

**GRANT AGREEMENT BETWEEN
THE SAN DIEGO ASSOCIATION OF GOVERNMENTS AND
[JURISDICTION NAME]
REGARDING [FULL PROJECT TITLE]**

TRANSNET SMART GROWTH INCENTIVE PROGRAM – CYCLE 6

SANDAG CONTRACT NO. [ERP NUMBER]

THIS GRANT AGREEMENT (“Agreement”) is made and entered into effective as of the last signature date below by and between the San Diego Association of Governments (“SANDAG”) and [JURISDICTION NAME] (“Grantee”). This Agreement expires on [Month and Day, Year], unless amended in writing by mutual agreement of the parties.

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 to support local transportation-related infrastructure projects in the San Diego region through a competitive process.
- B.** The TransNet Extension Ordinance contains provisions to fund the Smart Growth Incentive Program (SGIP), for which funding began on April 1, 2008. The SGIP encompasses projects that better integrate transportation and land use and recognizes the comprehensive effort to integrate smart growth place-making, access to transit, and environmental justice.
- C.** In January 2010, the SANDAG Board of Directors approved Board Policy No. 035: Competitive Grant Program Procedures, which is available in its updated version at <https://www.sandag.org/about/bylaws-and-policies>. This Agreement and the Grantee’s performance are subject to Board Policy No. 035, as the same may be amended from time to time, which includes multiple “use it or lose it” provisions.
- D.** On November 22, 2024, the SANDAG Board of Directors approved the program eligibility and evaluation criteria for the SGIP Cycle 6 Call for Projects, including up to \$45 million in funding from TransNet.
- E.** On [Insert Date], SANDAG issued a call for projects from local jurisdictions in San Diego County that wish to apply for a portion of the TransNet SGIP funds for use on climate action planning, planning, and capital improvement projects meeting certain criteria.
- F.** On [Insert Date], the SANDAG Board of Directors approved a list of recommended SGIP Cycle 6 projects for this competitive grant cycle, and one of those projects is the subject of this Agreement (Project). The Project Scope of Work and Budget, and Project Schedule are included as Attachments A and B, respectively.
- G.** The purpose of this Agreement is to establish the terms and conditions for SANDAG to provide Grantee with funding to implement the Project.
- H.** Although SANDAG will provide financial assistance to Grantee 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.

NOW, THEREFORE, it is agreed as follows:

I. GRANT AWARD

- A. The total amount payable by SANDAG to Grantee under this Agreement shall be the proportion of actual Project costs allocated to grant funding in the Project Budget (Attachment A) and shall not exceed the grant award of [dollar amount] (Fund Limit).
- B. It is agreed and understood that this Agreement Fund Limit is a ceiling and that SANDAG will only reimburse the allowable cost of services rendered as authorized by SANDAG at or below the Fund Limit.
- C. Grantee is included in the Regional Transportation Improvement Plan (RTIP). The TransNet MPO ID for the Project is [ID Number].

II. PROJECT BUDGET

The Grantee and SANDAG have agreed to a Project Budget outlined in Attachment A. The Grantee and third-party contractor(s) will incur obligations to the Project only as authorized by the Project Budget. Grantee may, with prior written approval from the SGIP Program Manager, reallocate funds between tasks in the Project Budget as long as all of the following conditions are met:

- 1. The funds to be reallocated do not exceed an aggregate amount of ten percent for any particular task in the Project Budget,
- 2. The reallocation does not negatively impact the benefits obtained from the Project, and
- 3. There is no increase to the Fund Limit or decrease to the matching funds.

Any other changes to the Project Budget require the issuance of an amendment to this Agreement.

III. MATCHING FUNDS

Grantee agrees to provide matching funds in an amount of [dollar amount] of the actual cost of the Project, estimated to be [number including two decimals (e.g., 15.00)] percent based on the Project Budget. If the actual cost of the Project exceeds the Project Budget, Grantee is responsible for 100 percent of the actual cost greater than the Project Budget.

A. Availability of Grant Funding

Except where expressly allowed in writing herein, credits for matching funds will be made or allowed only for work performed on and after the Agreement effective date and before the termination date of this Agreement, unless expressly permitted by SANDAG in writing.

B. Reduction of Matching Funds

The Grantee agrees that no matching funds may be reduced unless a reduction of the proportional share of the grant funding provided by SANDAG under this Agreement is also made.

C. Prompt Payment of Grantee's Share of Matching Funds

Grantee agrees to complete all actions necessary to provide its share of the Project costs at or before the time the matching funds are needed from Grantee to pay for Project costs. The Grantee agrees to provide not less than its cumulative required match amount of Project costs prior to invoicing SANDAG for reimbursement. Each of Grantee's invoices must include its matching fund

contribution, along with supporting, descriptive, and explanatory documentation for the matching funds provided.

IV. PROJECT MANAGER

Grantee's Project Manager is [Project Manager].

The SGIP Program Manager is Goldy Herbon,.

Project Manager continuity and experience are deemed essential in Grantee's ability to carry out the Project under the terms of this Agreement. Should the Grantee change the Project Manager, it will provide written notice to the SGIP Program Manager within ten business days of the change, including contact information for the new Project Manager.

V. NOTICE

All notices required to be given, by either party to the other, shall be deemed fully given when made in writing and received by the parties at their respective addresses:

San Diego Association of Governments
Attention: Grants Program Manager
401 B Street, Suite 800
San Diego, CA 92101

Grantee:
[Jurisdiction Name]
Attention: [Project Manager]
[Address]
[City, CA, ZIP]

VI. PROJECT IMPLEMENTATION

A. General

The Grantee agrees to carry out the Project as follows:

1. Project Description

Grantee agrees to perform the work as described in the Scope of Work included in Attachment A.

2. Grantee's Capacity

The Grantee agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to: (a) plan, manage, and complete the Project as described in Attachment A and provide for the use of any Project property; (b) carry out any safety and security aspects of the Project; and (c) comply with the terms of the Agreement and all applicable laws, regulations, and policies pertaining to the Project and the Grantee, as the same may be amended from time to time, including but not limited to Board Policy No. 035.

3. Project Schedule

The Grantee agrees to complete the Project according to the Project Schedule included in Attachment B and in compliance with Board Policy No. 035, as the same may be amended from time to time.

4. Project Implementation and Oversight Requirements

Grantee agrees to comply with the Performance Measures included in Attachment C.

5. Changes to Project Scope of Work

This Agreement was awarded to Grantee based on the application submitted by Grantee with the intention that the awarded funds would be used to implement the Project as described in the project application. Any substantive deviation from Grantee's Scope of Work during project implementation may require reevaluation or result in loss of funding. If Grantee knows or should have known that substantive changes to the Project will occur or have occurred, Grantee will immediately notify SANDAG in writing. SANDAG will then determine whether the Project is still consistent with the overall objectives of the grant program and whether the changes would have negatively affected the Project ranking during the competitive grant evaluation process. SANDAG reserves the right to have grant funding withheld from Grantee, or refunded to SANDAG, due to Grantee's failure to complete the Project satisfactorily or due to substantive changes to the Project not approved in advance by SANDAG.

B. Application of Laws

Should a federal or state law pre-empt or conflict with a local law, policy, or ordinance, the Grantee must comply with the federal or state law and implementing regulations. No provision of this Agreement requires the Grantee to observe or enforce compliance with any provision, perform any other act, or do any other task in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of this Agreement violates or would require the Grantee to violate any law, the Grantee agrees to notify SANDAG immediately in writing. Should this occur, SANDAG and the Grantee agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project or affected portions expeditiously.

C. Changes in Project Performance

The Grantee 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, including a force majeure event, that may adversely affect the Grantee's ability to perform the Project under the terms of the Agreement and as required by Board Policy No. 035. The Grantee also agrees to notify SANDAG immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect SANDAG's interests in 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, the Grantee agrees to send each notice to SANDAG required by this subsection to SANDAG's Grants Program Manager.

[Include the following CIS language for capital projects only.]

D. Compliance Information System (CIS)

If Grantee will utilize persons other than its own employees to carry out work, Grantee and all of its third-party contractors and subcontractors (hereinafter "subcontractors") shall report payment details using the SANDAG web-based CIS by the 15th of each month following receipt of payment by SANDAG. The CIS is available at <https://sandag.sdbbe.com>. CIS allows SANDAG to monitor the promptness of payment to subcontractors and will allow Grantee and its subcontractors to manage their own records, maintain accurate contract information, and report payment details online. CIS is mandatory for Grantee and subcontractors to use unless SANDAG instructs otherwise. After execution of this Agreement, Grantee will receive instructions on how to set up its account and enter required subcontractor data into CIS via an internet browser. Grantee must require each subcontractor to enter the required payment information into CIS. Failure of Grantee or its

subcontractors to enter required information and confirm payments on a timely basis will delay payment by SANDAG to Grantee until Grantee has cured any defects or provided the missing information. Should Grantee fail to provide the required information, SANDAG shall have sole discretion regarding whether to withhold payment or terminate this Agreement.

E. Licenses and Permits

Grantee represents and warrants to SANDAG that Grantee and its subcontractors will have all necessary licenses, permits, qualifications and approvals of whatever nature that are required to legally practice its profession and perform services under this Agreement at all times during the term of this Agreement.

[Include the following DIR language for capital projects only.]

F. Registration with DIR and Prevailing Wage Requirements

All provisions of this section shall be passed through to any subcontractors performing work related to this Agreement. Additional requirements for public works projects are included in Attachment D.

1. Payment of Prevailing Wages

Grantee acknowledges that any work that qualifies as a “public work” within the meaning of California Labor Code section 1720 shall cause Grantee and its subcontractors to comply with the provisions of California Labor Code sections 1775 et seq, which includes the payment of prevailing wages to all workers performing prevailing wage work.

2. Public Works Contractor Registration With DIR

If Grantee or its subcontractors will engage in the performance of a public work as defined by California Labor Code sections 1720 et seq. and will utilize persons who are not employees of a public entity, registration and payment of an annual registration fee to the DIR shall be required of each entity performing the work. This requirement applies to anyone affected by the public works statutes found in the California Labor Code, including but not limited to landscapers, fencers, surveyors, soil testers, dredgers, heavy equipment operators, and inspectors. Registration can be completed online at <https://www.dir.ca.gov/public-works/contractor-registration.html>.

3. Subcontract Requirements

If Grantee will award any subcontracts for the performance of a public work:

- a. Grantee will create a Project Registration Form (PWC-100 form) for each subcontract using the online database of the California Department of Industrial Relations (DIR).
- b. Grantee shall notify SANDAG ten business days prior to the subcontractor performing the prevailing wage work so SANDAG can prepare for labor compliance monitoring. Grantee will provide to SANDAG the name, DIR registration number, and contractor’s license numbers of each subcontractor so SANDAG or its labor compliance designee can verify, that the selected subcontractor is currently licensed and registered with the DIR. If SANDAG finds that the selected subcontractor is not licensed and registered with the DIR, SANDAG will promptly notify Grantee and Grantee will be required to notify the selected subcontractor to stop work.
- c. If there are any changes to a subcontractor or lower-tier subcontractor, Grantee will advise SANDAG of these changes as soon as those changes are known to the Grantee.

4. Certified Payroll Reporting to DIR

Grantee and all subcontractors performing a public work under this Agreement shall use the DIR's Electronic Certified Payroll Reporting (eCPR) System, available at <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>, to furnish certified payroll records to the California Labor Commissioner. Grantee and its subcontractors are required to utilize the eCPR system throughout the entire duration of the public work.

5. Certified Payroll Reporting to SANDAG

In addition to the eCPR system, Grantee and all subcontractors performing a public work shall utilize the SANDAG Labor Compliance Monitoring System (LCMS), available at <https://www.sandag.org/about/work-with-us/labor-compliance-monitoring-program> to furnish certified payroll records to SANDAG. If Grantee desires to utilize a different system to provide certified payroll records to SANDAG, it must request prior authorization and receive approval in writing from the Grants Program Manager.

Grantee will be required to enter all of its subcontractors' information into LCMS on an ongoing basis. The SANDAG LCMS will allow Grantee to convert certified payroll records to the XML file format for upload to the DIR system.

6. Retention and Inspection of Payroll Records and Employment of Registered Apprentices

Grantee agrees to comply and cause any of its applicable subcontractors to comply with Labor Code section 1776 regarding retention and inspection of payroll records and noncompliance penalties, Labor Code section 1777.5 regarding employment of registered apprentices, and Labor Code section 1813 regarding forfeiture for violations of the maximum hours per day and per week provisions contained in the same chapter. In order to ensure compliance with the Labor Code, Grantee and its subcontractors shall be subject to site visits and spot-check audits by SANDAG or its labor compliance designee. During these audits and inspections, SANDAG or its designee may request Grantee or subcontractor records, including but not limited to certified payroll, apprenticeship, and other ancillary records at any time during the term of the Agreement.

If such an audit or site visit discloses that Grantee or a subcontractor has not kept complete and accurate records or complied with the requirements of the California Labor Code, SANDAG will notify the Grantee and request that the Grantee complete a written Action Plan that includes specific actions the Grantee will take to remedy the outstanding issues and a timeline to bring the Project into compliance. Should the Grantee be unable to submit its Action Plan by the deadline included in the notice or complete its Action Plan in a timely manner, SANDAG will notify the DIR of potential labor compliance issues related to the Project.

Additionally, if Grantee was provided an exception to utilizing the SANDAG LCMS, Grantee will be required to input and submit all applicable certified payrolls and accompanying documentation related to the Project, retroactive to the start of the Project, into the SANDAG LCMS.

G. Standard of Care

Grantee expressly warrants that the work to be performed under this Agreement shall be performed in accordance with the applicable standard of care. Where approval by SANDAG, its management, or other representative of SANDAG is indicated in the Scope of Work, it is understood to be conceptual approval only and does not relieve the Grantee of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Grantee or its third-party contractors.

H. Third-Party Contracting

Although the Grantee may delegate any or almost all Project responsibilities to one or more third-party contractors, the Grantee agrees that it, rather than any third-party contractor, is ultimately responsible for compliance with all applicable laws, regulations, and this Agreement. The first invoice utilizing any third-party contractor shall be accompanied by evidence of compliance with the following requirements:

1. Competitive Procurement

Grantee shall not award contracts with a cumulative value over \$10,000 based on a noncompetitive procurement for work to be performed under this Agreement without the prior written approval of the SGIP Program Manager for such sole source. A Sole Source Request template can be obtained by contacting the SGIP Program Manager. Grantee shall submit its Request for Proposals or bid solicitation documents to SANDAG staff when requesting reimbursement of any third-party contractor expenses to ensure a competitive process was used.

If Grantee hires a third-party contractor to carry out work funded under this Agreement, Grantee shall: prepare a cost estimate prior to soliciting proposals/bids; publicly advertise for competing proposals/bids for the work; for professional services, use cost as a significant evaluation factor in selecting the third-party contractor; document a record of negotiation establishing that the amount paid by Grantee for the work is fair and reasonable; and pass through the relevant obligations in this Agreement to the third-party contractor.

2. Debarment

Grantee and its third-party contractors shall review debarment and suspension websites to confirm the proposed third-party contractor has not been disqualified from doing business with government entities. The documentation showing a lack of debarment shall be obtained from the following two websites:

- Grantee will check the System for Award Management (SAM) at www.sam.gov to verify the third-party contractor and all of its subcontractors are not currently debarred or suspended by the federal government.
- Entities in the United States are banned from doing business with companies with ownership based in countries such as Cuba, Sudan and China due to United States trade sanctions. A search on the US Treasury's Office of Foreign Assets Control (OFAC) website can ensure Grantee will not be doing business with a vendor that is subject to trade sanctions. This can be done at <https://sanctionssearch.ofac.treas.gov/>.

3. Flowdown

Grantee agrees to take appropriate measures necessary, including the execution of a subagreement, lease, third-party contract, or other contractual agreement, to ensure that all Project participants, including alternate payees or third-party contractors at any tier, comply with all applicable federal laws, regulations, policies affecting Project implementation and Agreement requirements. In addition, if an entity other than the Grantee is expected to fulfill any responsibilities typically performed by the Grantee, the Grantee agrees to assure that the entity carries out the Grantee's responsibilities as outlined in this Agreement.

4. No SANDAG Obligations to Third Parties

In connection with the Project, the Grantee agrees that SANDAG shall not be subject to any obligations or liabilities to any subcontractor, lessee, third-party contractor at any tier, or other person or entity that is not a party to the Agreement for the Project. Notwithstanding that SANDAG may have concurred in or approved any solicitation, subagreement, lease, alternate payee designation, or third-party contract at any tier, SANDAG has no obligations or liabilities to any entity other than the Grantee.

5. Equipment Purchases

Grantee shall maintain ownership of any equipment purchased using Agreement funding and shall use such equipment only for the purposes outlined in this Agreement. The parties agree to meet and confer in good faith to ensure the equipment's continued use for the intended purposes, which may include reimbursement to SANDAG when the fair market value of the equipment at Project completion exceeds \$5,000. SANDAG and Grantee further agree that Grantee shall keep an inventory record for each piece of equipment purchased under this Agreement and maintain each piece of equipment in good operating order consistent with the purposes for which they were intended. SANDAG shall have the right to conduct periodic maintenance inspections to confirm the equipment's existence, condition, and proper maintenance.

VII. ETHICS

A. Grantee Code of Conduct/Standards of Conduct

The Grantee agrees to maintain a written code of conduct or standards of conduct that shall govern the actions of its officers, employees, council or board members, or agents engaged in the award or administration of subagreements, leases, or third-party contracts supported with the grant funding. The Grantee agrees that its code of conduct or standards of conduct shall specify that its officers, employees, council or board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subcontractor, lessee, or third-party contractor at any tier or agent thereof. The Grantee may set de minimis rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Grantee agrees that its code of conduct or standards of conduct shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by state or local law or regulations, the Grantee agrees that its code of conduct or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, council or board members, or their agents, or its third-party contractors or subcontractors or their agents.

B. Personal Conflicts of Interest

The Grantee agrees that its code of conduct or standards of conduct shall prohibit the Grantee's employees, officers, council or board members, or agents from participating in the selection, award, or administration of any third-party contract or subagreement supported by the grant funding if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of their immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein have a financial interest in a firm competing for award.

C. Organizational Conflicts of Interest

The Grantee agrees that its code of conduct or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third-party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third-party contractor or subcontractor or impair its objectivity in performing the contract work.

D. SANDAG Code of Conduct

SANDAG has established policies concerning potential conflicts of interest. These policies apply to Grantee. For all awards by SANDAG, any practices that might result in unlawful activity are prohibited, including, but not limited to, rebates, kickbacks, or other unlawful considerations. SANDAG staff members are specifically prohibited from participating in the selection process 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 with SANDAG. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract. Staff also are prohibited from soliciting or accepting gratuities from any organization seeking funding from SANDAG. SANDAG's officers, employees, agents, and board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements. By signing this Agreement, Grantee affirms that it has no knowledge of an ethical violation by SANDAG staff or Grantee. If Grantee has any reason to believe a conflict of interest exists concerning the Agreement or the Project, it shall notify the SANDAG Office of General Counsel immediately.

E. Bonus or Commission

The Grantee affirms that it has not paid and agrees not to pay any bonus or commission to obtain approval of its grant funding application for the Project.

F. False or Fraudulent Statements or Claims

The Grantee acknowledges and agrees that by executing the Agreement for the Project, the Grantee certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project, including, but not limited to, the Grantee's grant application, progress reports, and invoices.

VIII. PAYMENTS

A. Reimbursement Basis

Payment to Grantee for work performed pursuant to this Agreement will be on a reimbursement basis and will be based on actual, substantiated, and allowable costs incurred by the Grantee with documentation provided to SANDAG.

B. Alternate Payee

If the Grantee designates a party as an Alternate Payee, Alternate Payee is authorized to submit payment requests directly to SANDAG to receive reimbursement for allowable Project costs. This does not alleviate Grantee from all obligations under this Grant Agreement.

C. Invoicing

Grantee or Alternate Payee is required to submit invoices no more often than quarterly using a template provided by SANDAG. Invoices must be accompanied by a quarterly report using the quarterly report template provided by SANDAG. SANDAG will make payments for eligible amounts to Grantee or Alternate Payee as promptly as SANDAG fiscal procedures permit upon receipt of Grantee's or Alternate Payee's itemized signed invoice(s), backup, deliverables, and confirmation by the SGIP Program Manager that Grantee is in compliance with the reporting and other requirements in this Agreement. SANDAG shall retain 10 percent from the amounts invoiced until the satisfactory completion of the Project. SANDAG shall promptly pay retention amounts to Grantee or Alternate Payee following satisfactory completion of the Scope of Work, including but not limited to receipt of all deliverables, completion of a final site visit and notification that all labor compliance requirements have been met (for capital projects), the final invoice, and all required documentation.

D. Eligible Costs

The Grantee agrees that Project costs eligible for grant funding must comply with the following requirements unless SANDAG determines otherwise in writing. To be eligible for reimbursement, Project costs must be:

1. Consistent with the Project Scope of Work, Schedule, and Project Budget, and other provisions of the Agreement.
2. Necessary to accomplish the Project.
3. Reasonable for the goods or services purchased.
4. Actual net costs to the Grantee (i.e., the price paid minus any refunds, rebates, or other items of value received by the Grantee that reduces the cost actually incurred, excluding program income). Project-generated revenue realized by the Grantee shall be used to support the Project. Project-generated revenue and expenditures, if any, shall be reported at the end of the Agreement period.
5. Incurred for work performed on or after the Agreement effective date and before the termination date, and also must have been paid for by the Grantee.
6. Satisfactorily documented with supporting documentation, which will be submitted with each invoice. Copies of third-party contractor invoices are required for goods or services provided by third parties.
7. Treated consistently following generally accepted accounting principles and procedures for the Grantee and any third-party contractors and subcontractors, (see Section entitled "Accounting, Reporting, Record Retention, and Access").
8. Eligible for grant funding as part of the grant program through which the funds were awarded.
9. Indirect costs are only allowable if they were included in the Grantee's original project application and Project Budget and were approved by SANDAG.

E. Excluded Costs

In determining the amount of TransNet funds SANDAG will provide for the Project, SANDAG will exclude the following:

1. Any Project cost incurred by the Grantee before the Effective Date of the Agreement or applicable Amendment.
2. Any cost that is not included in the Project Budget.
3. Any cost for Project property or services received in connection with a subagreement, lease, third-party contract, or other arrangement that is required to be, but has not been, concurred in or approved in writing by SANDAG.
4. Any cost ineligible for SANDAG participation as provided by applicable laws, regulations, or policies.
5. Indirect costs unless they were included in the Grantee's original project application and Project Budget and were approved by SANDAG.

The Grantee understands and agrees that payment to the Grantee for any Project cost does not constitute SANDAG's final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation by the Grantee of the terms of this Agreement or Board Policy No. 035 (as the same may be amended). The Grantee acknowledges that SANDAG will not make a final determination about the allowability and eligibility of any cost until the final payment has been made on the Project or the results of an audit of the Project requested by SANDAG or its Independent Taxpayers' Oversight Committee (ITOC) have been completed, whichever occurs latest. If SANDAG determines that the Grantee is not entitled to receive any portion of the grant funding requested or paid, SANDAG will notify the Grantee in writing, stating its reasons. The Grantee agrees that Project closeout will not alter the Grantee's responsibility to return any funds due to SANDAG as a result of later refunds, corrections, performance deficiencies, or other similar actions; nor will Project closeout alter SANDAG's right to disallow costs and recover funds provided for the Project on the basis of a later audit or other review. Upon notification to the Grantee that specific amounts are owed to SANDAG, whether for excess payments of grant funding, disallowed costs, or funds recovered from third parties or elsewhere, the Grantee agrees to promptly remit to SANDAG the amounts owed, including applicable interest, penalties and administrative charges.

IX. ACCOUNTING, REPORTING, RECORD RETENTION, AND ACCESS

A. Project Accounts

The Grantee and Alternate Payee agree to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Grantee and Alternate Payee also agree to maintain documentation of all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project so that they may be clearly identified, readily accessible, and available to SANDAG upon request and, to the extent feasible, kept separate from documents not related to the Project.

B. Reports

1. The Grantee agrees to submit to SANDAG all reports required by law and regulation, policy, this Agreement, or any other reports SANDAG may specify. SANDAG reserves the right to specify that records be submitted in particular formats. Grantee may be required to attend meetings of SANDAG staff and committees, including but not limited to the TransNet Independent Taxpayer Oversight Committee, Transportation and Regional Planning Committees and the SANDAG Board of Directors, to report on its progress and respond to questions from Committee or Board Members or the public.

2. Grantee's performance shall be monitored for consistency with the Scope of Work. SANDAG will utilize Performance Measures (Attachment C) and the SANDAG Grant Monitoring Checklist provided by the SGIP Program Manager, to document compliance with this Agreement. Grantee's performance will be measured against the Performance Measures during the term of this Agreement. If the Grantee does not comply with provisions in this Agreement or achieve minimum performance requirements, SANDAG will issue Grantee a written Notice to Complete a Recovery Plan (Notice). Grantee's Recovery Plan shall include a detailed description of how Grantee intends to come into compliance with the Agreement or Performance Measures. Grantee's Recovery Plan must include an implementation schedule that reflects compliance with the Agreement as referenced in the Notice, or achievement of its performance measure minimums within three months following the issue date of the Notice. Grantee must submit its Recovery Plan to the SGIP Program Manager within 30 calendar days following the issue date of the Notice. If Grantee's performance is inconsistent with that proposed in its Recovery Plan, SANDAG, in its sole discretion, may terminate this Agreement.
3. Grantee must submit quarterly reports and invoices to SANDAG, detailing accomplishments in the quarter, anticipated progress next quarter, pending issues and actions toward resolution, and status of the Project's budget, schedule, and Performance Measures using templates provided by SANDAG. The Quarterly Progress Report shall be submitted to SANDAG within 30 days after each period close, covering January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31. Grantee will not be paid until all reports are completed and provided to SANDAG in the format and with the content SANDAG requires. Furthermore, the Grantee agrees to provide project milestone information (such as presentations to community groups, other agencies, and elected officials, groundbreaking, and ribbon-cuttings) to support media and communications efforts. Grantee needs to document and track in-kind contributions designated as matching funds as part of project management. Grantee must provide all deliverables identified in the Scope of Work in order to receive payment.
4. Press materials shall be provided to SANDAG staff before they are distributed. SANDAG logo(s) should be included in press materials and other project collateral based on logo usage guidelines to be provided by SANDAG. Grantee agrees to provide project milestone information to support media and communications efforts.
5. Grantee is responsible for the following photo documentation:
 - For capital projects, pre-construction photos, which should illustrate the conditions of the project site before construction and demonstrate the need for improved facilities.
 - Project milestone photos (such as workshops, presentations to community groups, other agencies, and elected officials)
 - Photos should be high resolution (at least 4 inches by 6 inches with a minimum of 300 pixels per inch) and be provided to SANDAG with captions including project descriptions, dates, locations, and the names of those featured, if appropriate. Grantees must obtain the consent of all persons featured in photos (or that of a parent or guardian of persons under the age of 18) by using the SANDAG Photo and Testimonial Release form to be provided by SANDAG, or a similar release form developed by Grantee and agreed upon by SANDAG.

C. Record Retention

During the course of the Project and for three years thereafter from the date of transmission of the final invoice, the Grantee agrees to maintain, intact and readily accessible, all communications, data, documents, reports, records, contracts, and supporting materials relating to the Project, as

SANDAG may require. All communications and information provided to SANDAG become the property of SANDAG and public records, as such, may be subject to public review. Please see SANDAG's Board Policy No. 015: Records Management Policy, which is available at <https://www.sandag.org/about/bylaws-and-policies>, for information regarding the treatment of documents designated as confidential.

D. Meeting Records

Grantee shall provide SANDAG with agendas and meeting summaries for all community meetings. SANDAG staff may attend any meetings as appropriate.

E. Access to Records of Grantees and Third-Party Contractors

The Grantee agrees to permit, and require its third-party contractors to permit, SANDAG or its authorized representatives, upon request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its third-party contractors pertaining to the Project.

X. PROJECT COMPLETION, AUDIT, SETTLEMENT, AND CLOSEOUT

A. Project Completion

Within 90 calendar days following Project completion or termination by SANDAG, the Grantee agrees to submit a final invoice of Project expenses and final reports, as applicable. All payments made to the Grantee shall be subject to review for compliance by SANDAG with the requirements of this Agreement and shall be subject to an audit upon completion of the Project.

B. Project Audit

The Grantee agrees to have financial, performance, and compliance audits performed as SANDAG may require. The Grantee agrees that Project closeout will not alter the Grantee's audit responsibilities. Audit costs are allowable Project costs.

C. Performance Audit

The Grantee agrees to cooperate with SANDAG or ITOC regarding any performance audit performed on the Project.

D. Project Closeout

Project closeout occurs when SANDAG notifies the Grantee that SANDAG has closed the Project, and, if applicable, either forwards the final grant funding payment and or acknowledges that the Grantee has remitted the proper refund. The Grantee agrees that Project closeout by SANDAG does not invalidate any continuing requirements imposed by the Agreement or any unmet requirements outlined in a written notification from SANDAG.

XI. TIMELY PROGRESS AND RIGHT OF SANDAG TO TERMINATE

A. Grantee shall make diligent and timely progress toward completion of the Project within the timelines outlined in the Project Schedule and consistent with Board Policy No. 035 and any amendments thereto.

B. In the event Grantee encounters or anticipates difficulty in meeting the Project Schedule, the Grantee shall immediately notify the SGIP Program Manager in writing, and shall provide pertinent details, including the reason(s) for the delay in performance and the date by which Grantee expects

to complete performance or delivery. This notification shall be informational in character only and 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, including Board Policy No. 035 requirements.

- C. Grantee agrees that SANDAG, at its sole discretion, may suspend or terminate all or any part of the grant funding if the Grantee fails to make reasonable progress on the Project and/or violates the terms of the Agreement or Board Policy No. 035 (as the same may be amended from time to time), or if SANDAG determines that the continuation of grant funding for the Project would not adequately serve the purpose of the laws or policies authorizing the Project.
- D. In general, termination of grant funding for the Project will not invalidate obligations properly incurred by the Grantee before the termination date to the extent those obligations cannot be canceled. If, however, SANDAG determines that the Grantee has willfully misused grant funding by failing to make adequate progress, complete the Scope of Work, meet the performance measures, or failing to comply with the terms of the Agreement, SANDAG reserves the right to require the Grantee to refund to SANDAG the entire amount of grant funding provided for the Project or any lesser amount as SANDAG may determine.
- E. Expiration of any Project time period established in the Project Schedule will not automatically constitute an expiration or termination of the Agreement for the Project. However, Grantee must request, and SANDAG may agree to amend the Agreement in writing if the Project Schedule will not be met. An amendment to the Project Schedule may be made at SANDAG's discretion if Grantee's request is consistent with the provisions of Board Policy No. 035.

XII. CIVIL RIGHTS

The Grantee agrees to comply with all applicable civil rights laws, regulations and policies and shall include the provisions of this section in each subagreement, lease, third-party contract or other legally binding document to perform work funded by this Agreement. Applicable civil rights laws, regulations and policies include, but are not limited to, the following:

A. Nondiscrimination

SANDAG implements its programs without regard to income level, disability, race, color, and national origin in compliance with the Americans with Disabilities Act and Title VI of the Civil Rights Act. Grantee shall prohibit discrimination on these grounds, notify the public of their rights under these laws, and utilize a process for addressing complaints of discrimination. Furthermore, Grantee shall make the procedures for filing a complaint available to members of the public and will keep a log of all such complaints. Grantee must notify SANDAG immediately if a complaint related to the Project or program funded by this grant is lodged. If Grantee receives a Title VI-related or ADA-related complaint, Grantee 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.

B. Equal Employment Opportunity

During the performance of this Agreement, Grantee 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 sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave, denial of pregnancy disability leave, veteran status, or sexual orientation. Grantee 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. Grantee 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 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code Section 12990 (a-f), outlined in Chapter 5 of Division 4 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. Grantee and its third-party contractors shall give written notice of their obligations under this clause to labor organizations with a collective bargaining or other Agreement.

XIII. DISPUTES AND VENUE

A. Choice of Law

This Agreement shall be interpreted under the laws of the State of California.

B. Dispute Resolution Process

If Grantee has a dispute with SANDAG during the performance of this Agreement, Grantee shall continue to perform unless SANDAG informs Grantee in writing to cease performance. The dispute resolution process for disputes arising under this Agreement shall be as follows:

1. Grantee shall submit a statement of the grounds for the dispute, including all pertinent dates, names of persons involved, and supporting documentation, to the SGIP Program Manager. The SGIP Program Manager and other appropriate SANDAG staff will review the documentation promptly and reply to Grantee within 20 calendar days. Upon receipt of an adverse decision by SANDAG, Grantee may submit a request for reconsideration to SANDAG's Chief Executive Officer or designee. The request for reconsideration must be received within ten calendar days from the postmark date of SANDAG's reply. The Chief Executive Officer or designee will respond in writing to the request for reconsideration within ten working days.
2. If Grantee is dissatisfied with the results following the exhaustion of the above dispute resolution procedures, Grantee shall make a written request to SANDAG for appeal to the SANDAG applicable policy advisory committee. SANDAG shall respond to a request for mediation within 30 calendar days. The decision of the applicable policy advisory committee shall be final. In the event that more than one policy advisory committee is responsible to make recommendations related to SGIP grant awards, the written request shall be submitted to the next regularly scheduled policy advisory committee.

C. Venue

If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

XIV. ASSIGNMENT

Grantee shall not assign, sublet, or transfer (whether by assignment or novation) this Agreement or any rights under or interest in this Agreement.

XV. INDEMNIFICATION AND HOLD HARMLESS

A. Generally

With regard to any claim, protest, or litigation arising from or related to the Grantee's performance in connection with or incidental to the Project or this Agreement, Grantee agrees to defend, indemnify, protect, and hold SANDAG and its agents, officers, Board members, and employees harmless from and against any and all claims, including, but not limited to prevailing wage claims against the Project, asserted or established liability for damages or injuries to any person or property, including injury to the Grantee's or its third-party contractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the Grantee and its third-party contractors and their agents, officers, or employees, in performing the work or services herein, and all expenses of investigating and defending against same, including attorney fees and costs; provided, however, that the Grantee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its Board of Directors, agents, officers, or employees.

B. Intellectual Property

Upon request by SANDAG, the Grantee agrees to indemnify, save, and hold harmless SANDAG and its Board of Directors, officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Grantee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Grantee shall not be required to indemnify SANDAG for any liability caused solely by the wrongful acts of SANDAG employees or agents.

XVI. INDEPENDENT CONTRACTOR

A. Status of Grantee

Grantee shall perform the services provided for within this Agreement as an independent contractor, not an employee of SANDAG. Grantee shall be under the control of SANDAG as to the result to be accomplished and not the means. The payments made to Grantee under this Agreement shall be the full compensation to which Grantee is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Grantee. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Grantee. Grantee agrees to indemnify SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Grantee or any employee of Grantee for work done under this Agreement.

B. Actions on Behalf of SANDAG

Except as SANDAG may specify in writing, Grantee shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise. Grantee shall have no authority, express or implied, to bind SANDAG or its members, agents, or employees to any obligation whatsoever unless expressly provided for in this Agreement.

XVII. SEVERABILITY AND INTEGRATION

If any provision of the Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder continues to conform to the requirements of applicable laws or regulations.

This Agreement, with its attachments and the resolution from Grantee's governing body submitted with its application, represents the entire understanding of SANDAG and Grantee regarding those matters. No prior oral or written understanding shall be of any force or effect concerning those matters covered herein. This Agreement may not be modified or altered except in writing, signed by SANDAG and the Grantee.

XVIII. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last signature date below.

SAN DIEGO ASSOCIATION OF
GOVERNMENTS

[JURISDICTION NAME]

SUSAN HUNTINGTON **Date**
Director of Financial Planning, Budgets,
and Grants

[FULL NAME] **Date**
[Title]

APPROVED AS TO FORM:

Office of General Counsel **Date**

ATTACHMENT A
SCOPE OF WORK AND PROJECT BUDGET

(Contracts to Insert final Scope and Project Budget from Excel file)

ATTACHMENT B
PROJECT SCHEDULE

(Contracts to Insert final Project Schedule from Excel file)

ATTACHMENT C
PERFORMANCE MEASURES

Grantee must provide sufficient evidence that demonstrates the use of grant funding meets all SGIP goals and objectives. Grantee agrees to the following performance measures:

(Contracts to Insert final Performance Measures provided by Grants Division)

ATTACHMENT D
PUBLIC WORKS REQUIREMENTS

Any subcontract entered into as a result of the Agreement, shall contain all the provisions of these Public Works Requirements. Use of the term “Contractor” herein shall refer to “Grantee and its third-party contractors” as defined in the Agreement and use of the term “Contract” herein shall refer to the “Agreement”.

7 1.01A LABOR CODE REQUIREMENTS

7 1.01A(1) HOURS OF LABOR

Eight (8) hours labor constitutes a legal day’s work. The Contractor or any subcontractor under the Contractor shall forfeit, as a penalty to SANDAG, twenty five dollars (\$25) for each worker employed in the execution of the Contract by the respective Contractor or subcontractor for each calendar day during which that worker is required or permitted to work more than 8 hours in any one calendar day and forty (40) hours in any one calendar week in violation of the requirements of the Labor Code, and in particular, §§1810 - 1815, thereof, inclusive, except that work performed by employees of Contractors in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one half times the basic rate of pay, as provided in §1815 thereof.

7 1.01A(2) PREVAILING WAGE

The Contractor shall pay wage rates consistent with the State of California Labor Code and the California Department of Industrial Relations.

The wage rates determined by the Director of Industrial Relations can be found in the State Prevailing Wage Rates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, said published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the Department of Industrial Relations, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

Contractor and any subcontractor under Contractor shall comply with Labor Code §§1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit to SANDAG a penalty of not more than two-hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Contract by the Contractor or by any subcontractor under the Contractor in violation of the requirements of the Labor Code and in particular, Labor Code §§ 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each

worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for the penalties described above unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

- A. The contract executed between Contractor and the subcontractor for the performance of work on the Project shall include a copy of the requirements in §§1720.9, 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
- B. Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
- C. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
- D. Prior to making final payment to the subcontractor for work performed on the public works project, Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify a contractor on a public works project within fifteen (15) days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if SANDAG did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, Contractor shall pay all moneys retained from the subcontractor to SANDAG. These moneys shall be retained by SANDAG pending the final decision of an enforcement action.

Pursuant to the requirements in Labor Code §1773, SANDAG has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1, apprenticeship or other training programs authorized by Labor Code §3093, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned.

The general prevailing wage rates and any applicable changes to these wage rates are available at the Labor Compliance Office at the offices of the District Director of Transportation for the district of Caltrans in which the work is situated or at the California Department of Industrial Relations' website at: <http://www.dir.ca.gov>.

The wage rates determined by the Director of Industrial Relations for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for Bids and are good for the life of the Contract. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the Contract. The Contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

Pursuant to §1773.2 of the Labor Code, general prevailing wage rates shall be posted by the Contractor at a prominent place at the site of the Work.

Changes in general prevailing wage determinations that conform to Labor Code §1773.6 and Title 8 California Code of Regulations §16204 shall apply to the Project when issued by the Director of Industrial Relations at least ten (10) days prior to the date of the Notice to Contractors for the Project.

Pursuant to Labor Code §1720.9, "public works" shall include the hauling and delivery of ready-mixed concrete to carry out a public works contract for SANDAG.

7 1.01A(2)(A) TRAVEL AND SUBSISTENCE PAYMENTS

Contractor shall make travel and subsistence payments to each workman, needed to execute the Work, in conformance with the requirements in Labor Code Section 1773.1.

7 1.01A(3)(A) PAYROLL RECORDS – LABOR CODE REQUIREMENTS

Attention is directed to the requirements in Labor Code §1776, a portion of which is quoted below. Regulations implementing Labor Code §1776 are located in §§16200 et seq. of Title 8, California Code of Regulations.

"(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, last 4 digits of social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1720.9, 1771, 1811, and 1815 of the Labor Code for any work performed by its employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or their authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of

Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the ten (10) day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section."

The penalties specified in subdivision (h) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

A copy of all payrolls shall be uploaded weekly to the SANDAG Labor Compliance Monitoring System (LCMS) no later than ten calendar days after the payroll week end date. Payrolls shall contain the full name, address and Social Security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number must be entered on all payrolls. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract. The "Statement of Compliance" shall be on forms furnished by SANDAG or on any form with identical wording. The Contractor shall be responsible to ensure submission of subcontractor payrolls in the LCMS and the Department of Industrial Relations (DIR) eCPR systems. In addition, the contractor is responsible for maintaining physical copies of all (prime/subcontractor) payrolls for DIR auditing purposes.

Submitted certified payrolls for hauling and delivering ready-mix concrete must be accompanied by a written time record. The time record must include the following information and be uploaded to LCMS:

- Truck driver's full name
- Name and location of the batch plant
- Time the concrete was loaded

- Time the truck returned to the batch plant
- Truck driver's signature certifying under penalty of perjury that the information contained in it is true and correct.

The Contractor and each subcontract shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

7 1.01A(3)(B) PAYROLL RECORDS – ADDITIONAL REQUIREMENTS

The Contractor shall also maintain its records in conformance with the following:

A. At the preconstruction meeting, the Contractor will be provided with all necessary forms from the SANDAG current labor compliance consultant. The Contractor shall submit weekly a copy of all payrolls to SANDAG or to the labor compliance consultant, depending on the project. The copy shall be accompanied by a statement signed by the employer or its agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor or the State of California Labor Code, and that the classifications set forth for each laborer or mechanic conform to the work which he or she performed. The Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor shall make the records required under the labor standards clauses of the Contract available for inspection by authorized representatives of SANDAG and the Department of Labor and shall permit such representatives to interview employees during working hours on the job.

B. Contractor, and each subcontractor having contracts exceeding \$10,000, shall submit monthly a report of manpower utilization of the total work force for all work performed during the month. If Contractor or subcontractor does not perform work on the project during the month, a negative report shall be submitted. The reports shall be submitted by the 15th of the following month. Contractor shall be responsible for submission of reports of all subcontractors. If any required manpower utilization report is not received by the designated due date, SANDAG will retain 10 percent (10%) of the estimated value of the work during the month from the next monthly estimate, except that such retentions shall not exceed \$10,000, nor be less than \$1,000. Retentions for failure to submit manpower utilization reports will be additional to all other retentions provided for in this Contract. Retentions for failure to submit manpower utilization reports will be released for payment on the monthly estimate for partial payments next following the date that all the delinquent reports for which the retention was made are submitted

C. The Contractor shall make its records available and is responsible for making its subcontractors' records available for inspection by authorized representatives of SANDAG or the state or federal government and shall permit such representatives to interview employees during working hours on the job.

7 1.01A(5) APPRENTICE REQUIREMENTS

A. Contractor and its subcontractors are required to meet the apprenticeship ratio of one hour of apprentice work for every five hours of journeyman work per Title 8 California Code of Regulations, §230.1 for its public works projects exceeding \$30,000, with the exception of design build projects, which have a higher ratio requirement that graduates from 20% to 60% between 2016 and 2020. California Labor Code §1777.5 requires all public works contractors and subcontractors to submit contract award information to applicable apprenticeship programs that can supply apprentices to the site of the public work, employ registered apprentices, and make training fund contributions to approved apprenticeship programs.

B. Contractor and its subcontractors shall comply with §§1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Code of Regulations §200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each contractor or subcontractor should, where some question exists, contact the Division of

Apprenticeship Standards, or one of its branch offices prior to commencement of work on this Contract. Responsibility for compliance with this Section lies with Contractor.

C. SANDAG encourages the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

7 1.01A(7) WORKERS' COMPENSATION

Pursuant to the requirements in Labor Code §1860, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in conformance with the requirements in Labor Code §3700.

7 1.01A(8) RECOVERY OF PENALTIES AND FORFEITURES

Attention is directed to Labor Code §§1730 to 1742, which calls for the Labor Commissioner to issue a civil wage and penalty assessment to Contractor or subcontractor or both if the Labor Commissioner determines after investigation that there has been a violation of the laws regulating public works contracts. Contractor or subcontractor may obtain review of a civil wage and penalty assessment by transmitting a written request for a hearing to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment.

7 1.01B CONTRACTOR'S LICENSING LAWS

Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code (commencing with §7000) concerning the licensing of contractors.

All Contractors and subcontractors shall be licensed in accordance with the laws and regulations of the State of California and with the requirements of this Contract and any Contractor or subcontractor not so licensed is subject to the penalties imposed by those laws. Contractor must also provide the license number for any subcontractor completing work in excess of one half of one percent of the total bid.