts.

- F. Commercially Useful Function Standards
  1. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SANDAG will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performed and the DBE credit claimed for its performance of the work, and other relevant factors.
  2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SANDAG must examine similar transactions, particularly those in which DBEs do not participate.
  3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
  4. When a DBE is presumed not to be performing a commercially useful function as provided in the previous bullet, the DBE may present evidence to rebut this presumption. SANDAG may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

5. SANDAG's decisions on commercially useful function matters are subject to review by the FTA.

**G. DBE "Fronts" and Frauds**

Only legitimate DBEs are eligible to participate in any federally funded contract. Therefore, SUBRECIPIENT is cautioned against knowingly and willingly using "fronts" or doing business with DBEs in a manner, which could compromise the DBE's continued eligibility and DBE participation credit. The use of "fronts" and "pass through" third-party contracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation toll free hotline at (800) 424-9071.

**H. Substitution**

1. U/DBEs must perform work or supply materials as listed in the U/DBE Commitment form, as provided by SANDAG upon request and as shown in Consultant Contract U/DBE Commitment Information if applicable. SUBRECIPIENT shall not terminate a DBE listed third-party contract for convenience and perform the work with its own forces or obtain materials from other sources without prior written authorization from SANDAG.
2. SANDAG will grant authorization to substitute other forces or sources of materials if SUBRECIPIENT submits a request to SANDAG that establishes any of the following justifications:
  - a. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project.
  - b. SUBRECIPIENT stipulates that a bond is a condition of executing the third-party contract and the listed DBE fails to meet the bond requirements.
  - c. Work requires a license and listed DBE does not have a valid license.
  - d. Listed DBE fails or refuses to perform the work or furnish the listed materials.
  - e. Listed DBE's work is unsatisfactory and not in compliance with its contract.
  - f. Listed DBE delays or disrupts the progress of the work.
  - g. Listed DBE becomes bankrupt or insolvent.
3. SUBRECIPIENT will need to follow the procedures below to substitute DBE third-party contractors so that the DBE commitment can be met:
  - a. Obtain proposed fee amounts and qualifications information for the scope of work that each proposed DBE firm could provide.
  - b. Check the CUCP database to ensure the proposed firms are DBE certified for the associated DBE categories and types of work North American Industry Classification System (NAICS) codes in the task order.
  - c. Provide SANDAG with the qualifications and fee information that was used for selection.

- d. If a listed DBE third-party contract is terminated, SUBRECIPIENT must make good faith efforts to find another DBE third-party contractor to substitute for the original DBE. For more detailed information, see Notice to Proposers Regarding Disadvantaged Business Enterprise Requirements and Instructions, as provided by SANDAG upon request. The substitute DBE must perform at least the same amount of work as the original DBE to the extent needed to meet the DBE goal. The substitute DBE must be certified as a DBE at the time of request for substitution. SANDAG does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.
4. SUBRECIPIENT should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or third-party contractors without prior written approval from SANDAG. SUBRECIPIENT must request and justify the need for the substitution and obtain approval from SANDAG prior to use of a different third-party contractor. The proposed substituted person or firm must be as qualified as the original, and at the same or lower cost.

### **XIII. INCORPORATION OF FEDERAL AND STATE GUIDELINES - APPLICABLE TO ALL CONTRACTS**

- A. All relevant federal and state grant provisions and guidelines, as presently written or as changed during the life of this Agreement, bearing on this Agreement, are hereby wholly incorporated by reference herein and made a part of this Agreement and take precedence over any inconsistent terms of this Agreement. Any third-party contract entered into as a result of this Agreement shall contain all of the provisions of this Section.
- B. Specific guidelines shall be those prescribed by “Federal Transit Administration Master Agreement” (Form FTA-MA) 2 CFR 1201 et seq., , Federal Transit Administration (FTA) Circular 4220.1F, “Third-party Contracting Requirements” and 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

### **XIV. DRUG AND ALCOHOL PROGRAM - APPLICABLE TO ALL CONTRACTS**

During the performance of this Agreement SUBRECIPIENT agrees to implement a drug and alcohol program that is compliant with 49 C.F.R. 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation, the California Department of Transportation, or SANDAG to inspect the facilities and records association with the implementation of the drug and alcohol testing program, as required under Parts 655, and review the testing process.

### **XV. EQUIPMENT PURCHASES - APPLICABLE TO ALL CONTRACTS**

- A. Prior authorization in writing by the Project Manager shall be required before SUBRECIPIENT enters into any non-budgeted purchase order or third-party contract exceeding \$3,500 for supplies, equipment, or third-party contractor services. If the non-budgeted purpose will cause the Project budget to exceed the Maximum Amount of the Agreement, then prior approval from the SANDAG Executive Director is also required. SUBRECIPIENT shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or third-party consulting work not covered in the Payment or Fee Schedule and exceeding \$3,500, with prior authorization by the Project Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- B. SUBRECIPIENT shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include, but is not limited to, the following: description, identification number, acquisition date, cost, grant-funded percentage, grant number, useful life,

location, use and condition, disposition action, title holder, and/or any other information necessary to identify said Property or equipment. (2 CFR 200.313) . Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to SANDAG on request by SANDAG.

- C. At the conclusion of the Agreement or if the Agreement is terminated, SUBRECIPIENT may either keep the equipment and credit SANDAG in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established procedures, and credit SANDAG in an amount equal to the sales price. If the SUBRECIPIENT elects to keep the equipment, fair market value shall be determined, at the SUBRECIPIENT's expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to SANDAG and SUBRECIPIENT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG.
- D. 2 CFR 200.313 requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000, is credited to the Project.

#### **XVI. COMPLIANCE WITH EXECUTIVE ORDER 11246 - APPLICABLE TO ALL CONTRACTS**

During the performance of this Agreement, SUBRECIPIENT agrees as follows:

- A. SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin. SUBRECIPIENT will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination
- B. SUBRECIPIENT will, in all solicitations or advancements for employees placed by or on behalf of SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 (EO 11246) (Johnson, 1965) and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. SUBRECIPIENT will comply with all provisions of EO 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. SUBRECIPIENT will furnish all information and reports required by EO 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of SUBRECIPIENT's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled,

terminated, or suspended in whole or in part and the SUBRECIPIENT may be declared ineligible for further government contracts in accordance with procedures authorized in EO 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. SUBRECIPIENT will include the provisions of paragraphs A through F in every third-party contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be binding upon each third-party contractor or vendor. SUBRECIPIENT will take such action with respect to any third-party contract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event SUBRECIPIENT becomes involved in, or is threatened with, litigation with a third-party contractor or vendor as a result of such direction, SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by Executive Order 11375 (Johnson, 1967), 32 FR 14303, 3 C.F.R., 1966-1970 Comp., p. 684, Executive Order 12086 (Carter, 1978), 43 FR 46501, 3 C.F.R., 1978 Comp., p. 230]

#### **XVII. COST PRINCIPLES - APPLICABLE TO ALL CONTRACTS**

- A. SUBRECIPIENT agrees that the Contract Cost Principles and Procedures, 48 C.F.R., Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the allowability of individual items of cost, except on negotiated contracts procured under a Request for Proposals, which shall instead be governed by 2 C.F.R. 200.
- B. SUBRECIPIENT also agrees to comply with federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the SUBRECIPIENT that are determined by subsequent audit to be unallowable under application sections of 48 C.F.R. 15, 48 C.F.R., Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. and/or or 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, are subject to repayment by the SUBRECIPIENT to SANDAG.

#### **XVIII. DEBARMENT AND SUSPENSION - APPLICABLE TO ALL CONTRACTS EXCEEDING \$25,000**

- A. SANDAG and the SUBRECIPIENT shall comply with the requirements of Executive Orders (EO) 12549 (Reagan, 1986) and EO 12689 (Bush, 1989), "Debarment and Suspension," 31 U.S.C. 6101 note; and U.S. DOT regulations on Debarment and Suspension at 2 CFR 1200. SUBRECIPIENT shall be registered in the SAM.gov website. The System for Award Management (SAM) is an Official U.S. Government database of awardees of federal funds. There is NO fee for SUBRECIPIENT to register for this site.
- B. Unless otherwise permitted by FTA, SUBRECIPIENT shall refrain from awarding any third-party contract of any amount to or enter into any subagreement of any amount with a party included in the "United States General Services Administration's (U.S. GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs," implementing EO 12549 and EO 12689, "Debarment and Suspension" and 2 CFR 1200. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than EO 12549 and EO 12689.
- C. Before entering into any third-party contract, SUBRECIPIENT shall obtain a debarment and suspension certification from each prospective third-party contractor containing information about the debarment and suspension status and other specific information about the third-party contractor

and its "principals," as defined at 2 CFR 180.335. An example of the appropriate certification shall be provided by SANDAG upon request.

- D. Before entering into any third-party contract exceeding \$25,000, SUBRECIPIENT shall obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 2 CFR 180.335. SUBRECIPIENT also shall require each third-party contractor to refrain from awarding any subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any subcontractor (at any tier) seeking a contract exceeding \$100,000. An example of the appropriate certification shall be provided by SANDAG upon request.
- E. SANDAG shall provide FTA a copy of each conditioned debarment or suspension certification provided by SUBRECIPIENT and third-party contractors at any tier. Until FTA approval is obtained by SANDAG and conveyed to SUBRECIPIENT, SUBRECIPIENT shall refrain from awarding a third-party contract with any party that has submitted a conditioned debarment or suspension certification.

#### **XIX. TECHNICAL RESTRICTIONS ON THE ACQUISITION OF PROPERTY AND SERVICES**

If this Agreement involves the acquisition of Intelligent Transportation System (ITS) property and/or services, then the ITS property and services must comply with the national ITS architecture and standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA notice, "FTA National ITS Architecture Policy on Transit Projects," 23 CFR 940, January 8, 2001, and later published policies or implementing directives FTA may issue. Third-party contracts involving ITS must also contain provisions to ensure compliance with these Federal Requirements. (FTA Circular 4220.1F, Page IV-17, November 1, 2008.)

**FEDERAL PROVISIONS FOR PROCUREMENTS IN EXCESS OF \$100,000  
(FEDERAL TRANSIT ADMINISTRATION)**

As a Federal Transit Administration (FTA) grantee, the San Diego Association of Governments (SANDAG) is required to inform the SUBRECIPIENT of these Standard Federal Provisions as provided herein. Any third-party contract entered into by SUBRECIPIENT as a result of the Section 5310 Fund Transfer Program AGREEMENT (Agreement) with SANDAG, shall contain all of these Standard Federal Provisions.

**I. BUY AMERICA - APPLICABLE TO PUBLIC WORKS, ACQUISITION OF GOODS, OR ROLLING STOCK PROCUREMENTS EXCEEDING \$100,000**

The SUBRECIPIENT's attention is directed to the "Buy America" requirements set forth in 49 USC 5323(j), and the FTA regulations implementing Section 165 (49 C.F.R. 661). Information on "Buy America" requirements (49 C.F.R. 661) is available for review at the SANDAG office.

Any steel or manufactured product used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

- A.** Applying this provision would be inconsistent with the public interest.
- B.** The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for this Project.
- C.** Including domestically produced material will increase the cost of the contract by more than 25 percent.
- D.** Note: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.
- E.** Where SANDAG is purchasing buses or other rolling stock (including train control, communication, and traction power equipment) on behalf of SUBRECIPIENT as part of the Agreement, the cost of components produced in the United States is more than 60 percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States.
- F.** In reference to exception C above, FTA requires that the bid for nondomestic items must be adjusted by the appropriate differential (10 percent or 25 percent) and then the adjusted overall bid prices compared to determine if the inclusion of domestic materials will increase the "overall Project contract." When both "rolling stock" and "nonrolling stock" are being procured in a single contract, the appropriate differentials will be applied to the different items only and not to the overall bid price.
- G.** Thus, the foreign purchased components of the individual bid items will be adjusted upward, for purposes of determining Buy America compliance only, by 10 percent for rolling stock and 25 percent for nonrolling stock, thereby increasing the cost proposal item by the adjusted amount, thereby adjusting the overall total bid price.
- H.** The revised bid amount will be the basis for determining the lowest bid.
- I.** Within five days of written notification, the SUBRECIPIENT shall provide the necessary information to substantiate the cost of nondomestic items and the factual basis for the claim of exception to the requirements of 49 USC 5323(j) and the regulations in 49 C.F.R. 661.



- J. In the Buy America Certificate (FTA), provided by SANDAG upon request, Alternative 'A' or 'B,' must be completed and submitted with any proposal. A proposal which does not include either Alternative 'A' or 'B' or which includes both Alternative 'A' and Alternative 'B' may be considered nonresponsive.
- K. A waiver from the Buy America provision may be sought by the SUBRECIPIENT if grounds for the waiver exist. Inclusion of the Alternative 'B' certificate in a bid constitutes an application by the SUBRECIPIENT for an exception to the Buy America requirement applicable to this type of contract. If a bid includes the Alternative 'B' certificate and an exception is not granted by FTA, the bid will be considered nonresponsive.

## **II. ENVIRONMENTAL VIOLATIONS**

For all work in excess of \$100,000, SUBRECIPIENT agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), Section 508 of the Clean Water Act (33 U.S.C. 1368), and Environmental Protection Agency (EPA) regulations which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. SUBRECIPIENT shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

## **III. ENVIRONMENTAL REQUIREMENTS**

The successful SUBRECIPIENT recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and scattered sections of 29 USC; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 et seq. SUBRECIPIENT recognizes that United States EPA, Federal Highway Administration (FHWA), and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, SUBRECIPIENT agrees to adhere to, and impose on its third-party contractors, any such federal requirements as the federal government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and SANDAG. Contractor acknowledges that this list does not constitute SUBRECIPIENT's entire obligation to meet all federal environmental and resource conservation requirements.

### **A. Environmental Protection**

SUBRECIPIENT shall comply with the applicable requirements of the National Environment Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 et seq., in accordance with Executive Order 12898 (Clinton, 1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. 771, and 49 C.F.R. 622.

If SUBRECIPIENT will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, the SUBRECIPIENT will be required to submit a statement to SANDAG certifying that the SUBRECIPIENT has no financial or other interest in the outcome of the Project, 40 C.F.R. 1506.5(c).

## **B. Air Quality**

1. SUBRECIPIENT shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Specifically:
  - a. SUBRECIPIENT shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act," 40 C.F.R. Part 51 Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. 93. To support the requisite air quality conformity finding for the Project, SUBRECIPIENT shall implement each air quality mitigation and control measure incorporated in the Project. SUBRECIPIENT agrees that any Project identified in a State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the description of the design concept and scope of the Project described in the SIP.
  - b. United States EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to transit operators, particularly operators of large transit bus fleets. Thus, SUBRECIPIENT should be aware that the following United States EPA regulations, among others, may apply to this Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. 600.
2. SUBRECIPIENT agrees to report and require each third-party contractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor or itself to FTA and the appropriate United States EPA Regional Office.

## **C. Clean Water**

1. SUBRECIPIENT shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. SUBRECIPIENT agrees to report and require each third-party contractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor (at any tier) or itself to FTA and the appropriate United States EPA Regional Office.

## **D. Use of Public Lands**

SUBRECIPIENT agrees that no publicly-owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 U.S.C. 303.

## **E. Mitigation of Adverse Environmental Effects**

SUBRECIPIENT agrees that, if the Project should cause adverse environmental effects, the SUBRECIPIENT will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. 5324(b), and all other applicable federal laws and regulations; specifically, the procedures of 23 C.F.R. 771, and 49 C.F.R. 622. SUBRECIPIENT agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements,

memoranda of agreement, and statements required by 49 U.S.C. 303) and with any conditions the federal government has imposed in its finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. As soon as the federal government, SANDAG and SUBRECIPIENT reach agreement on any deferred mitigation measures, those measures will then be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. SUBRECIPIENT agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the federal government.

**F. Consultant Certification**

If SUBRECIPIENT will be preparing an environmental impact statement on behalf of SANDAG under NEPA, SUBRECIPIENT certifies, as required by 40 C.F.R. 1506.5(c), by signing this Agreement, that it has no financial or other interest in the outcome of the Project.

**IV. RESTRICTIONS ON LOBBYING**

- A.** SANDAG and SUBRECIPIENT shall not use federal assistance funds to support lobbying.
- B.** In accordance with 31 U.S.C. 1352 and United States DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. 20, if the Project exceeds \$100,000, the FTA will not make any federal assistance available to the SUBRECIPIENT until the FTA has: (a) received the SUBRECIPIENT's certification that the SUBRECIPIENT has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the Project is originally derived, consistent with 31 U.S.C 1352, and (b) if applicable, the SUBRECIPIENT's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the Project.
- C.** The SUBRECIPIENT agrees to provide SANDAG a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier. The form is Certification of Restrictions on Lobbying, provided by SANDAG upon request.

## **FEDERAL PROVISIONS FOR THE SECTION 5310 PROGRAM ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES**

The Federal Transit Administration (FTA) Standard Federal Provisions included as part of the Section 5310 Fund Transfer Program Fund Transfer Agreement (Agreement) provide federal provisions generally applicable to all FTA-funded programs. This document provides requirements that are specific to the 5310 Program, Enhanced Mobility of Seniors and Individuals with Disabilities (Section 5310 Program Provisions). SANDAG, as an FTA recipient, is required to inform the SUBRECIPIENT, as identified in the Agreement, of these Federal Provisions, as provided herein. Further, any third-party contract entered into by SUBRECIPIENT as a result of the Agreement with SANDAG shall include these Section 5310 Program Provisions.

### **I. EQUIPMENT MANAGEMENT**

#### **A. General**

Common grant rule procedures and requirements for SUBRECIPIENTS are more explicit and can be found in 2 CFR 200.313.

#### **B. Transfer of Property**

Section 5310 permits SANDAG to transfer facilities and equipment acquired with assistance under Section 5310 to any eligible SUBRECIPIENT if the facility or equipment will continue to be used in accordance with the requirements of Section 5310. SUBRECIPIENTS receiving equipment or facilities under this provision to provide Section 5310 service must comply with all requirements as provided in the Agreement.

#### **C. Vehicle Use, Useful Life, Replacement Standards, and Disposition**

Under the Agreement, SANDAG shall lease vehicles acquired with Section 5310 funds and transfer title to SUBRECIPIENT. SANDAG shall record a lien against the title to the vehicles, holding a security interest in the vehicles and retaining SANDAGs continuing control of the vehicles.

Maximum use of vehicles funded under the Section 5310 program is encouraged. If the SUBRECIPIENT no longer wants to use the vehicle for the Section 5310 grant funded purposes, the vehicle will be returned to SANDAG consistent with the terms of the Agreement.

SUBRECIPIENTS must adhere to the vehicle useful life criteria that are detailed in the current FTA Circular 5010.1, Grant Management Requirements. At the conclusion of the useful life of the property, SUBRECIPIENT shall dispose of property consistent with FTA guidance and the terms of the Agreement.

### **II. PROCUREMENT**

#### **A. General**

When procuring property, supplies, equipment, or services with funds from an FTA grant, SUBRECIPIENTS must comply with FTA procurement requirements at 2 CFR 200.318 et seq. and guidance contained in the current FTA Circular 4220.1F. SANDAG is responsible for ensuring that SUBRECIPIENTS are aware of and comply with requirements and will assist SUBRECIPIENTS as needed.

## **B. Pre-Award and Post-delivery Reviews**

Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 C.F.R. 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement" on FTA's website: [www.transit.dot.gov](http://www.transit.dot.gov).

SUBRECIPIENTS are responsible for conducting a post-delivery review to ensure compliance with the bid specifications, Buy America requirements, and federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles for use in areas under 200,000 in population (more than ten, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated state procurements, the in-plant inspection requirement is triggered only if a SUBRECIPIENT will receive more than ten vehicles, depending on area size.

## **C. New Model Bus Testing**

SUBRECIPIENTS must ensure that buses and vans acquired with FTA funds are tested consistent with the requirements in 49 C.F.R. 665 and must provide SANDAG with a copy of the resulting test report before FTA funds can be released. FTA provides a bus testing section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: search "bus testing" on [www.transit.dot.gov](http://www.transit.dot.gov).

The bus testing provisions under 49 U.S.C. 5318 require FTA establish a pass/fail testing standard. FTA funds will be available to acquire a new bus model only if the bus has received a passing score. This requirement will take effect after FTA has issued regulations establishing the standard.

## **D. Buy America**

Title 49 U.S.C. 5323(j) provides with limited exceptions that funds for a public transportation project may not be obligated unless the steel, iron, and manufactured goods used in the project are produced in the United States. Section 5310 SUBRECIPIENTS must comply with FTA regulations, 49 C.F.R. 661. FTA's Buy America requirements at 49 C.F.R. 661 differ from Federal Buy American regulations at 48 C.F.R. 25. SANDAG strongly advises SUBRECIPIENTS to review 49 C.F.R. 661 as well as the current FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement and SANDAG is available to assist SUBRECIPIENTS as needed. In addition, 49 U.S.C. 5323(j)(11) allows a party adversely affected by an FTA action the right to seek review. FTA has created a Buy America website to provide an overview of these requirements as well as policies, procedures, and letters of interpretation: [www.transit.dot.gov/buyamerica](http://www.transit.dot.gov/buyamerica).

## **E. Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement**

SUBRECIPIENTS are obligated to determine, by checking the TVM listing on FTA's website, [www.transit.dot.gov/TVM](http://www.transit.dot.gov/TVM), or by checking with FTA's Office of Civil Rights that the manufacturer likely to receive the contract is in compliance with part 26. For further guidance, contact the FTA Regional Civil Rights Officer in San Diego or SANDAG.

## **III. FINANCIAL MANAGEMENT**

The financial management system for SUBRECIPIENTS must meet the standards set forth in 2 CFR 200.302 of the common grant rule. These standards include:

**A. Financial Reporting**

Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant award.

**B. Accounting Records**

SUBRECIPIENTS must maintain records that adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to SUBRECIPIENT awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

**C. Internal Control**

Effective control and accountability must be maintained for all SUBRECIPIENT cash, real and personal property, and other assets. SUBRECIPIENTS must adequately safeguard all such property and must ensure that it is used solely for authorized purposes.

**D. Budget Control**

Actual expenditures or outlays must be compared with budgeted amounts for each grant award. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the Agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

**E. Allowable Cost**

Applicable Office of Management and Budget (OMB) cost principles, FTA program regulations, and the terms of the FTA master agreement and grant agreements will be followed in determining the reasonableness, allowability, and allocability of costs. (2 C.F.R. 200) provides guidance on allowable costs for nonprofit organizations. Expenses such as indirect costs or payments to a self-insurance fund must be documented appropriately. Advertising and public relations is permitted for "specific purposes necessary to meet the requirements of the federal award." Transit marketing and promotion are allowable project costs under these provisions, since transit ridership is the ultimate purpose of the federal grant.

**F. Source Documentation**

Accounting records must be supported by such source documentation as cancelled checks, paid bills, payroll, time and attendance records, third-party contract award documents, etc.

**IV. SUBRECIPIENT DUNS REQUIREMENT**

SUBRECIPIENT shall provide its DUNS number to SANDAG. No entity may receive an award from SANDAG unless a DUNS number has been provided.

**V. DRUG AND ALCOHOL TESTING**

A SUBRECIPIENT that receives only Section 5310 program assistance is not subject to FTA's drug and alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for all employees who hold commercial driver's licenses (49 C.F.R. 382). Section 5310 SUBRECIPIENTS that also receive funding under one of the covered FTA programs (Section 5307, 5309, or 5311) should include any employees funded under Section 5310 projects in their testing program.

An FTA compliant testing program, as required by the receipt of FTA operating or capital funding (5307, 5309, 5311), may be used for Section 5310 employees; there is no need to have separate testing programs.

Technical assistance materials and training information to help SUBRECIPIENTS implement the rules are available at FTA's website [www.transit.dot.gov](http://www.transit.dot.gov) or through contacting SANDAG or the FTA Office of Safety and Oversight, FTA Headquarters.

## **VI. COMMERCIAL DRIVER'S LICENSE (CDL)**

All drivers of motor vehicles designed to transport 16 or more passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.

**FISCAL YEAR 2020 ANNUAL LIST OF CERTIFICATIONS AND ASSURANCES FOR FTA  
GRANTS AND COOPERATIVE AGREEMENTS**

To be inserted at time of AGREEMENT execution.



## **CERTIFICATE OF NONDISCRIMINATION ASSURANCES**

To be inserted at time of AGREEMENT execution.

## **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE**

To be inserted at time of AGREEMENT execution.

**SUBRECIPIENT TITLE VI PROGRAM RESOLUTION**

To be inserted at time of AGREEMENT execution.

**BUY AMERICA CERTIFICATE (FTA)**

To be inserted at time of AGREEMENT execution.

## **MONITORING CHECKLIST**

To be inserted at time of AGREEMENT execution.