

***TransNet* SENIOR TRANSPORTATION MINI-GRANT PROGRAM**

**GRANT AGREEMENT
BETWEEN THE SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND RECIPIENT NAME**

AGREEMENT NO. AGREEMENT NO.

This grant agreement (AGREEMENT), executed as of the date of the last signature shown on the signature page, is between the San Diego Association of Governments, (SANDAG), and Recipient Name, hereinafter referred to as RECIPIENT. SANDAG and RECIPIENT are also hereinafter collectively referred to as “the parties.”

RECITALS

The following recitals are a substantive part of this AGREEMENT:

- A. The SANDAG Board of Directors allocates funds under the *TransNet* local sales tax program.
- B. The *TransNet* Extension Ordinance contains provisions for the creation of a Senior Mini-Grant (SMG) Program with a goal of funding innovative and cost-effective approaches to providing improved senior transportation. The *TransNet* Extension Ordinance was approved in 2004, and the first Senior Mini-Grant funds were awarded in 2007.
- C. The *TransNet* Extension Ordinance states that *TransNet* funds are not intended to supplant other sources of funding. RECIPIENT shall be required to establish funds provided under this AGREEMENT will not supplant fund sources previously available to RECIPIENT from other sources.
- D. The grant award (this AGREEMENT) and RECIPIENT’s performance hereunder are subject to Board Policy No. 035. In January 2010, the SANDAG Board of Directors approved Board Policy No. 035 - Competitive Grant Program Procedures (Board Policy No. 035), the most recent version of which is an attachment to this AGREEMENT.
- E. SANDAG issued a solicitation seeking applications from entities wishing to apply for a portion of the SMG funds in July 2020, and on Insert Date, the SANDAG Board of Directors approved a list of recommended SMG projects for the competitive grant cycle. RECIPIENT’s application and project were selected for award and are the subject of this AGREEMENT. The AGREEMENT, which hereby incorporates RECIPIENT’s application materials to the extent they are not in conflict, establishes the terms and conditions for SANDAG to provide RECIPIENT with funding to implement the Name of Project (Project). The Project will be carried out as described in the Project Description and the Performance Measures, which are attachments to this AGREEMENT.
- F. Although SANDAG will be providing financial assistance to RECIPIENT to support the Project, SANDAG will not take an active role or retain substantial control of the Project. Therefore, this AGREEMENT is characterized as a funding agreement rather than a cooperative agreement.
- G. RECIPIENT understands that *TransNet* funds derive from retail transactions and use tax revenues which fluctuate. SANDAG funding commitments to SMG projects, including this Project, are subject to these fluctuations, which may impact funding availability for this Project.

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

I. GRANT AWARD

- A. The total amount payable to RECIPIENT pursuant to this AGREEMENT by SANDAG shall not exceed Grant Amount (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's 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

RECIPIENT shall provide matching funds in an amount of Match Percentage with two digits after decimal (XX.XX%) percent (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 \$Match Amount. 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 permissible local match expenditures made prior to the effective date of this AGREEMENT.
- B. RECIPIENT agrees to contribute at least the Match Percentage using sources other than *TransNet* Ordinance funds or fare revenues. 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

RECIPIENT agrees to complete the Project as described in the Project Description and in accordance with the Performance Measures using the *TransNet* funds provided under the AGREEMENT and any matching funds committed to herein solely for the Project.

V. NOTIFICATION OF PARTIES

RECIPIENT's Project Manager is Recipient 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 overnight mail carrier or email by the parties at their respective addresses:

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

Zachary.Rivera@sandag.org

RECIPIENT: Recipient Name
Attention: Recipient PM Name
Recipient Address
Recipient Address

Recipient PM Email

VI. SCOPE OF PERFORMANCE

- A.** This AGREEMENT was awarded based on the application submitted by RECIPIENT 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 RECIPIENT believes substantive changes need to be made to the Project, RECIPIENT will immediately notify SANDAG in writing. SANDAG will then determine whether the Project is still consistent with the overall objectives of the SMG 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.** RECIPIENT shall make diligent and timely progress toward completion of the Project within the timelines set forth in the Project Schedule, which is included in the Project Description. RECIPIENT 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 RECIPIENT encounters or anticipates difficulty in meeting the Project Schedule, RECIPIENT 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 RECIPIENT expects to complete performance. RECIPIENT's notification shall be informational in character only and SANDAG 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. PERFORMANCE MONITORING AND COMPLIANCE

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

- A.** RECIPIENT's performance will be measured against the Performance Measures during the term of the AGREEMENT. If the RECIPIENT does not achieve minimum performance requirements, SANDAG will issue RECIPIENT a written Notice to Complete a Recovery Plan. RECIPIENT's Recovery Plan shall include a detailed description of how RECIPIENT intends to come into compliance with its performance measures minimums. RECIPIENT's Recovery Plan description must include an implementation schedule that reflects achievement of its performance measure minimums within six months following the issue date of the SANDAG Notice to Complete a

Recovery Plan. RECIPIENT 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 RECIPIENT'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 and performance. If RECIPIENT does not comply with provisions in this AGREEMENT and Grant Monitoring Checklist, SANDAG will issue RECIPIENT a written Notice to Complete a Recovery Plan. RECIPIENT's Recovery Plan shall include a detailed description of how RECIPIENT intends to come into compliance. RECIPIENT'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. RECIPIENT 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 RECIPIENT 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 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 available to SANDAG through the SMG Program 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 SMG Program does not provide sufficient funds for the 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 RECIPIENT costs in accordance with 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 RECIPIENT for expended actual allowable direct and indirect costs, including, but not limited to, labor costs, employee benefits, and travel (overhead is reimbursable only if RECIPIENT has a SANDAG-approved indirect cost allocation plan) and third-party contract costs incurred by RECIPIENT 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 RECIPIENT.
- B. Reimbursement of RECIPIENT expenditures will be authorized only for those allowable costs actually incurred by RECIPIENT in the performance of the Project work. RECIPIENT 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 at the actual costs incurred by the RECIPIENT, as 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 RECIPIENT 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 RECIPIENT 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 RECIPIENT-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 RECIPIENT's mileage logs, and require RECIPIENT's submission of its mileage logs with any RECIPIENT invoices seeking mileage reimbursement.

- E. RECIPIENT shall submit invoices no more frequently than monthly and no less frequently than every 90 calendar days. SANDAG will reimburse RECIPIENT 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 RECIPIENT invoice and reporting forms will be provided by the SANDAG Project Manager. Invoices shall reference this AGREEMENT number, 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: SANDAG PM Name
401 B Street, Suite 800
San Diego, CA 92101

X. COST PRINCIPLES

Any Project costs for which RECIPIENT has received payment or credit that are determined by subsequent audit to be unallowable are subject to repayment by RECIPIENT to SANDAG by offset or other means approved by SANDAG. Should RECIPIENT 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 RECIPIENT from SANDAG.

XI. REPORTS AND DATA COLLECTION

- A. RECIPIENT shall submit written progress reports no less than quarterly to allow SANDAG to determine if RECIPIENT 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 RECIPIENT's performance as compared to the Performance Measures shall be provided by RECIPIENT to SANDAG no less frequently than quarterly. The

standardized RECIPIENT invoice and reporting forms will be provided by the SANDAG Project Manager.

- B. RECIPIENT shall promptly provide to SANDAG any requested data regarding trips, populations served, or other data as may be needed to establish RECIPIENT's performance and compliance with the AGREEMENT.
- C. No less than 90 calendar days prior to the end of this AGREEMENT's term, RECIPIENT 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 RECIPIENT and SANDAG and shall include any budget, schedule, and/or scope of work adjustments to be completed by RECIPIENT prior to the termination date of this AGREEMENT.
- D. In order to track the types of persons served by grantees for Title VI, as well as provide information to RECIPIENT to help it better serve its clients, RECIPIENT will be required to provide client demographic information and other data to SANDAG annually, on a form to be provided by SANDAG.

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, RECIPIENT agrees that SANDAG shall not be subject to any obligations or liabilities to any subgrantee, lessee, 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 solicitation, subagreement, lease, or third-party contract at any tier, SANDAG has no obligations or liabilities to any entity other than the RECIPIENT, including any subgrantee, lessee, or 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 RECIPIENT or its third-party contractor(s) under or in connection with any work, authority, or jurisdiction arising from or related to this AGREEMENT. RECIPIENT and its third-party contractor(s) 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 RECIPIENT and its third-party contractor(s) under or in connection with any work, authority, or jurisdiction arising under this AGREEMENT.

XIII. INSURANCE

RECIPIENT for itself and on behalf of its third-party contractor(s) shall procure and 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 an 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(s) 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".

RECIPIENT 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 RECIPIENT and/or its third-party contractor(s) required under this AGREEMENT. Each insurance policy shall contain a clause that 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.

RECIPIENT and its third-party contractor(s) shall maintain sufficient insurance or a self-insurance program approved by SANDAG to cover all casualty losses and ensure the repair or replacement of *TransNet*-funded Property. In the event a piece of Property is not replaced or repaired, RECIPIENT agrees to transfer any insurance proceeds received to SANDAG.

XIV. Insurance Certificate Submittal

- XV.** 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.**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 RECIPIENT unless RECIPIENT 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 Administrative Code and the Americans with Disabilities Act (42 USC 12101, et seq.).

XVI. NON-DISCRIMINATION

- A.** During the performance of this AGREEMENT, RECIPIENT 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. RECIPIENT 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. RECIPIENT and its third-party contractors shall comply with the provisions of the Fair Employment and Housing Act (California 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 California 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. RECIPIENT and its third-party contractor(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- B. RECIPIENT shall include the nondiscrimination and compliance provisions of this Section in all third-party contracts to perform work under this AGREEMENT.
- C. RECIPIENT agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
 - 1. Nondiscrimination on the Basis of Disability. RECIPIENT agrees to comply, and assures the compliance of each third-party contractor and each subrecipient 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.
 - 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. 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.
 - 2. Nondiscrimination—Title VI. RECIPIENT 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.), which 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.

XVII. COMPLAINT PROCEDURES

RECIPIENT 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. RECIPIENT shall establish and implement procedures to ensure timely resolution of complaints and sufficiently document steps taken to investigate and address complaints. RECIPIENT shall make these records available to SANDAG for inspection during audits. Additionally, RECIPIENT is required to report complaints to SANDAG on regularly submitted progress reports. If RECIPIENT receives a Title VI-related or ADA-related complaint, RECIPIENT 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 RECIPIENT or a third-party contractor at any tier is a mandated reporter, RECIPIENT 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 RECIPIENT

- A.** Prior authorization in writing by SANDAG shall be required before RECIPIENT enters into any non-budgeted third-party contracts exceeding \$500 for supplies, equipment, or consultant services. RECIPIENT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B.** For the purchase of any item, service, or consulting work not covered in the Project Description and exceeding \$500, RECIPIENT must competitively bid the work, or the absence of bidding must be adequately justified, and prior authorization must be obtained from SANDAG. RECIPIENT 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.
- C.** For Property other than vehicles, the useful life of the Property will be specified in the Project Description based on the SANDAG determination of the useful life of such Property.
- D.** SANDAG and RECIPIENT agree that RECIPIENT shall maintain each piece of Property in good operating order consistent with the purposes for which they were intended. RECIPIENT agrees to make all maintenance records available to SANDAG and include as applicable in reports (See the Section titled “Reports”, above).
- E.** RECIPIENT 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 RECIPIENT must create and implement. SANDAG shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and proper maintenance of the Property.
- F.** Any Property purchased as a result of this AGREEMENT is subject to the following:
 - 1. RECIPIENT shall maintain an inventory record for each piece of non-expendable Property purchased or built with funds provided under the terms of this AGREEMENT at least once every two years.
 - 2. 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).
 - 3. 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.
- G.** SANDAG and RECIPIENT 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. RECIPIENT agrees to provide such technical assistance

and information as necessary for the development of that Title VI report. (See also the Section titled "Non-Discrimination", above).

XX. THIRD-PARTY CONTRACTING

- A.** RECIPIENT 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 RECIPIENT'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.** RECIPIENT 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 RECIPIENT, if intended as Match Percentage, must meet the requirements set forth in this AGREEMENT regarding local match funds.
- C.** RECIPIENT shall execute and cause its third-party contractors to execute debarment and suspension certificates stating they have not been disqualified from doing business with government entities. RECIPIENT 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 RECIPIENT 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, RECIPIENT 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 RECIPIENT may delegate any or almost all Project responsibilities to one or more third-party contractors at any tier, RECIPIENT agrees that it, rather than any third-party contractor, is ultimately responsible for compliance with all applicable laws, regulations, and this AGREEMENT.

XVIII. ETHICS

- A.** RECIPIENT 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 subagreements, leases, or third-party contracts supported with funding provided under this AGREEMENT. SANDAG has established policies concerning potential conflicts of interest. These policies apply to RECIPIENT.
- B.** For all awards by SANDAG or RECIPIENT, any practices which might result in unlawful activity are prohibited including, but not limited to, rebates, kickbacks, or other unlawful considerations. SANDAG and RECIPIENT staff 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 RECIPIENT 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 RECIPIENT. Neither SANDAG nor RECIPIENT'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, RECIPIENT affirms that it has no knowledge of an ethical violation by SANDAG or RECIPIENT staff. If RECIPIENT 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.

XIX. 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 RECIPIENT 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. RECIPIENT 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 Sections 1720-1815) will be paid not less than the general prevailing wage rates predetermined by the Director of the State Department of Industrial Relations.
- B. 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.
- C. 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.
- D. 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.
- E. The State Fire Marshal adopts building standards for fire safety and panic prevention. When applicable, RECIPIENT must assure that any relevant Project plans meet the standards of the State Fire Marshal to ensure consistency with fire protection standards.

XXI. RECORDS RETENTION AND AUDITS

- A. RECIPIENT, 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 RECIPIENT 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 RECIPIENT, 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 RECIPIENT and shall be held open to inspection, copying, and audit by representatives of SANDAG. Copies thereof will be furnished by RECIPIENT, 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 RECIPIENT's third-party contracts pursuant to Government Code section 8546.7, RECIPIENT, RECIPIENT'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. RECIPIENT 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 RECIPIENT under this AGREEMENT. SANDAG or any duly authorized representative of SANDAG shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and RECIPIENT shall furnish copies thereof upon SANDAG request.
- C. RECIPIENT, 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.

XXII. MEDIA AND COMMUNITY OUTREACH COORDINATION

- A. RECIPIENT 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. RECIPIENT agrees to assist SANDAG with media or community events related to the grant-funded Project.
- B. As part of the reports submitted to SANDAG, RECIPIENT 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 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. RECIPIENT 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 photos and information provided by RECIPIENT for any combination of the following: social media posts, online photo albums, videos, press releases, PowerPoint presentations, web updates, newsletters, and testimonials. By submitting photos to SANDAG, RECIPIENT 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 RECIPIENT and agreed upon by SANDAG, and to release the rights of the photos to SANDAG for its use.
- D. RECIPIENT agrees to include the SANDAG and *TransNet* logos on promotional materials for services funded by this AGREEMENT. SANDAG will provide RECIPIENT with required logos upon request. SANDAG logos may not be used for any purpose not expressly authorized by SANDAG.

XXIII. ENVIRONMENTAL CLEARANCE

If applicable to the Project, environmental clearance of Project by RECIPIENT 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.

XXIV. CHANGES IN TERMS OR CONDITIONS

This AGREEMENT may be amended or modified only by mutual written agreement of the Parties. RECIPIENT 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 RECIPIENT'S ability to perform the Project in accordance with the terms of this AGREEMENT. RECIPIENT 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 RECIPIENT'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, RECIPIENT agrees to send each notice to SANDAG required by this subsection by overnight mail delivery to the SANDAG Office of General Counsel.

XXV. 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 RECIPIENT, 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.

XXVI. 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 RECIPIENT will include authorized non-cancelable obligations and eligible costs incurred prior to receipt of the notice of termination.
- 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 or 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.

XXVII. PROJECT CLOSE OUT

The termination date of this AGREEMENT refers to the last date for RECIPIENT to incur valid Project costs or credits. RECIPIENT 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 RECIPIENT to reimburse for Project expenses.

XXVIII. 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.

XXIX. INTEGRATION AND SEVERABILITY

This AGREEMENT represents the entire understanding of SANDAG and RECIPIENT 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.

XXX. 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.

XXXI. 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.

XXXII. 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.

XXXIII. ATTACHMENTS

The following attachments are incorporated into and are made part of this AGREEMENT by this reference and attachment. In the event SANDAG Board Policy No. 035 "Competitive Grant Program Procedures," as amended, conflicts with the terms of this AGREEMENT, SANDAG Board Policy No. 035 shall prevail.

- Project Description (Scope of Work, Project Schedule, and Project Budget)
- Performance Measures
- RECIPIENT Resolution
- Equal Employment Opportunity Certificate
- SANDAG Board Policy No. 035 "Competitive Grant Program Procedures"
- Grant Monitoring Checklist

XXXIV. SIGNATURES

The individuals executing this AGREEMENT represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. 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

SUBRECIPIENT NAME

SANDAG SIGNATORY
SANDAG Signatory Title

SUBRECIPIENT SIGNATORY
Subrecipient 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.

PERFORMANCE MEASURES

To be inserted at time of AGREEMENT execution.

RECIPIENT RESOLUTION

To be inserted at time of AGREEMENT execution.

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE

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

GRANT MONITORING CHECKLIST

To be inserted at time of AGREEMENT execution.