

TransNet SENIOR TRANSPORTATION MINI-GRANT PROGRAM FISCAL YEAR 2009

**GRANT AGREEMENT 5001097 BETWEEN
THE SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND
ALL CONGREGATIONS TOGETHER
REGARDING COMLINK TRANSPORTATION**

THIS GRANT AGREEMENT 5001097 is made this 1st day of April, 2009, by and between the San Diego Association of Governments (hereinafter referred to as "SANDAG"), 401 B Street, Suite 800, San Diego, CA, and All Congregations Together, 4790 Market Street, San Diego, CA (hereinafter referred to as "Grantee").

RECITALS

The following recitals are a substantive part of this Agreement:

- A. In November 2004, the voters of San Diego County approved SANDAG Ordinance 04-01, which extended the *TransNet* ½ cent sales and use tax through 2048 (Extension Ordinance).
- B. The *TransNet* Extension Ordinance contains provisions for the creation of a Senior Transportation Mini-Grant Program (STMGP), initially funded by the Extension Ordinance on April 1, 2008.
- C. In May 2008, SANDAG issued a request for proposals from entities wishing to apply for a portion of the STMGP funds for use on specialized transportation services for seniors meeting certain criteria.
- D. Grantee successfully applied for STMGP funds for the following project: ComLink Transportation (hereinafter referred to as the "Project").
- E. The purpose of this Agreement is to establish the terms and conditions for SANDAG to provide Grantee with funding to implement the Project.
- F. Although SANDAG will be providing financial assistance to Grantee to support a particular Project, SANDAG will not take an active role or retain substantial control of the Project.
- G. On September 26, 2008, the SANDAG Board of Directors approved funding for a list of *TransNet* Senior Mini-Grant Projects, including the one described in this Agreement. At this meeting, the Board also directed staff to conduct a reassessment of the program and evaluation criteria for the *TransNet* Senior Mini-Grant program. SANDAG staff's reassessment of the program and evaluation criteria for the *TransNet* Senior Mini-Grant program, which will be subject to Board approval, may result in funding changes to this Project beyond its first year.

- H. Grantee understands that *TransNet* funds derive from retail transactions and use tax revenues which are subject to fluctuate. SANDAG's funding commitment to Senior Mini-Grant Program Projects, including this Project, is subject to these fluctuations, which may impact funding availability for this Project.

NOW, THEREFORE, it is agreed as follows:

Section 1. Definitions

- A. **Application** means the signed and dated grant application, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with SANDAG by or on behalf of the Grantee and accepted or approved by SANDAG. All of Grantee's application materials, not in conflict with this Agreement, are hereby incorporated into this Agreement as though fully set forth herein.
- B. **Approval, Authorization, Concurrence, Waiver** means a conscious written statement (transmitted in typewritten hard copy or electronically) of a SANDAG official authorized to permit the Grantee to take or omit an action required by Agreement, which action may not be taken or omitted without such permission. Except to the extent that SANDAG determines otherwise in writing, such approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force or effect.
- C. **Approved Project Budget** means the most recent statement of the costs of the Project, the maximum amount of assistance from SANDAG for which the Grantee is currently eligible, the specific tasks (including specific contingencies) covered, and the estimated cost of each task that has been approved by SANDAG.
- D. **Grantee** means that, even if a single organization within a legal entity has executed this Agreement as the Grantee, the entire legal entity is the Grantee. If the Grantee is a consortium, partnership, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is deemed "Grantee" for purposes of compliance with applicable requirements of the Agreement for its Project.
- E. **Subgrantee** means any contractor or consultant, at any tier, paid directly or indirectly with funds flowing from this Agreement for the Project.

Section 2. 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 attached as Exhibit A.
 2. **Effective Date.** The effective date of the Agreement or any Amendment thereto is the date first written above. The Grantee agrees to undertake Project work promptly after

receiving notice that SANDAG has awarded Extension Ordinance funding for the Project.

3. **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 and provide for the use of any Project property; (b) carry out the 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, including but not limited to the Extension Ordinance.
4. **Project Budget and Schedule.** The Grantee agrees to complete the Project within the Approved Project Budget, attached hereto as Exhibit B, and in a timely manner. SANDAG and the Grantee agree that milestone dates and other Project completion dates set forth in the Project Schedule attached hereto as Exhibit C are to be treated as good faith estimates rather than precise and firm legal requirements. However, Grantee must receive prior written approval from SANDAG's STMGP Project Manager to change, whether by advancing or extending, a milestone date more than thirty (30) calendar days.
5. **Project Management and Subcontracting.** The Grantee agrees to give SANDAG's STMGP Project Manager thirty days (30) advance written notice of its intent to change its Project Manager, or to subcontract more than 30 percent of the Project.
6. **Application of Laws.** Should a federal or state law preempt a local law, regulation, or the Extension Ordinance, the Grantee must comply with the federal or state law and implementing regulations. No provision of the Agreement requires the Grantee to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of the 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 that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project or portions thereof expeditiously.

Public Utilities Commission Transportation Reimbursement Account Fees (PUCTRA). Grantee is responsible for determining whether the Project, or any part of the Project, is subject to PUCTRA fees, and for paying PUCTRA fees if required. Public Utilities Code Section 421(b) requires the Public Utilities Commission (PUC) to establish annual fees that passenger stage corporations, charter-party carriers of passengers, vessel common carriers and for-hire vessel operators must pay. PUC Resolution TL-19095 sets the annual PUC Transportation Reimbursement Account (PUCTRA) fees for these entities for the period July 1, 2008 to June 30, 2009. Please see www.puc.ca.gov for additional information regarding PUCTRA fees.

- B. **Significant Participation by a Subgrantee.** Although the Grantee may delegate any or almost all Project responsibilities to one or more subgrantees, the Grantee agrees that it, rather than any subgrantee, is ultimately responsible for compliance with all applicable laws, regulations, and this Agreement.

- C. **Grantee's Responsibility to Extend Agreement Requirements to Other Entities**
1. **Entities Affected.** Grantee agrees to take appropriate measures necessary to ensure that all Project participants comply with all applicable Federal laws, regulations, and policies affecting Project implementation. 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 set forth in this Agreement.
 2. SANDAG encourages Grantee to use a reasonably competitive bid and/or procurement process if Grantee uses Grant funds to procure goods or services. Grantee understands and agrees that the terms and conditions of this Agreement shall be passed through, and be binding upon, Grantee's third-party contractors.
 3. **Documents Affected.** The applicability provisions of laws, regulations, and policies determine the extent to which those provisions affect an entity (such as a subgrantee) participating in the Project through the Grantee. Thus, the Grantee agrees to use a written document to ensure that each entity participating in the Project complies with applicable laws, regulations, and policies.
 - a. **Required Clauses.** The Grantee agrees to use a written document (such as a subagreement, lease, third-party contract or other) including all appropriate clauses stating the entity's responsibilities under applicable laws, regulations, or policies.
 - b. **Flowdown.** The Grantee agrees to include in each document (subagreement, lease, third-party contract, or other) any necessary provisions requiring the Project participant (third-party contractor, subgrantee, or other) to impose applicable laws, Agreement requirements and directives on its subgrantees, lessees, third-party contractors, and other Project participants at the lowest tier necessary.
- D. **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 subgrantee, lessee, third-party contractor, 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, or third-party contract at any tier, SANDAG has no obligations or liabilities to any entity other than the Grantee, including any subgrantee, lessee, or third-party contractor at any tier.
- E. **Changes in Project Performance** (i.e., Disputes, Breaches, Defaults, or Litigation). 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 that may adversely affect the Grantee's ability to perform the Project in accordance with the terms of the Agreement. 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 Office of General Counsel.

- F. **Standard of Care.** The Grantee expressly warrants that the work to be performed pursuant to this Agreement shall be performed in accordance with the applicable standard of care. Where approval by SANDAG, the Executive Director, 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 subgrantees.

Section 3. 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, board members, or agents engaged in the award or administration of subagreements, leases, or third-party contracts supported with *TransNet* Ordinance assistance. The Grantee agrees that its code of conduct or standards of conduct shall specify that its officers, Employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subgrantee, lessee, or third-party contractor at any tier or agent thereof. Such a conflict would arise when an Employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the entity selected for award. 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, board members, or their agents, or its third-party contractors or subgrantees or their agents.
1. **Personal Conflicts of Interest.** The Grantee agrees that its code of conduct or standards of conduct shall prohibit the Grantee's employees, officers, board members, or agents from participating in the selection, award, or administration of any third-party contract or subagreement supported by *TransNet* Ordinance Assistance 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 his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.
 2. **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 subgrantee or impair its objectivity in performing the contract work.

- B. **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 which might result in unlawful activity are prohibited, including but not limited to rebates, kickbacks, or other unlawful considerations. SANDAG staff is 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 STMG employment relationship with a person or business entity seeking a contract. 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 is also 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 with regard to the Agreement or the Project, it should notify the SANDAG Office of General Counsel immediately.
- C. **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 *TransNet* Ordinance Assistance application for the Project.
- D. **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.

Section 4. Amount of Funding Assistance

The Grantee agrees that SANDAG will provide *TransNet* Ordinance Assistance for the Project equal to the smallest of the following amounts: (a) "Maximum SANDAG Amount Approved" of \$520,732.80 (projected annual disbursements are: FY 09 - \$158,876.80; FY 10 - \$174,783.20; and FY 11 - \$187,072.80), or (b) the amount calculated in accordance with the "Maximum Percentage(s) of SANDAG Participation." SANDAG's responsibility to make payments under this Agreement is limited to the amounts listed in the Approved Project Budget for the Project. Grantee's estimate in its application for funding from SANDAG for the Project is the amount that forms the basis upon which SANDAG determines the "Maximum SANDAG Amount Awarded" and "Maximum Percentage(s) of SANDAG Participation." SANDAG's execution of this Agreement indicates its approval of the first year of funding only.

Notwithstanding the immediately preceding paragraph, Grantee understands that *TransNet* funds derive from retail transactions and use tax revenues which are subject to fluctuation. SANDAG's funding commitment to Senior Mini-Grant Program Projects, including this Project, is subject to these fluctuations, which may impact funding availability for this Project.

The method of payment for this Grant Agreement will be based upon actual allowable costs. SANDAG will reimburse the Grantee for expended actual allowable direct and indirect costs, including but not limited to labor costs, employee benefits, and travel (overhead is reimbursable only if the Grantee has an approved indirect cost allocation plan and prior written approval by SANDAG), and contracted consultant services costs incurred by the Grantee in performance of the Project work, not to exceed the cost reimbursement limitation set forth in this Section 4.

Section 5. Matching Funds

A Grantee that has proposed to provide matching funds for the Project agrees as follows:

- A. **Duty to Obtain Matching Funds.** The Grantee agrees to provide sufficient funds or approved in-kind resources, together with the *TransNet* Ordinance Assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Agreement for the Project. The amount of matching funds and percentage(s) of matching funds Grantee shall provide are set forth in the Approved Project Budget. The Grantee agrees to complete all proceedings necessary to provide its share of the Project costs at or before the time the matching funds are needed for Project costs.
- B. **Prompt Payment of Matching Funds.** The Grantee agrees to provide the proportionate amount of the matching funds promptly as it incurs Project costs or Project costs become due.
- C. **Reduction of Matching Funds.** The Grantee agrees that no refund or reduction of the amount of matching funds may be made unless, at the same time, a reduction of the proportional amount of the *TransNet* Ordinance Assistance provided is made to SANDAG in order to maintain the Maximum Percentage(s) of SANDAG Participation.

Section 6. Approved Project Budget

Except to the extent that SANDAG determines otherwise in writing, the Grantee agrees as follows: The Grantee and SANDAG have agreed to a Project budget that is designated the "Approved Project Budget." The Grantee will incur obligations and make disbursements of Project funds only as authorized by the Approved Project Budget. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the *TransNet* Ordinance Assistance awarded for the Project may be made consistent with applicable laws, regulations, and policies. Prior SANDAG approval is required for transfers of funds from non-construction to construction categories or vice versa or when, in non-construction grants, cumulative transfers of funds between total direct cost categories exceed ten (10) percent of the total budget.

Section 7. Payments

- A. **Grantee's Request for Payment When Matching Funds Are Required.** The Grantee will demonstrate or certify that it will provide adequate matching funds that, when combined with payments from SANDAG, will cover all costs to be incurred for the Project. Except to the extent that SANDAG determines, in writing, that the Grantee may defer its provision of its

matching funds for the Project, a Grantee required under the terms of this Agreement to provide matching funds for the Project agrees that it will not:

1. Request or obtain matching funds exceeding the amount justified by the matching share previously provided, or
 2. Take any action that would cause the proportion of *TransNet* Ordinance Assistance made available to the Project at any time to exceed the percentage authorized by the Grant Agreement or Cooperative Agreement for the Project.
- B. **Payment by SANDAG.** Upon receiving a request for payment and adequate supporting information, SANDAG will make payment for eligible amounts to Grantee within 30 days if Grantee has complied with the requirements of the Agreement, has satisfied SANDAG that the *TransNet* Ordinance Assistance requested is needed for Project purposes in that requisition period, and is making adequate progress toward Project completion. After the Grantee has demonstrated satisfactory compliance with the preceding requirements, SANDAG may reimburse the Grantee's apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Project.
- C. **1. "Adequate Supporting Information,"** as required above, before SANDAG will make payments for eligible amounts to Grantee include:
- a. A Progress Report detailing the tasks completed to date on the Project;
 - b. Operating Data detailing the number of one way trips provided, the number of passengers served, the number of vehicle trips provided, and any additional data requested by SANDAG; and
 - c. An invoice summarizing the items in Paragraphs B(1)(a) and (b), including the total dollar value of the allowable costs incurred (or to be incurred in the requisition period).
- D. **Costs Reimbursed.** The Grantee agrees that Project costs eligible for *TransNet* Ordinance Assistance must comply with all the following requirements. Except to the extent that SANDAG determines otherwise, in writing, to be eligible for reimbursement, Project costs must be:
1. Consistent with the Project Description, the Approved Project Budget, and other provisions of the Agreement;
 2. Necessary in order 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 have the effect of reducing the cost actually incurred, excluding program income);
 5. Incurred for work performed after the Effective Date of the Agreement;

6. Satisfactorily documented;
7. Treated consistently in accordance with accounting principles and procedures approved by SANDAG for the Grantee (see Section 8, Accounting Records, below) and with accounting principles and procedures approved by the Grantee for its third-party contractors and subgrantees; and
8. Eligible for *TransNet* Ordinance Assistance as part of the STMGP.

E. **Excluded Costs**

1. In determining the amount of *TransNet* Ordinance Assistance SANDAG will provide for the Project, SANDAG will exclude:
 - a. Any Project cost incurred by the Grantee before the Effective Date of the Agreement or Amendment thereto;
 - b. Any cost that is not included in the latest Approved Project Budget;
 - c. 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; and
 - d. Any cost ineligible for SANDAG participation as provided by applicable laws, regulations, or policies.
2. 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 the Agreement for the Project. 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 has been completed, whichever occurs latest. If SANDAG determines that the Grantee is not entitled to receive any portion of the *TransNet* Ordinance Assistance 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 SANDAG as a result of later refunds, corrections, or other similar transactions; 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.

F. **Excess Payments, Disallowed Costs, including Interest**

1. **Grantee's Responsibility to Pay.** Upon notification to the Grantee that specific amounts are owed to SANDAG, whether for excess payments of *TransNet* Ordinance Assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Grantee agrees to remit to SANDAG promptly the amounts owed, including applicable interest, penalties, and administrative charges.

Section 8. Accounting Records

In compliance with applicable laws, regulations, and policies, the Grantee agrees as follows:

- A. **Project Accounts.** The Grantee agrees 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 also agrees to maintain 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. **Documentation of Project Costs and Program Income.** Except to the extent that SANDAG determines otherwise, in writing, the Grantee agrees to support all costs charged to the Project, including any approved services or property contributed by the Grantee or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges, including adequate records to support the costs the Grantee has incurred underlying any payment SANDAG has agreed to participate in based upon a "payable" milestone.

Section 9. Reporting, Record Retention, and Access

- A. **Types of Reports.** The Grantee agrees to submit to SANDAG all reports required by laws and regulations, policies, the Agreement, and any other reports SANDAG may specify.
- B. **Report Formats.** The Grantee agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to SANDAG must be prepared and submitted in electronic and or typewritten hard copy formats as SANDAG may specify. SANDAG reserves the right to specify that records be submitted in particular formats.
- C. **Record Retention.** During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Grantee agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the Project as SANDAG may require.
- D. **Access to Records of Grantees and Subgrantees.** The Grantee agrees to permit, and require its subgrantees 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 subgrantees pertaining to the Project.
- E. **Project Closeout.** The Grantee agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.
- F. **Progress Reports.** It shall be the responsibility of Grantee to advise SANDAG of the progress of its work, expenditures incurred, and information regarding whether the Project is projected to comply with the fee payment schedule and Project budget limits. The progress

report shall be submitted in writing to SANDAG with each request for payment. Grantee shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG and, if applicable, to the satisfaction of any government agency as directed by SANDAG. This may include progress and final reports, plans, specifications, estimates, or other evidence of attainment of the Agreement objectives, which are requested by SANDAG or the Independent Taxpayers' Oversight Committee (ITOC). Grantee may be required to attend meetings of SANDAG staff and committees, including ITOC, to report on its progress and respond to questions.

Section 10. Project Completion, Audit, Settlement, and Closeout

- A. **Project Completion.** Within ninety (90) calendar days following Project completion or termination by SANDAG, the Grantee agrees to submit a final certification of Project expenses and audit reports, as applicable.
- B. **Audit of Grantees.** The Grantee agrees to have performed financial and compliance audits SANDAG may require. If performed, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The Grantee also agrees to obtain any other audits required by SANDAG. The Grantee agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Grantee agrees that Project closeout will not alter the Grantee's audit responsibilities. Audit costs are allowable Project costs.
- C. **Project Closeout.** Project closeout occurs when SANDAG notifies the Grantee that SANDAG has closed the Project, and either forwards the final *TransNet* Ordinance Assistance payment 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 set forth in a written notification from SANDAG.

Section 11. Timely Progress and Right of SANDAG to Terminate

- A. Grantee shall make diligent and timely progress toward completion of the Project within the timelines set forth in the Project Schedule (Exhibit C). If timely progress is not achieved, SANDAG may review the status of the Project to determine if the funds should be reallocated to another eligible project. Grantee understands and agrees that any failure to make reasonable progress on the Project or violation of the Agreement that endangers substantial performance of the Project shall provide sufficient grounds for SANDAG to terminate the Agreement for the Project.
- B. Upon written notice, the Grantee agrees that SANDAG may suspend or terminate all or any part of the *TransNet* Ordinance Assistance to be provided for the Project if the Grantee has violated the terms of the Agreement, or if SANDAG determines that the purposes of the laws or policies authorizing the Project would not be adequately served by the continuation of *TransNet* Ordinance Assistance for the Project.

- C. In general, termination of *TransNet* Ordinance Assistance 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 *TransNet* Ordinance Assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of the Agreement, SANDAG reserves the right to require the Grantee to refund the entire amount of *TransNet* Ordinance Assistance provided for the Project or any lesser amount as SANDAG may determine.
- D. Expiration of any Project time period established in the Project Schedule will not, by itself, automatically constitute an expiration or termination of the Agreement for the Project, however, Grantee must request and SANDAG must agree to amend the contract if the Project Schedule will not be met. An amendment to the Project Schedule may be made at SANDAG's discretion if Grantee provides documentation that the Project is delayed due to factors external to the control of Grantee.

Section 12. Civil Rights

The Grantee agrees to comply with all applicable civil rights laws, regulations and policies. These include but are not limited to the following:

- A. **Nondiscrimination** – Title VI of the Civil Rights Act. The Grantee agrees to comply, and assures the compliance of each subgrantee, lessee, or third-party contractor at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq.
- B. **Equal Employment Opportunity.** Grantee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include but not be limited to employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Section 13. Ownership of Work Product

SANDAG shall own any deliverables created in whole or in part for SANDAG's benefit pursuant to the Scope of Work for the Project. The term "deliverables" includes but is not limited to all original drawings, reports, and other documents, including detailed calculations and other work product developed for the Project or services performed on the Project.

Section 14. Disputes and Venue

- A. **Choice of Law.** This Agreement shall be interpreted in accordance with the laws of the State of California.

- B. **Dispute Resolution Process.** In the event 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 SANDAG's Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Grantee within 20 days. Upon receipt of an adverse decision by SANDAG, Grantee may submit a request for reconsideration to SANDAG's Executive Director. The request for reconsideration must be received within 10 days from the postmark date of SANDAG's reply. The Executive Director will respond to the request for reconsideration within 10 working days. The decision of the Executive Director will be final and in writing.
 2. If Grantee is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Grantee shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within thirty (30) calendar days. If SANDAG agrees mediation is appropriate, a mutually-acceptable mediator shall be selected by the parties, and the parties will proceed to mediation of the dispute.
- 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.

Section 15. Assignment

The Grantee agrees that Grantee shall not assign, sublet, or transfer (whether by assignment or novation) this Agreement or any rights under or interest in this Agreement without the written consent of SANDAG, which may be withheld for any reason, provided however, that claims for money due to Grantee from SANDAG under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of such assignment or transfer shall be promptly furnished to SANDAG in writing.

Section 16. Insurance

Grantee shall procure and maintain during the period of performance of this Agreement, and for 12 months following completion, policies of insurance from insurance companies authorized to do business in the State of California or the equivalent types and amounts of self-insurance, as follows:

- A. **General Liability.** Combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal and bodily injury, including death, and broad form property damage. The policy must include an acceptable "Waiver of Transfer Rights of Recovery Against Others Endorsement." The policy must name SANDAG as an additional insured in the endorsement. A deductible or retention may be utilized, subject to approval by SANDAG.

- B. **Automobile Liability.** For personal and bodily injury, including death, and property damage in an amount not less than \$1,000,000.
- 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" naming SANDAG as an additional insured.
- D. **Other Requirements.** Grantee shall furnish satisfactory proof by one or more certificates (original copies) that it has the foregoing insurance. The insurance shall be provided by an acceptable insurance provider, as determined by SANDAG, which satisfies the following minimum requirements:
 - 1. An insurance carrier qualified to do business in California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better, and a financial size of "\$10 million to \$24 million (Class V) or better," or
 - 2. A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for service of process in California.
 - 3. Certificates of insurance shall be filed with SANDAG. These policies shall be primary insurance as to SANDAG so that any other coverage held by SANDAG shall not contribute to any loss under Grantee's insurance. Each insurance policy shall contain a clause which provides that the policy may not be canceled without first giving thirty (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.

Section 17. Indemnification and Hold Harmless

- A. **Generally.** With regard to the Grantee's performance in connection with or incidental to the Project, the Grantee agrees to defend, indemnify, protect, and hold SANDAG and its agents, officers and Employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Grantee's or its subgrantees' 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 subgrantees 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 agents, officers, or Employees.
- B. **Intellectual Property.** Upon request by SANDAG, the Grantee agrees to indemnify, save, and hold harmless SANDAG and its 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 such liability caused solely by the wrongful acts of SANDAG Employees or agents.

Section 18. Independent Contractor

- A. **Status of Grantee.** Grantee shall perform the services provided for within this Agreement as an independent contractor, and not as an Employee of SANDAG. Grantee shall be under the control of SANDAG as to the result to be accomplished and not the means, and shall consult with SANDAG as provided for in the Scope of Work. The payment made to Grantee pursuant to this Agreement shall be the full and complete 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 in this Agreement.

Section 19. Integration

This Agreement represents the entire understanding of SANDAG and Grantee 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 and the Grantee.

Section 20. Severability

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

Section 21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Attn: Danielle Kochman

Grantee:
All Congregations Together
4970 Market Street
San Diego, CA 92102
Attn: Mac McGee

and shall be effective upon receipt thereof.

Section 22. 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 date written above.

SAN DIEGO ASSOCIATION
OF GOVERNMENTS

ALL CONGREGATIONS TOGETHER

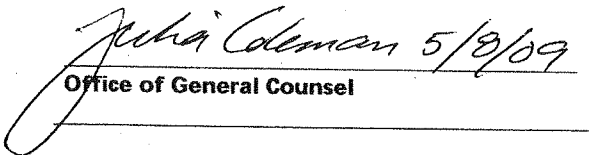


ROBERT A. LEITER
Director of Land Use & Transportation
Planning

WILLIE J. (MAC) MCGEE
Executive Director

5/5/2009

APPROVED AS TO FORM:

 5/8/09
Office of General Counsel