

FY 2013 MEMORANDUM OF UNDERSTANDING BETWEEN H136015
THE CITY OF SAN DIEGO
AND
GROUNDWORK SAN DIEGO
FOR THE CHOLLAS CREEK TO BAYSHORE BIKEWAY
MULTI USE PATH DESIGN PROJECT

This memorandum of understanding ("MOU") is made and entered into by and among, the City of San Diego, a municipal corporation ("City"), and Groundwork San Diego, a State of California nonprofit corporation ("GSD"), (both of which are collectively hereinafter referred to as the "Parties") pursuant to the following facts and circumstances:

RECITALS

WHEREAS, GSD requested that the City partner with it for Chollas Creek to Bayshore Bikeway Multi Use Path Design Project ("Project");

WHEREAS, on June 26, 2012, the County of San Diego Board of Supervisors awarded the City of San Diego \$100,000 in Neighborhood Reinvestment Program Grant Funds ("Grant Funds") for capital planning costs associated with the Project, including preliminary engineering and environmental studies;

WHEREAS, the City executed a Neighborhood Reinvestment Program Grant Agreement with the County of San Diego effective June 26, 2012 ("Grant Agreement") for the allocation of the Grant Funds;

WHEREAS, GSD is a qualified non-profit organization under Section 501(c)(3) of the Internal Revenue Code, and has the expertise, experience, and personnel necessary to provide services in accordance with this MOU;

WHEREAS, the Parties desire that the City receive the Grant Funds and distribute a maximum of \$50,000 to GSD for public outreach and administrative purposes; and

WHEREAS, the Parties desire to set forth their mutual understandings and obligations as follows; however, nothing set forth herein shall be interpreted to supersede any requirement of the Grant Agreement; and

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained in this MOU, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GSD and City agree as follows:

ARTICLE I - INCORPORATION OF RECITALS

1.1. Recitals and Exhibits. The above recitals are true and correct, and are hereby fully incorporated herein by reference. All exhibits to this MOU are hereby fully incorporated herein by reference.

- 1.2. Contract Administrators. Each Party shall designate a representative for the purpose of performing the Services.
- 1.3. GSD Contract Administrator. The Executive Director, Leslie Reynolds, is GSD's contract administrator for this MOU. GSD's designated representative will communicate with the City's designated representative on all matters related to the administration of this MOU. Communications with GSD shall be with GSD's designated representative, unless GSD's designated representative or this MOU specifies otherwise. However, when this MOU refers to an act or approval to be performed by GSD, that act or approval shall be performed by a person acting with lawful authority to bind GSD.
- 1.4. Modification of Scope of Services. Either Party may, without invalidating this MOU, request changes in the Scope of Services by altering, adding to or deducting from the Services to be performed. All such changes shall be approved in writing by the other Party in advance of the Services to be performed, and shall be performed in accordance with the provisions of this MOU. No changes shall be permitted that conflict with any obligation set forth in the Grant MOU. If any such changes cause an increase in the time for performance, the Party responsible for performance shall immediately notify the other Party.
- 1.5. Competitive Bidding. The Parties shall comply with all competitive bidding and prevailing wage requirements of the Grant Agreement.

ARTICLE II – TERM OF MOU

- 2.1. Upon the execution of this MOU by the Parties and approval of this MOU by the City Attorney in accordance with Charter Section 40, this MOU shall be effective as of May _____, 2013 and continue until September 1, 2014, unless terminated earlier in accordance with the terms of this MOU.
- 2.2. Time is of the essence for each provision of this MOU, unless otherwise specified in this MOU.

ARTICLE III - OBLIGATIONS OF GSD

- 3.1. **SCOPE OF SERVICES.** GSD shall perform the services described in the Attachment A, Scope of Services and Project Budget and all other terms and conditions of this MOU.
- 3.2. **SERVICES PROVIDED BY GSD.** GSD shall provide the services necessary to accomplish the Scope of Work, as described in Attachment A, Scope of Services. GSD may provide the services directly or through a Consultant or Subcontractor, or both, subject to the terms and conditions of this MOU.

with the following:

- 3.3.1. Scope of Services and Project Budget (Attachment A)
- 3.3.2. County of San Diego Grant Agreement (Attachment B)
- 3.3.3. City's Equal Opportunity Contracting Program (Exhibit C)
 - AA Workforce Report
 - BB Subconsultant List
 - CC Contract Activity Report
 - DD Consultant Past Participation
- 3.3.4. Contractor Standards Pledge of Compliance (Exhibit D)
- 3.3.5. Certification for a Drug-Free Workplace (Exhibit E);
- 3.3.6. Equal Benefit Ordinance Certificate of Compliance (Exhibit F);
- 3.3.7. Public Records Act (Exhibit G);
- 3.3.8. Americans with Disabilities Act (ADA) (Exhibit H);
- 3.3.9. Insurance as specified in Article V of this MOU (Exhibit I); and
- 3.3.10. IRS Letter of Non-Profit 501(c)(3) (Exhibit J);
- 3.3.11. SANDAG Active Transportation Contract (Exhibit K)

ARTICLE IV – PAYMENTS

4.1 TOTAL PAYMENT. The total disbursement available to GSD under this MOU shall not, under any circumstances, exceed \$50,000.

4.2 PAYMENT SCHEDULE. GSD may apply to the City for payment from the Grant Funds for up to \$50,000.

4.2.1 GSD may request up to four (4) disbursements and in accordance with the terms set forth in this MOU.

4.2.2 GSD shall make any and all request(s) for disbursement to the City no later than June 30, 2014 and no earlier than one hundred and twenty (120) days from the anticipated need for the funds. If GSD fails to request funds by June 30, 2014 those funds will not be disbursed by the City. GSD shall expend the funds within 60 days from the date of receipt from the City, or by August 30, 2014, whichever occurs earlier and subsequent supporting documentation shall be submitted to the Department. Failure to expend contract funds in a timely manner may affect future funding.

4.3 PAYMENT REQUIREMENTS AND RESTRICTIONS.

4.3.1 GSD request(s) for disbursement of funds as an advance for any expenditure must be supported with documentation to the reason for the advance and the sum requested. Upon receipt of advance sums from the City, the funds must be used in a timely manner and documentation of use and receipts received by the City within the time set forth in Section 4.2.2.

4.3.2 GSD shall not request reimbursement of any expenditure and/or service provided without proof that each eligible expenditure claimed has been paid in full by GSD or that each service provided has been done in accordance with the Grant Agreement and this MOU and any and all applicable laws and regulations.

4.3.3 GSD assumes all responsibility for taking the appropriate action to properly and timely submit requests for reimbursement to the City.

- 4.3.4** GSD shall provide the City with authentic, accurate, and legible written documentation including, but not limited to invoices, for all services provided and/or expenses incurred in accordance with this MOU and the Grant Agreement. Written invoices from any of GSD's Contractor, Subcontractor, or other vendors shall be provided to the City in the form originally provided to GSD with no alterations or other markings on such invoices. GSD shall make original invoices immediately available to the City upon request. The documentation provided by GSD to the City shall include an itemized description of the completed service, the date such service was performed, and all supporting invoices and documentation sufficient for the Contract Administrator to adequately determine eligibility for reimbursement of each and every expenditure and that such expenditure GSD shall not be reimbursed for any expenditure without proper and sufficient proof and documentation that each expenditure is eligible to be reimbursed and that such expenditure has been paid in full by GSD. GSD shall not be reimbursed for any service provided pursuant to this MOU unless GSD provides any and all supporting invoices and documentation sufficient for the City to adequately determine eligibility for reimbursement for such service. In addition to providing such proof and documentation, GSD shall complete all of the necessary forms provided by the City in order to properly submit a request for reimbursement.
- 4.3.5** GSD shall take such actions, pay such expenses and do all things necessary to complete the services specified in Attachment A, "Scope of Services" in accordance with the schedule for completion set forth therein and within the terms and conditions of this MOU and the Grant Agreement.
- 4.3.6** GSD acknowledges and understands that the City reserves the right to deny reimbursement for any request that is not properly submitted, including but not limited to GSD's failure to accurately provide the forms required by the City for reimbursement.
- 4.3.7** Any expenditure by GSD that is not within the prescribed limitations set forth in this MOU (including the Project Budget) and the Grant Agreement, and applicable laws, rules, and regulations governing this MOU, is not chargeable to the Project and shall be borne solely by GSD.
- 4.3.8** Upon the determination of the City and/or County of San Diego that any reimbursement has been provided to GSD for an ineligible expenditure or based on a fraudulent or other illegal submittal of a request for reimbursement, GSD shall return such funds to the City within 10 calendar days upon written request to GSD. In addition to the remedies set forth in Article IX of the MOU, if GSD fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to GSD.

4.3.9 Upon the determination of the City and/or County of San Diego that any reimbursement has been provided to GSD based on an inadequate or improper submittal of a request for reimbursement by GSD including, but not limited to, inadequate supporting documentation for expenditure(s) or services provided and/or the failure to properly complete required forms, GSD shall provide any and all documentation required by the City and/or County of San Diego in order to fully remedy such concern(s). GSD shall provide such documentation within 10 calendar days of any written request to GSD. In the event that GSD is unable or unwilling to remedy such concern(s), GSD shall return such funds to the City within 10 calendar days of any written determination by the City and/or County of San Diego that such submittal remains inadequate or improper. In addition to the remedies set forth in Article IX of the MOU, if GSD fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to GSD.

ARTICLE V – INSURANCE

5.1. PREREQUISITES TO COMMENCEMENT OF WORK.

5.1.1. Prior to the execution of this MOU by the Parties, and prior to GSD's performance of its obligations and/or duties under the Scope of Services (Exhibit A), GSD shall complete each of the following:

5.1.1.1. Comply with Section 5.2 below regarding insurance companies; and

5.1.1.2. Obtain all insurance required in Sections 5.3, 5.4, and 5.5 below, and confirm that all insurance policies contain the specific provisions required in those sections.

5.1.2. GSD shall not allow any Subcontractor to commence work on a subcontract in connection with this MOU, unless and until all insurance and subcontract(s) required of the Subcontractor have been obtained.

5.2. INSURANCE COMPANIES. All insurance required in Sections 5.3, 5.4, and 5.5 below shall be carried only by insurers that have been rated "A-, VI," or better, by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted "surplus lines" carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers.

Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this MOU and failure to maintain or renew coverage or to provide evidence of renewal during the term of this MOU may be treated as a material breach of contract by the City. Further, GSD shall not modify any policy or endorsement

thereto which increases the City's exposure to loss for the duration of this MOU.

5.3. COMMERCIAL GENERAL LIABILITY INSURANCE.

- 5.3.1. At all times during the term of this MOU, GSD shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000.
- 5.3.2. The policy shall expressly provide that:
 - 5.3.2.1.all defense costs shall be outside the limits of the policy; and
 - 5.3.2.2. the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
- 5.3.3. The policy shall be endorsed to expressly provide that:
 - 5.3.3.1.the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insurers; and
 - 5.3.3.2.the policy is primary and non-contributory to any insurance that may be carried by the City.
- 5.3.4. There shall be no endorsement or modification of the policy limiting the scope of coverage for insured versus insured claims, or for contractual liability.

5.4. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

- 5.4.1. At all times during the term of this MOU, GSD shall maintain, in full force and effect, Commercial Automobile Liability Insurance for all of GSD's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence. The insurance policy shall reflect coverage for any automobile ("any auto").
- 5.4.2. The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar day's written notice by the insurer to the City by certified mail.
- 5.4.3. The policy shall be endorsed to expressly provide that the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insurers.

5.5. WORKERS' COMPENSATION INSURANCE.

- 5.5.1. At all times during the term of this MOU, GSD shall maintain, in full force and effect, Workers' Compensation Insurance for all of GSD's employees who are subject to this MOU, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.
- 5.5.2. The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar day's written notice by the insurer to the City by certified mail.
- 5.5.3. The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against the City of San Diego, its elected officials, officers, agents, employees, and representatives.

5.6. CERTIFICATES. Prior to the effective date of this MOU (as defined in Section 2.1 above), GSD shall provide to the City insurance certificates evidencing the insurance required in Sections 5.3, 5.4, and 5.5 above.

5.7. ENDORSEMENTS. Prior to the effective date of this MOU (as defined in Section 2.1 above), GSD shall provide to the City the endorsements required under Sections 5.3.3, 5.4.3, and 5.5.3 above. GSD shall ensure that all such endorsements are in full force and effect throughout the term of this MOU.

5.8. CITY'S RIGHT TO REQUEST AND REVIEW GSD'S INSURANCE POLICIES. The City reserves its right to request, and GSD shall immediately submit to the City upon the City's request, copies of any policy required in Sections 5.3, 5.4, and 5.5 above, and its right to review, at any time, GSD's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are sufficient, given the level of risk associated with the services described in the Scope of Services (Exhibit A). If the City determines that any such insurance coverage, limits, deductibles, and/or self-insured retentions is insufficient, the City and GSD shall amend this MOU to increase such insurance coverage, limits, deductibles, and/or self-insured retentions to a sufficient level, as determined by the City, and GSD shall comply with any such amendment.

5.9. DEDUCTIBLES AND SELF-INSURED RETENTIONS. All deductibles and self-insured retentions on any policy shall be the responsibility of GSD, and shall be disclosed on the insurance certificates and acceptable to the City at the time the required evidence of insurance is provided to the City.

5.10. GSD'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE. GSD's liability, including, but not limited to, GSD's indemnity obligations under this MOU, shall not be deemed limited in any way to the insurance coverage required in this Article.

- 5.11. MODIFICATIONS AFFECTING CITY'S EXPOSURE TO LOSS.** GSD shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this MOU.
- 5.12. ADDITIONAL INSURANCE.** GSD may obtain additional insurance not required by this MOU.
- 5.13. EXPIRATION OF POLICIES.** Upon the expiration date of each insurance policy required in Sections 5.3, 5.4, and 5.5 above, GSD shall provide to the City an insurance certificate showing that a new or extended policy has been obtained which meets the requirements of this MOU. GSD shall provide to the City all required endorsements for the new or extended policies within fifteen calendar days of the expiration date of each expiring insurance policy.
- 5.14. REQUIREMENT TO MAINTAIN INSURANCE.** Any failure by GSD to maintain the insurance required in Sections 5.3, 5.4, and 5.5 (above) throughout the term of this MOU, or to provide the City evidence of such insurance coverage as required under this MOU, shall constitute a material breach of this MOU and shall be grounds for immediate termination.

ARTICLE VI – AUDITS

6.1. AUDITS.

- 6.1.1. For each of GSD's fiscal years in which GSD receives Grant Funds, GSD shall have Financial Statement Audits prepared in accordance with Generally Accepted Accounting Principles [GAAP] and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:
- 6.1.1.1. An audited financial statement to include a Balance Sheet, Income Statement, and Cash Flow Statement showing use of revenues and expenditures of all funds received by GSD;
 - 6.1.1.2. A statement certifying compliance with all terms and conditions of the City's contract with GSD, and that all required reports and disclosures have been completed, signed, and submitted by an executive officer of GSD; and
 - 6.1.1.3. Copies of the State Form 199 and the Federal Form 990 signed tax reports that have been submitted to the taxing GSD.
 - 6.1.1.4. GSD shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of GSD's fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by GSD.

- 6.1.2. If GSD expends \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year shall, pursuant to the Single Audit Act of 1984 (P.L. 98-502), GSD shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. GSD shall ensure that the Single Audit is completed within 180 calendar days of the end of GSD's fiscal year. If GSD completes audits by calendar year (rather than fiscal year), GSD shall ensure that the Single Audit is completed within 180 calendar days of December 31st. GSD shall provide the City with a copy of the Single Audit within fifteen calendar days of GSD's receipt of the audit.
- 6.1.3. GSD shall ensure that the Financial Statement Audit and Annual Single Audit are completed by a Certified Public Accountant. GSD shall include a clause in any agreement or agreement GSD enters into with an audit firm to provide access by the City or federal government to the working papers of the independent auditor who prepares the audit(s) for GSD. By executing this MOU, GSD also waives any claim of privilege or confidentiality and consents to and authorizes any and all audit firms hired by GSD in connection with this MOU to release any and all information obtained and utilized by any such audit firm as the basis of any audit report issued by the audit firm involving GSD. Individual projects funded by the City shall be clearly identified in the audits, as well as the dollar amounts allocated to such projects by the City.
- 6.1.4. If GSD is subject to an audit from a source other than the City, GSD shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s). GSD shall fully cooperate with any such annual review by providing the City with any and all documentation associated with any such third-party audit(s) within 14 calendar days unless otherwise specified by the City.
- 6.1.5. In the event that any type of audit or monitoring review reveals any pattern of suspicious or questionable request for reimbursement submittals to the City, the City in its sole discretion reserves the right to take action as provided under Article IX of this MOU including, but not limited to, immediately suspending this MOU in whole or in part to further investigate such matters upon provision of written notice to GSD.
- 6.1.6. In the event that an independent audit outlines any concerns about GSD's accounting practices or internal controls which results in an opinion other than an unqualified opinion, the City reserves the right to immediately suspend or terminate this MOU as well as any and all other active contracts between the City and GSD involving the use of Program Grant funds effective immediately upon written notice to GSD. Furthermore, the City reserves the right not to execute future contracts with GSD until such times as an independent auditor can attest to an unqualified opinion that demonstrates GSD's accounting practices and internal controls fully comply with GAAP. If GSD is unable to obtain an unqualified opinion by an independent auditor within ninety (90) calendar days of the issuance of the initial independent auditor's opinion, the City further reserves the right to reprogram any and all pending Program Grant funds allocated to GSD.

6.1.7. GSD shall fully cooperate with the City and any other auditors related to any review or investigation of GSD's conduct or action(s) relating to this MOU. Such cooperation shall include, but is not limited to, the timely provision of responses and documentation requested in any such review or investigation. Failure by GSD to do so shall constitute a material breach of the MOU, which shall subject GSD to immediate termination of the MOU.

ARTICLE VII – PROJECT RECORDS

- 7.1. GENERAL.** GSD shall maintain, and require its subcontractors to maintain, all Project records during the term of this MOU.
- 7.2. ACCOUNTING RECORDS.** GSD shall maintain, and require its subcontractors to maintain, complete and accurate accounting records, in accordance with GAAP in the industry.
- 7.3. INSPECTION AND PHOTOCOPYING.** At any time during normal business hours and as often as requested, GSD shall permit, and require its subcontractors to permit, the City, or any of their duly authorized representatives, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of GSD), all Project records for the purposes of making audits, examinations, excerpts, and/or transcriptions, as well as monitoring and/or evaluating GSD's performance of its obligations and/or duties under this MOU. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Project records in the strictest confidence required by law. If GSD is unable to make any Project records available for inspection within the County of San Diego, then GSD shall pay all of the City's travel-related costs to inspect and/or audit the Project records at the location where the Project records are maintained. Any refusal by GSD to fully comply with the provisions of this section shall be deemed a material breach of this MOU and shall be grounds for immediate termination. All project records shall be made available to the County of San Diego for full audit and inspection if requested. Furthermore, all GSD employees involved in the project shall be available to discuss or be interviewed by County of San Diego staff.
- 7.4. DUPLICATES OF RECORDS.** Upon any request by the City or any of their duly authorized representatives, for any Project records, GSD shall submit, and require its subcontractors to submit, exact duplicates of the originals of the requested Project records to the requesting party for the purposes described in Section 7.3 above.
- 7.5. OWNERSHIP OF RECORDS.** Once GSD has received any reimbursement from the City for GSD's performance of its obligations and/or duties under this MOU, all Project records shall be the property of the City. The City's ownership of the Project records includes the use, reproduction, and/or reuse of the Project records, as well as all incidental rights, whether or not the work for which the Project Records were prepared has been performed. No Project records shall be shown to any other public or private person or entity, except as authorized by the City in writing, or unless such Project records are subject to the California Public Records Act.

- 7.6. STORAGE PERIOD.** GSD shall store, and require its subcontractors to store, all Project records for a period of not less than five years after GSD's final submission of all required reports under this MOU, or five years after the City and GSD make all final payments, or until all pending matters (including audit findings) have been resolved, whichever is longest. All Project records shall be kept at GSD's (or relevant Subcontractor's) regular place of business. At any time during the storage period, GSD shall permit, and require its subcontractors to permit, the City, County of San Diego, Comptroller General, or any of their duly authorized representatives, to inspect and photocopy all Project records for the purposes described in Section 7.3 above. After the storage period has expired, GSD shall provide the City with thirty calendar days written notice of its intent to dispose of any Project records. During this time period, GSD shall provide any and all Project records to the City upon the request of the City.

ARTICLE VIII – COMPLIANCE WITH LAWS AND POLICIES

- 8.1. GENERAL.** GSD shall comply, and require its subcontractors to comply, with all applicable laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, and policies of the federal, state, and local governments, as they pertain to this MOU. In addition, GSD shall immediately comply, and require its subcontractors to immediately comply, with all directives issued by the City, or its duly authorized representatives, under authority of any law, statute, rule, regulation, order, ordinance, resolution, permit, requirement, or policy of the federal, state, or local governments. Failure by GSD to accept or comply with rules, regulations, and procedures which affect the terms of this MOU, and which the City shall present in writing, shall be deemed a material breach of this MOU and shall be grounds for immediate termination by the City.
- 8.2. CONFLICT OF INTEREST.**
- 8.2.1. GSD shall comply, and require its subcontractors to comply, with all state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:
- 8.2.1.1. The conflict of interest provisions in 24 C.F.R. 570.611, and Attachment O of OMB Circular No. A-110;
 - 8.2.1.2. California Government Code sections 1090 et. seq., and 81000 et. seq.;
 - 8.2.1.3. California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
 - 8.2.1.4. The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
 - 8.2.1.5. The "eEqual Opportunity Contracting Program" (Exhibit C).
- 8.2.2. The Parties are unaware of any financial or economic interest of any public officer or

employee of the City relating to this MOU. If GSD becomes aware at any time during the Term of this MOU of any financial or economic interest, GSD shall immediately disclose in writing such interest to the County of San Diego Contract Administrator. If such a financial and/or economic interest is determined to exist, the City may immediately terminate this MOU by giving written notice thereof.

- 8.2.3. If, in performing its obligations and duties set forth in this MOU, GSD makes, or participates in, a “governmental decision,” as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City’s conflict of interest regulations, GSD shall be subject to the City’s conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing GSD's relevant financial interests. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. GSD shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that GSD is subject to the City’s conflict of interest regulations. GSD shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which GSD was subject to the City’s conflict of interest regulations. If the City requires GSD to file a statement of economic interests as a result of the obligations and duties performed, GSD shall be considered a “City Official,” subject to the provisions of the City’s Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this MOU.
- 8.2.4. GSD shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.
- 8.2.5. GSD's personnel, employed in performing the obligations and duties under this MOU, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. GSD shall not recommend or specify any product, supplier, or contractor with whom GSD has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 8.2.6. If GSD violates any conflict of interest law, or any of the provisions of Section 8.2 of this MOU, the violation shall be grounds for immediate termination of this MOU, and/or the imposition of other remedies. Further, any such violation shall subject GSD to liability to the City for attorney’s fees and all damages sustained as a result of the violation.
- 8.3. EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, the City, at its sole discretion, may unilaterally and immediately terminate this MOU if GSD employs an individual, who, within twelve months immediately preceding such employment, did, in the individual’s capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection

with the selection of GSD for the Project.

8.4. EQUAL EMPLOYMENT OPPORTUNITY.

- 8.4.1. GSD shall comply, and shall require its Subcontractors to comply, with the City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701 – 22.2707. GSD and all of its Subcontractors are individually responsible for abiding by its contents.
- 8.4.2. GSD shall comply, and shall require its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964 (as amended by Executive Orders 11246, 11375, and 12086; as supplemented by 41 C.F.R. chapter 60), the California Fair Employment Practices Act, and any other applicable federal and state laws and/or regulations hereinafter enacted.
- 8.4.3. GSD shall not discriminate, and shall require its Subcontractors not to discriminate, on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing any obligation or duty in connection with this MOU, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.
- 8.4.4. GSD, and its Subcontractors, shall provide equal opportunity in all employment practices.
- 8.4.5. GSD shall submit to the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting [EOC] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.
- 8.4.6. GSD understands that compliance with the EEO provisions shall be monitored and reviewed by the City's EOC staff.
- 8.4.7. GSD acknowledges that its failure to comply with the above requirements, or its submittal of false information in response to these requirements, fully authorizes the City to take any of the following action: the withholding of reimbursement payments until GSD complies with the above; immediate termination of this MOU; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit GSD from participating in future City contracts, until all penalties have been satisfied.
- 8.4.8. Nothing in this Section shall be interpreted to hold GSD liable for any discriminatory practice of its Subcontractors.

8.5. NON-DISCRIMINATION IN CONTRACTING.

- 8.5.1. GSD shall comply, and shall require its Subcontractors to comply, with the City's

Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 – 22.3517.

- 8.5.2. GSD shall not discriminate, and shall require its Subcontractors not to discriminate, on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, familial status, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any Subcontractors, vendors, or suppliers.
- 8.5.3. Within sixty calendar days of a request by the City, GSD shall provide the City a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that GSD has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by GSD for each subcontract or supply contract. GSD shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.
- 8.5.4. Violation of any provision of Section 8.5 shall be considered a material breach of this MOU, and may result in remedies being ordered against GSD up to, and including, immediate termination of this MOU, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.
- 8.6. **LOCAL BUSINESS AND EMPLOYMENT.** GSD acknowledges, and shall require its Subcontractors to acknowledge that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts. GSD shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this MOU, from local residents and firms, as opportunities occur. GSD shall hire qualified local residents and firms, whenever feasible.
- 8.7. **LIVING WAGE ORDINANCE.** GSD shall comply, and shall require its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this MOU.
- 8.8. **AMERICANS WITH DISABILITIES ACT.** GSD shall comply, and shall require its Subcontractors to comply, with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally mandated Americans with Disabilities Act [ADA]. GSD, and its Subcontractors, shall be individually responsible for their own ADA program.
- 8.9. **DRUG-FREE WORKPLACE.**
 - 8.9.1. GSD shall comply, and shall require its Subcontractors to comply, with the City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952. GSD shall certify, and require its Subcontractors to certify, that it shall provide a drug free workplace, by submitting to the City an "GSD Certification for a Drug-Free Workplace" form. This certification shall be a condition precedent to this MOU and shall be submitted to the City prior to

the date of execution of this MOU by the City and approval by the City Attorney.

- 8.9.2. GSD shall post in a prominent place at the Project site a statement setting forth its drug-free policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violating the prohibition.
- 8.9.3. GSD shall establish a drug free awareness program to inform employees about each of the following:
 - 8.9.3.1. the dangers of drug abuse in the workplace;
 - 8.9.3.2. the policy of maintaining a drug free workplace;
 - 8.9.3.3. the availability of drug counseling, rehabilitation, and employee assistance programs; and
 - 8.9.3.4. the penalties that may be imposed upon employees for drug abuse violations.
- 8.9.4. GSD shall ensure that all subcontracts in connection with this MOU shall contain language that binds the Subcontractor to comply with the provisions of Section 8.9 of this MOU, as required by City Council Policy 100-17.
- 8.9.5. GSD, and its Subcontractors, shall be individually responsible for their own drug free workplace program.

8.10. LOBBYING AND POLITICAL ACTIVITIES.

- 8.10.1. GSD shall not use, and shall require its Subcontractors not to use, any of the funds, personnel, or materials received in connection with this MOU, to influence, or attempt to influence, any governmental decision or election in any manner, whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, GSD, bureau, board, commission, district, or any other instrument of state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.
- 8.10.2. GSD shall complete and sign a certification form, certifying GSD's knowledge of, and promise to comply with, each of the provisions set forth in Section 8.10 of this MOU. This certification shall be a condition precedent to this MOU and shall be submitted to the City prior to the date of execution of this MOU by the City and approval by the City Attorney. GSD shall also require this same certification to be included in all subcontracts, subgrants, and cooperative agreements exceeding \$100,000.

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8.10.3. GSD shall disclose to the City any funds from any other source which have been paid by GSD (or its principals or agents), within the last year, to influence or attempt to influence decisions of the federal government, by completing, signing, and submitting to the City, Form LLL, "Disclosure of Lobbying Activities," found at 24 C.F.R. 87, Appendix B.

8.10.4. GSD understands that the duty to disclose lobbying activities is a continuing requirement, and therefore, shall make such disclosures at the end of each calendar quarter in which there occurs any event requiring disclosure.

8.11. STORM WATER POLLUTION PREVENTION. GSD shall comply, and require its Subcontractors to comply, with the City's Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this MOU.

8.12. PRODUCT ENDORSEMENT. GSD shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. GSD shall not create any advertisement or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.

8.13. RECOGNITION OF FUNDING SOURCE. GSD shall ensure, and require its Subcontractors to ensure recognition of the role of the County of San Diego in funding GSD's services under this MOU. All activities performed, facilities and items utilized, and publications prepared, in connection with this MOU shall be prominently labeled to reference the use of Program Grant funds from the County of San Diego as a funding source.

8.14. EQUAL BENEFITS ORDINANCE.

8.14.1. In accordance with the Equal Benefits Ordinance [EBO], GSD shall provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract [SDMC §22.4304(f)]. Prior to the execution of this MOU with the City, GSD shall complete the EBO Certification of Compliance and provide it to the City. Failure to maintain equal benefits consistent with the EBO is a material breach of the contract [SDMC §22.4304(e)].

8.14.2. GSD shall notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

“During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.”

8.14.3. GSD shall immediately give the City access to documents and records sufficient for the City to verify that GSD is providing equal benefits and otherwise complying with EBO requirements.

8.14.4. The full text of the EBO and the Rules Implementing the Equal Benefits Ordinance

are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

ARTICLE IX –SUSPENSION AND TERMINATION

9.1 AVAILABLE REMEDIES.

9.1.1. Other provisions of this MOU notwithstanding, if GSD fails to comply with any term or condition of this MOU, the City's remedies include, but are not limited to, each of the following:

9.1.1.1. suspending one or more payments to GSD, pending correction of the activity or action not in compliance;

9.1.1.2. disallowing funds for all or part of the cost of the activity or action not in compliance;

9.1.1.3. wholly or partly suspending the current award for the Project;

9.1.1.4. terminating the current award for the Project;

9.1.1.5. terminating this MOU;

9.1.1.6. deeming GSD ineligible from consideration for any future funding; and/or

9.1.1.7. any other remedy specified in this MOU.

9.1.2. If the City notifies GSD that the City has suspended payments or disallowed funds, or that the City has partly suspended the current award for the Project, GSD shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension, disallowance, or partial suspension of funding. If the City wholly suspends or terminates the current award for the Project, GSD shall cease expending funds in connection with the Project.

9.2. TERMINATION FOR CONVENIENCE. Notwithstanding the term of this MOU as specified in Section 2.1 above, the City or GSD may terminate this MOU for any reason at any time during the term of this MOU upon thirty calendar days written notice of the termination to the other party.

9.3. TERMINATION FOR CURABLE DEFAULT.

9.3.1. Except as provided in Section 9.4 below, the City, at its sole discretion, may terminate this MOU upon fifteen calendar days written notice to GSD, if GSD fails to comply with (i.e., defaults on) any term or condition of this MOU. The written notice shall include a description of GSD's default. If GSD fails to cure the default within fifteen calendar days of the date GSD receives the written

notice, the City may immediately terminate this MOU.

9.3.2. The City reserves the right to suspend payments to GSD during the fifteen calendar day notice period described in Section 9.3.1 above.

9.4. TERMINATION FOR INCURABLE DEFAULT. The City, at its sole discretion, may immediately terminate this MOU upon written notice to GSD if:

9.4.1. GSD makes a material misrepresentation in regard to information furnished to the City pursuant to this MOU, regardless of whether GSD had knowledge or intent with respect to the misrepresentation;

9.4.2. GSD violates any term or condition of this MOU for which immediate termination is authorized;

9.4.3. GSD, or any of its officers or directors, becomes subject to any pending court action or proceeding with respect to the performance of GSD's obligations and/or duties under this MOU (or any prior agreement with the City), that materially and adversely affects GSD's performance of its obligations and/or duties under this MOU;

9.4.4. GSD misappropriates any funds under this MOU (or any prior agreement with the City);

9.4.5. GSD files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors;

9.4.6. Any or all of the Grant Funds allocated to the City by the County of San Diego are suspended or terminated; and/or

9.4.7. GSD is unable or unwilling to comply with any additional terms or conditions governing the Project that may be required by newly enacted (or amended) state, and/or local laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, policies, and/or directives.

9.5. RIGHTS AND REMEDIES. The City's termination of this MOU shall terminate each and every right of GSD, and any person claiming any rights by or through GSD under this MOU. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this MOU; nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this MOU or hereinafter enacted or established, that may be available to the City against GSD.

9.6. CONTINUING RESPONSIBILITIES.

- 9.6.1. In the event this MOU is terminated, GSD shall complete any and all additional work necessary for the orderly filing of documents and closing of GSD's performance of its obligations and duties under this MOU. For services rendered in completing the work, GSD shall be entitled to fair and reasonable compensation for the services performed by GSD before the effective date of termination. By accepting payment for completion, GSD discharges the City of all of the City's payment obligations and liabilities under this MOU.
- 9.6.2. Upon the termination of this MOU, GSD shall deliver to the City the originals of all Project Records within fifteen calendar days of the termination date of this MOU. GSD shall retain copies of all Project records for the storage period specified in Section 7.6 above.
- 9.6.3. Upon the expiration this MOU, the City may request that GSD deliver, and GSD shall deliver, within fifteen calendar days of any such request by the City, the originals of all or any specified Project records to the City. GSD shall retain copies of all Project records for the storage period specified in Section 7.6 above.
- 9.6.4. Upon the expiration or termination of this MOU, GSD shall transfer to the City any Grant Funds on hand at the time of such expiration or termination.

ARTICLE X – INFORMAL DISPUTE RESOLUTION; MANDATORY ASSISTANCE

10.1. INFORMAL DISPUTE RESOLUTION. If the City and GSD have any dispute as to their respective rights, obligations, and/or duties under this MOU, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute may give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

10.2. MANDATORY ASSISTANCE.

10.2.1. If a third party dispute or litigation, or both, arises out of, or relates in any way to, the services provided under this MOU, upon the City's request, GSD, its agents, officers, and employees shall fully assist the City in resolving the dispute or litigation. GSD's assistance to the City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation

10.2.2. In providing the City with Mandatory Assistance, if GSD, its agents, officers, and/or employees incur costs, the City will compensate GSD for such costs.

However, if it is determined through resolution of the third party dispute or litigation, or both, that such third party dispute or litigation was attributable, in whole or in part, to the acts or omissions of GSD, its agents, officers, and/or employees, GSD shall fully reimburse the City for all funds paid to GSD, its agents, officers, and/or employees for Mandatory Assistance.

10.2.3. Any attorney's fees GSD may incur as a result of providing Mandatory Assistance are not reimbursable.

ARTICLE XI – INDEMNIFICATION

- 11.1. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** GSD shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to GSD's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this MOU, or by the acts or omissions of GSD, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. However, GSD's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, GSD shall pay the City for all costs related thereto, including, and without limitation, attorney's fees and costs.
- 11.2. ENFORCEMENT COSTS.** GSD shall pay the City any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 11.1 above.
- 11.3. NOT LIMITED BY INSURANCE.** The provisions of this Article are not limited by the requirements of Article V (Insurance) above.

ARTICLE XII – NOTICE

- 12.1.** In all cases where written notice is required under this MOU, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this MOU.
- 12.2.** For the purposes of this MOU, unless otherwise modified by written amendment to this MOU, notice to the City shall be addressed to:

The City of San Diego
Development Services Department - Planning Division

Attn: Nicholas O'Donnell, Grants Administrator
1222 First Avenue, MS 413
San Diego, CA 92101

Notice to GSD shall be addressed to:
Groundwork San Diego
Attn: Leslie Reynolds, Executive Director
5106 Federal Boulevard, #203
San Diego CA 92105

**ARTICLE XIII – CONTRACT ADMINISTRATOR;
CITY'S DESIGNATED REPRESENTATIVE**

- 13.1. The City's Development Services Department Advanced Planning Division is the contract administrator for this MOU. The City will identify a designated representative for the purposes of this MOU.
- 13.2. The City's designated representative shall communicate with GSD on all matters related to the administration of this MOU and GSD's performance of its obligations and duties rendered hereunder.
- 13.3. GSD shall work solely under the direction of the City's designated representative in performing GSD's obligations and duties under this MOU.
- 13.4. When this MOU refers to communications to or with the City, those communications shall be with the City's designated representative, unless this MOU or the City's designated representative specifies otherwise. When this MOU refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor or his designee, unless this MOU specifies otherwise.
- 13.5. The City, at its sole discretion, may change its designated representative at any time and shall inform GSD of any change of its designated representative within ten calendar days of the date of such change.

**ARTICLE XIV – INDEPENDENT CONTRACTOR; NO ASSIGNMENT;
GSD'S DESIGNATED REPRESENTATIVE**

- 14.1. GSD acknowledges, and shall require its Subcontractors to acknowledge, that GSD and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this MOU that may appear to give the City a right to direct GSD concerning the details of performing its obligations and/or duties under this MOU, or to exercise any control over such performance, shall mean only that GSD shall follow the direction of the City concerning the end results of the performance.
- 14.2. GSD shall have no authority to bind the City in any manner or to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or

otherwise, unless such authority is expressly conferred under this MOU or is otherwise expressly conferred in writing by the City.

- 14.3.** Because this MOU is entered into by the City in reliance upon GSD's qualifications, experience, and personnel identified, GSD shall not assign or subcontract any of its rights, obligations, and/or duties under this MOU, without first obtaining the written consent of the City. Any putative assignment of GSD's rights, obligations, and/or duties under this MOU shall not create a contractual relationship between the City and any putative assignee, and any such assignment shall be ineffective, null and void. Any assignment in violation of this Section is grounds for immediate termination of this MOU, at the sole discretion of the City.
- 14.4.** GSD shall identify a designated representative for the purposes of this MOU. In the event GSD changes its designated representative for the purposes of this MOU, GSD shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE XV – CONFIDENTIALITY OF INFORMATION

- 15.1.** All information provided by the City to GSD in connection with this MOU is for the sole use of GSD. GSD shall not release any of this information to any third party, without the prior written consent of the City.
- 15.2.** Section 15.1 above does not apply to information that:
- 15.2.1. was publicly known, or otherwise known to GSD, at the time the information was provided to GSD by the City;
 - 15.2.2. subsequently becomes publicly known, through no act or omission of GSD;
 - 15.2.3. becomes known to GSD from a source or means other than the City; or
 - 15.2.4. is considered a "public record," pursuant to the California Public Records Act (California Government Code sections 6250 – 6276.48).

ARTICLE XVI – MISCELLANEOUS PROVISIONS

- 16.1. MUNICIPAL POWERS.** Nothing contained in this MOU shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 16.2. GOVERNING LAW.** The terms and conditions of this MOU shall be construed and interpreted in accordance with the laws of the State of California. In addition, the terms and conditions of this MOU are subject to County of San Diego rules and regulations in effect on the effective date of this MOU. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this MOU upon receipt by the City.
- 16.3. JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of,

and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this MOU, subject to the requirements of Article X above.

- 16.4. INTEGRATED AGREEMENT.** This MOU, and the Exhibits and references incorporated into this MOU, fully express all understandings of the Parties concerning the matters covered in this MOU. All prior negotiations and agreements are merged into this MOU.
- 16.5. CHANGES OR AMENDMENTS TO AGREEMENT.** GSD acknowledges and agrees to fully perform the entire Scope of Services set forth in Exhibit A. In the event that GSD is unable to perform any portion of the Scope of Services through no fault of GSD, GSD agrees to immediately inform the Contract Administrator in writing of such inability to perform. Within 30 calendar days of failing to perform any required portion of the Scope of Services, including any monthly and/or quarterly goals, GSD shall contact the Contract Administrator and present a proposal regarding how GSD intends to address this inability to perform. GSD agrees that the City retains full and complete discretion regarding any request to amend any portion of the Scope of Services under the MOU. Should circumstances require and the Parties agree that any of the terms or conditions of this MOU be changed or amended, such change or amendment shall be accomplished only as follows:
- 16.5.1. a change to any of the terms or conditions of this MOU, that does not affect the total compensation herein, shall be accomplished by a written amendment to this MOU, by the completion of a Scope of Services Adjustment form as provided by the City, that is signed by the authorized representatives of the City and GSD;
- 16.5.2. a change which affects the total compensation specified under this MOU, shall be accomplished by a written amendment to this MOU signed by authorized representatives of the City and GSD as well as the completion of any and all forms required by the City, and approved by the City Council as necessary;
- 16.6. COVENANTS AND CONDITIONS.** All provisions herein, expressed as either covenants or conditions on the part of the City or GSD to be performed or observed, shall be deemed to be both covenants and conditions.
- 16.7. NO WAIVER.** No failure of either the City or GSD to insist upon the strict performance by the other of any term, covenant, or condition of this MOU, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this MOU, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this MOU, and each and every term, covenant, and condition, herein shall continue in full force and effect to any existing or subsequent breach.
- 16.8. SUCCESSORS IN INTEREST.** This MOU, and all rights, obligations, and/or duties under this MOU, shall be in full force and effect, whether or not any party to the MOU has been succeeded by another entity, and all rights, obligations, and/or duties under this MOU shall be vested and binding on any party's successor in interest.

- 16.9. SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this MOU shall not render any other provision of this MOU unenforceable, invalid, or illegal.
- 16.10. CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this MOU and the Exhibits, the main body of this MOU shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this MOU, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this MOU, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this MOU.
- 16.11. DRAFTING AMBIGUITIES.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this MOU, and the decision of whether or not to seek advice of counsel with respect to this MOU is a decision which is the sole responsibility of each party. This MOU shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the MOU.
- 16.12. SIGNING AUTHORITY.** Each individual executing this MOU on behalf of a legal entity represents and warrants that he/she is authorized to execute and deliver this MOU on behalf of such entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this MOU is binding upon such entity in accordance with its terms. GSD shall provide the City with evidence, satisfactory to the City, that such authority is valid and that such entity is a valid, qualified corporation or limited liability Company in good standing in its home state and that such entity is qualified to do business in California.
- 16.13. COUNTERPARTS.** This MOU may be executed in counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had executed the same page.
- 16.14. HEADINGS.** All headings in this MOU are for convenience only, and shall not affect the interpretation of this MOU.
- 16.15. EXHIBITS INCORPORATED.** All Exhibits referenced in this MOU are incorporated into the MOU by this reference.

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IN WITNESS WHEREOF, this MOU is executed by the City of San Diego, acting by and through its Mayor, and by GSD.

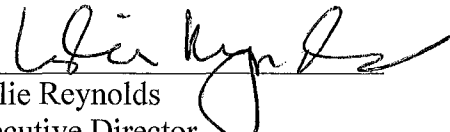
Dated this 5th day of June, 2013.

Dated this 15 day of May, 2013.

The City of San Diego


Groundwork San Diego

By: 
W. Downs Prior
Principal Contract Specialist
Public Works Contracting

By 
Leslie Reynolds
Executive Director
Groundwork San Diego

I HEREBY APPROVE the form and legality of the foregoing MOU this 10th day of June, 2013.

JAN I. GOLDSMITH
City Attorney

By 
Corrine L. Neuffer
Deputy City Attorney

Attachment A - Scope of Services and Project Budget
Attachment B- County of San Diego Contracting Program
Exhibit C City's Equal Opportunity

- 1. AA- Workforce Report
- 2. BB-Subconsultants List
- 3. CC-Contract Activity Report
- 4. DD Consultant Past Participation

- Exhibit D Contractor Standard Pledge of Compliance
- Exhibit E Certification for a Drug-Free Workplace
- Exhibit F Equal Benefits Ordinance Certification of Compliance
- Exhibit G Public Records Act
- Exhibit H Americans with Disabilities Act (ADA)
- Exhibit I Insurance
- Exhibit J IRS Letter of Non-Profit 501(c)(3)
- Exhibit K SANDAG Active Transportation Contract

Scope of Services and Budget

Task 1- Contracted Services: AT Grant Coordinator & Project Manager for Biological and Regulatory Issues for Chollas Creek To Bayshore Bikeway Multi-Use Path Design

Tasks identified include all communications and coordination with the selected team as well as Groundwork staff, interns, board members; scheduling and review of preliminary and final submittals; review of all work; field and team meetings and other related activity. Consultant will provide direction to the team of environmental consultants to ensure the goals of the project are achieved with budget and on schedule. Not to Exceed a Time and Materials Fee: \$20,000

Task 2-Contracted Services: AT Grant Coordinator & Project Manager for Biological and Regulatory Issues for Chollas Creek To Bayshore Bikeway Multi-Use Path Design

Tasks identified include all communications and coordination with the selected team as well as Groundwork staff, interns, board members; scheduling and review of preliminary and final submittals; review of all work; field and team meetings and other related activity. Consultant will provide direction to the team of environmental consultants to ensure the goals of the project are achieved with budget and on schedule. Not to Exceed a Time and Materials Fee: \$20,000

Task 3-Groundwork Professional Services: Project Management for Chollas Creek To Bayshore Bikeway Multi-Use Path Design Grant Compliance Reporting

Tasks include management of all contracted services; reporting to City of San Diego; completion of documentation in support of invoicing; completion of deliverables as represented in Attachment G. SANDAG ACTIVE TRANSPORTATION GRANT PROGRAM SCOPE OF WORK, SCHEDULE, AND BUDGET. Not to Exceed a Time and Materials Fee of \$10,000

**COUNTY OF SAN DIEGO
NEIGHBORHOOD REINVESTMENT PROGRAM
DOCUMENTATION OF GRANT EXPENDITURES**

Grant Period: 11/1/2012 to 11/1/2013

ORGANIZATION NAME: City of San Diego

TID: 956000776

PURPOSE OF GRANT: For capital planning costs associated with the Chollas Creek Bicycle/Pedestrian Trail project, including preliminary engineering and environmental studies.

CHECK #: 3700530 ISSUED ON: 12/10/2012 FOR: \$100,000.00

DOCUMENTATION DUE NOT LATER THAN: 12/1/2013

- For proper documentation procedures, please read the accompanying Documentation of Grant Expenditures Instructions before submittal.
- We will not accept documentation for expenditures that are not in accordance with the purpose of the grant.
- You must spend the grant funds only on the purpose stated above. Any remaining balance should be returned by check payable to the County of San Diego.

TOTAL EXPENDITURES: \$ _____ RETURNED AMOUNT: \$ _____

**WE DECLARE THAT ALL STATEMENTS CONTAINED ON THIS FORM AND IN ANY
ACCOMPANYING DOCUMENTS ARE TRUE AND CORRECT.**

Prepared by: (Signature) _____ Date _____

Print Name _____ Title _____

Phone Number _____ E-Mail _____

Confirmed by: (Signature) _____ Date _____

Print Name _____ Title _____

Phone Number _____ E-Mail _____



List of Expenditures

Date (Expenditures must be within Grant period on Documentation of Grant Expenditure Form)	Check # (Include copy of check and bank statement showing check has cleared)	Payable To (Include paid invoices)	Purpose (Expenditures must be within Purpose of Grant on Documentation of Grant Expenditure Form)	Amount	Item # (Label expenditures documents and bank statements with item #)
					1
					2
					3
					4
					5
					6
					7
					8
					9
					10
					11
					12
					13
					14
			TOTAL		

IMPORTANT NOTICE - READ CAREFULLY

COUNTY OF SAN DIEGO NEIGHBORHOOD REINVESTMENT PROGRAM DOCUMENTATION OF GRANT EXPENDITURES INSTRUCTIONS

Organizations that receive a Neighborhood Reinvestment Program grant must complete a Documentation of Grant Expenditures report. The purpose of this documentation is to verify that the grant funds have been spent in accordance with the purpose of the grant as specified in the grant agreement. **In order to comply with the terms of the grant, organizations must keep detailed records of expenses made using these grant funds.**

Complete and return the Documentation report promptly after all grant funds have been spent, **but no later than one month after the end of the grant period.** Send the documentation to:

**COUNTY OF SAN DIEGO
Neighborhood Reinvestment Program
1600 Pacific Highway, Room 352
San Diego CA 92101-2478**

The Grant Expenditure report **MUST** include the following:

- 1. Cover letter on the organization's letterhead detailing how the grant funds were spent.**
- 2. Completed Documentation of Grant Expenditures Form.**
- 3. Completed List of Expenditures Form.**
- 4. Proof of expenditures (supporting documentation) for the entire grant amount. Please give each supporting document an item number that corresponds to the associated line on the List of Expenditures.**

Supporting documentation may consist of copies, as necessary or relevant, of one or more of the following:

1. Paid invoices **with** proof of payment (copy of the image of the check from bank statement or from bank's website; **OR** check stubs **and** bank statements showing that the checks were cleared; credit card statements). **Please avoid paying cash for services.**
2. For salary expenses, provide quarterly payroll reports produced by a third party payroll company. Include in the cover letter an explanation of how the personnel expenses relate to the project.
3. If the grant was used for paying rent/lease expenses, the rent/lease agreement and proof of payment of rent/lease expenses must be provided.
4. For ticket subsidy programs, please provide a recipient list, contact information, amount subsidized, and a signed affidavit from the recipients acknowledging receipt of the reduced price tickets.
5. If you are paying a group or individual for specialized services (such as a band, artist, performer, or referee) and do not have an invoice, please provide a signed affidavit from the group or individual acknowledging receipt of payment along with proof of payment.
6. Reimbursements to employees must include invoices and receipts as well as reimbursement forms signed by the appropriate authorities.
7. For scholarship or sponsorship grants, please provide a recipient list, how much each recipient received, and board minutes approving the scholarships along with proof of payment to the recipients.
8. We highly recommend augmenting the financial documentation with visual evidence of the expenditure of the funds, such as "before and after" pictures of an improvement project, flyers produced to advertise an event, or promotional materials developed to promote tourism.

Other important information

- A. Unless it is specified in the grant agreement, the purchase of gift cards or certificates is **NOT** allowed. If it is specified, please provide a recipient list showing amounts given along with proof of payment for the gift cards.
- B. Food expenses are **NOT** accepted unless the grant agreement authorizes it.
- C. Unless it is specified in the grant agreement, organizations **MAY NOT** donate part or all of the grant amount to another organization.

A video to assist your organization in the documentation of Neighborhood Reinvestment funds is available at <http://www.sdcounty.ca.gov/auditor/nrppresent.html>

If you have any questions, please contact Toosdhi M. McGowan, Neighborhood Reinvestment Program Coordinator, Office of Financial Planning, at (619) 531-4887.

County office use only

P - 1001838
O - 15650
E - 53664
T - 007
A - 100123
Supplier # - 1104357

RECEIVED

NOV 06 2012

OFF 

**NEIGHBORHOOD REINVESTMENT PROGRAM
GRANT AGREEMENT BETWEEN
THE COUNTY OF SAN DIEGO
AND City of San Diego**

This Grant Agreement is entered into between the County of San Diego, a political subdivision of the State of California (County), and City of San Diego, a Municipal Government (Grantee), on DEC 10 2012 with an effective date of November 1, 2012.

WHEREAS, the County wishes to reinvest taxpayer funds in the community to benefit the public by providing grant funds to community-based organizations that assist in meeting the social, cultural and recreational needs of County residents; and

WHEREAS, the Board of Supervisors may allocate grant funding for purchases, programs or events that will occur either subsequent to the Board's action to approve the grant or that have occurred prior to the Board's approval date; and

WHEREAS, on 6/26/2012 (28), the Board of Supervisors allocated the grant funding set forth in this Agreement for the purpose described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Amount of Grant.** The County agrees to pay to Grantee an amount of \$100,000.00. Under no circumstances is County obligated to pay Grantee more than this amount. County shall pay Grantee after County receives a signed copy of this Agreement from Grantee.
2. **Purpose of Grant.** Grantee shall use the grant funds provided by County under this Agreement solely for the following purpose: for capital planning costs associated with the Chollas Creek Bicycle/Pedestrian Trail project, including preliminary engineering and environmental studies.
3. **Term of Agreement.** The term of this Agreement shall be for 13 months starting on the effective date as specified above.
4. **Deadline for Use of Grant Funds and Documentation of Expenditures.**
 - (a) **Grantee shall spend all grant funds provided by the County for the purposes specified in Paragraph 2 within 12 months of the effective date of this Agreement as specified above.**
 - (b) **Grantee shall complete the Documentation of Grant Expenditures report, in the format prescribed by the County's administrator, setting forth Grantee's total actual expenditures of the grant funds provided under this Agreement. Grantee shall submit this documentation to the County's administrator promptly after spending the grant funds, but in any event, before the end of the Term of Agreement specified above. If the parties agree to extend the Term of Agreement, Grantee shall submit this expenditure documentation before the end of the extended**

Rev. 12/6/10

1



«YEAR»



AGREEMENT



«ORG ID»

Term. If County's administrator requests additional information regarding Grantee's expenditure of the grant funds, Grantee shall promptly submit the requested information to County's administrator.

- (c) If after reviewing Grantee's expenditure documentation, the County's administrator:
- (i) determines that the Grantee failed to spend all of the grant funds;
 - (ii) disallows any expenditure by Grantee; or
 - (iii) determines that the grant funds provided exceed Grantee's total actual expenditures authorized under this Agreement;

Grantee shall refund to the County the amount specified by the County's administrator. Grantee shall make this refund within fifteen (15) business days after receiving a written request for refund from the County's administrator. In its sole discretion, the County may offset the refund amount from any payment due to or to become due to Grantee under this Agreement or any other agreement with the County.

- (d) If Grantee fails to provide the required documentation of expenditures as required in Subparagraph (b) above, the County's administrator may request Grantee to refund to the County all or any portion of the grant funds provided under this Agreement. Within fifteen (15) business days of receipt of a written request for a refund, Grantee shall refund to the County the amount specified by the County's administrator. Grantee's failure to comply with this refund requirement shall constitute a material breach of this Agreement.
- (e) Expenditures incurred by the Grantee prior to the effective date of this Agreement for the purpose specified in Paragraph 2 are not eligible expenditures under Subparagraph (b) above.
- (f) If Grantee fails to use all grant funds as specified in Paragraph 2 above before the deadline specified in Subparagraph (a) above, Grantee may request an extension of the Term. Grantee shall make any such request in writing at least two weeks before the deadline specified in Subparagraph (a) above. Grantee and the County's administrator may agree in writing to extend the Term of Agreement to allow Grantee additional time to spend the grant funds for the purpose specified in Paragraph 2.

5. Restrictions on use of grant funds.

- (a) Grant funds shall not be used for any purposes prohibited by laws governing the use of public funds, including but not limited to, religious, political campaigning, or purely private purposes or activities.
- (b) Any Grantee that provides or participates in any activity for which public funds may not be used, such as religious activities, shall inform the County of this activity prior to accepting any grant funds. Grantee shall ensure that no grant funds awarded pursuant to the agreement are used to support in any manner said activity.
- (c) Grantee shall not spend any part of the grant amount on the fund raising activities.

- (d) Grantee shall not spend any part of the grant amount on food or beverages.
- (e) Grantee may not include in its Documentation of Grant Expenditures report under this Agreement any expenditures for which Grantee has received or is or will be claiming funding from any other source. Grantee's failure to comply with this requirement shall constitute a material breach of this Agreement.
- (f) Grantee shall not donate any portion of this Grant to a third party.
- (g) Grantee shall not assign or transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the County.

6. **Administrator of Agreement.** The Office of Financial Planning, under the Chief Financial Officer, shall administer this Agreement on behalf of the County, and Lara Gates at (619) 236-6006 shall administer it on behalf of Grantee.

7. **Notice.** All communications from Grantee to the County shall be sent to the Chief Financial Officer as listed below. Any notice or notices or other documentation required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

County: Chief Financial Officer
Office of Financial Planning
County of San Diego
1600 Pacific Highway Room 352
San Diego, CA 92101

Grantee: City of San Diego
1222 First Avenue, MS 413
San Diego, CA 92101

8. **Audit and Inspection of Records.** At any time during normal business hours and as often as the County may deem necessary, the Grantee shall make available to the County for examination all of its records with respect to all matters covered by this Agreement and will permit the County to audit, examine and make excerpts or transcripts from such records, and make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this Agreement. Unless otherwise specified by the County, said records should be made available for examination within San Diego County. Grantee shall maintain such records in an accessible location and condition for a period of not less than four years following Grantee's submission of the Documentation of Grant Expenditures report under this Agreement unless County agrees in writing to an earlier disposition. The State of California or any Federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County by this Agreement.

9. **Termination of Agreement for Cause.** If Grantee fails to perform its obligations according to this Agreement, the County may send Grantee a written notice of default that specifies the nature of the default. Grantee shall cure the default within fifteen (15) business days following receipt of the notice of default. If Grantee fails to cure

the default within that time, the County may terminate this Agreement by giving Grantee written notice of immediate termination. Upon termination, Grantee shall promptly provide County's administrator with Documentation of Grant Expenditures setting forth Grantee's total actual expenditures for the purpose of the grant as of the effective date of termination. Grantee shall promptly refund to County all funds County paid to Grantee under this Agreement that exceed Grantee's total actual expenditures made in conformance with this agreement, as determined by County's administrator, as of the effective date of termination. The County may also seek any and all legal and equitable remedies against Grantee for breaching this Agreement.

- 10. Termination for Convenience of County.** County may terminate this Agreement at any time by giving written notice to Grantee of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. On or before the date of termination, Grantee shall provide County's administrator with Documentation of Grant Expenditures setting forth Grantee's total actual expenditures for the purpose of the grant as of the effective date of termination. Grantee shall promptly refund to County all funds County paid to Grantee under this Agreement that exceed Grantee's total actual expenditures for the purpose of the grant, as determined by County's administrator, as of the effective date of termination.
- 11. Termination for Convenience of Grantee.** Grantee may terminate this Agreement at any time by giving written notice to County's administrator of such termination and specifying the effective date thereof at least 60 days before the effective date of such termination. On or before the date of termination, Grantee shall provide County's administrator with Documentation of Grant Expenditures setting forth Grantee's total actual expenditures for the purpose of the grant as of the effective date of termination. Grantee shall promptly refund to County all funds County paid to Grantee under this Agreement that exceed Grantee's total actual expenditure for the purpose of the grant, as determined by County's administrator, as of the effective date of termination.
- 12. Interest of Grantee.** Grantee covenants that Grantee presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with Grantee's completing the purpose of the grant as specified in Paragraph 2. Grantee further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by Grantee.
- 13. Publication, Reproduction and Use of Material.** No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other Country. The County shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
- 14. Insurance.** Grantee shall maintain insurance against claims or injuries to person or damages to property that may arise from or in connection with the use of the grant funds by Grantee, its agents, representatives, employees, volunteers or subcontractors. The cost of such insurance shall be borne by Grantee and coverage limits shall be a minimum of \$1,000,000 General Liability per occurrence/\$1,000,000 aggregate for operations, products and completed operations for bodily injury, personal injury and property damage; \$500,000 Automobile Liability per accident for bodily injury and property damage; and Workers' Compensation and Employers Liability Insurance as

required by the California Labor Code. County shall retain the right at any time to review the coverage and amount of insurance required.

15. **Independent Capacity.** In the performance of this Agreement, Grantee and its agents, employees and volunteers shall act in an independent capacity and not as officers, employees, agents or volunteers of the County. This Agreement does not create an employment relationship between Grantee and the County.
16. **Equal Opportunity.** Grantee will not discriminate against any employee, or against any applicant for such employment because of age, race, color, religion, physical handicap, ancestry, sex, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
17. **Defense and Indemnity.** To the fullest extent permitted by law, County shall not be liable for, and Grantee shall defend and indemnify County and its officers, agents, employees and volunteers (collectively, "County Parties") against any and all claims, deductibles, self-insured retention's, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to County's provision of grant funds and/or Grantee's use of grant funds under this Agreement arising either directly or indirectly from any act, error, omission or negligence of Grantee or its officers, employees, volunteers, agents, contractors, licensees or servants, including without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Grantee shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole active negligent act or willful misconduct of County Parties.
18. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of California.
19. **Complete Agreement.** This Agreement constitutes the entire agreement between Grantee and County regarding the subject matter contained herein. All other representations, oral or written, are superseded by this Agreement. Neither party is relying on any representation outside of this Agreement. This Agreement may be changed only by written amendment signed by both parties.
20. **Waiver.** The failure of either party to enforce any term, covenant or condition of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce this, or any other term, covenant or condition of this Agreement. No waiver shall be deemed effective unless the waiver is expressly stated in writing and signed by the party waiving the right or benefit.
21. **Consultation with Counsel.** Each party has had the opportunity to consult with independent legal counsel of its own choosing before executing this Agreement and has executed this Agreement without fraud, duress, or undue influence of any kind.

22. **Interpretation.** The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.

23. **Corporation Qualified to Do Business in California.** If Grantee is a California corporation, Grantee warrants that it is a corporation in good standing and is currently authorized to do business in California.

24. **Terms and Conditions Survive Expiration of Term of Agreement.** Unless otherwise specified herein, all terms and conditions of this Agreement shall survive the expiration of the Term of Agreement specified in Paragraph 3 above or the termination of this Agreement under Paragraphs 6, 7, or 8 above.

25. **Remedies.** The rights and remedies in this Agreement are in addition to, and not a limitation on, all other rights and remedies available at law or in equity, and exercise of one right or remedy shall not be deemed a waiver of any other right or remedy.


WHEREFORE, the parties execute this Agreement on the date first written above.

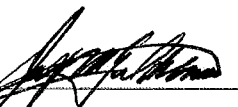
COUNTY OF SAN DIEGO

By:  11/7/2012
Chief Financial Officer
or Designated Representative

Ebony N. Shelton, Director
Office of Financial Planning

GRANTEE

1. By:  Date 11-1-12
Jay M. Goldstone, COO
Print Name and Title

2. By:  Date 11-1-12
Jay M. Goldstone, CFO
Print Name and Title

[Note: if Grantee is a California non-profit corporation, provide 1 signature from each of the following 2 groups:

- (1) Executive Group: President, Vice-President or Chairman of the Board; and
- (2) Management Group: Secretary, Assistant Secretary, Treasurer or Chief Financial Officer.]
(Corp. Code § 5214.)

Return This Agreement



WORK FORCE REPORT

ADMINISTRATIVE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: Groundwork San Diego - Chollas Creek

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 5706 Federal Blvd. # 203

City: San Diego County: San Diego State: Ca Zip: 92105

Telephone Number: (619) 543 0430 FAX Number: (619) 677 2748

Name of Company CEO: Leslie Reynolds

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ FAX Number: () _____

Type of Business: Environmental Nonprofit Type of License: _____

The Company has appointed: Leslie Reynolds
 as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 5706 Federal Blvd # 203

Telephone Number: (619) 543 0430 FAX Number: (619) 677 2748

- One San Diego County (or Most Local County) Work Force – Mandatory
- Branch Work Force *
- Managing Office Work Force

Check the box above that applies to this WFR.

*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of Groundwork San Diego - Chollas Creek,
 (Firm Name)
San Diego, Ca hereby certify that information provided
 (County) (State)
 herein is true and correct. This document was executed on this 3 day of April, 2013.
Leslie Reynolds Leslie Reynolds
 (Authorized Signature) (Print Authorized Signature)

WORK FORCE REPORT - NAME OF FIRM: Chellos Creek Groundwork Services - DATE: 4/3/13

OFFICE(S) or BRANCH(ES): 5106 Federal Blvd #203 COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Management & Financial													
Professional												2		
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

*Construction laborers and other field employees are not to be included on this page

Totals Each Column													2	
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	---	--

Grand Total All Employees 2

Non-Profit Organizations Only:

Board of Directors	2	2	2								4	2		
Volunteers														
Artists														

SUBCONSULTANTS LIST

This list shall include the name and complete address of all Subcontractors who qualify as SLBEs or ELBEs. Contractors may also list participation by MBE, WBE, DBE, DBVE and OBE firms. However, no additional points will be awarded for participation by these firms, except that DVBEs that are certified by the City as local businesses shall be counted as SLBEs.

Contractor shall also submit Subcontractor commitment letters on Subcontractor's letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

Subcontractors shall be used in the percentages listed. No changes to this Participation List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OF CONTRACT	SLBE/ELBE(*/ MBE/ WBE/DBE/ DVBE/OBE)	** WHERE CERTIFIED
Trestle's Environmental Corporation 11125 Mission Ave #325 Fellbrook Ca 92027	manage grant enviro review	10%	WBE	
PSOMAS 311 Camino Del Rio No. #702 San Diego Ca 92108	Design enviro review	90%	ELBE/SLBE	

* Listed for informational purposes only.

** Consultant shall indicate if Subcontractor is certified by one of the agencies listed in Section VII of the Equal Opportunity Contracting Program (EOCP) Attachment.

List of Abbreviations:

- | | |
|--|------|
| Certified Minority Business Enterprise | MBE |
| Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE |
| Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE |
| Small Local Business Enterprise | SLBE |
| Emerging Local Business Enterprise | ELBE |

CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: Chollas Creek to Bayshore Biheway Multi Use Path Design
 TYPE OF PROJECT: _____ ESTIMATED \$ VALUE OF PROJECT: _____

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB [Ⓛ]	WHERE CERTIFIED [Ⓛ]
Name: <u>PSOMAS</u> Address: <u>3111 Camino del Rio No</u> City: <u>San Diego</u> State: <u>Ca</u> Zip: <u>92108</u> Phone: <u>619 280</u>	<u>Contractor</u>	<u>Design, outreach, environmental review</u>	<u>\$ 395,870</u>	<u>SLBE</u> <u>SLOB</u>	
Name: <u>Trestles Environmental Corp.</u> Address: <u>1119 S Mission Ave # 325</u> City: <u>Fallbrook</u> State: <u>Ca</u> Zip: <u>92027</u> Phone: <u>714 246 3117</u>	<u>Contractor</u>	<u>Project management</u>	<u>\$ 40,000</u>		
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____					

Ⓛ As appropriate, Consultant shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

- | | | | |
|---|--------|--|---------|
| Certified Minority Business Enterprise | MBE | Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE | Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE | Certified Emerging Local Business Enterprise | ELBE |
| Certified Small Local Business Enterprise | SLBE | Small Disadvantaged Business | SDB |
| Woman-Owned Small Business | WoSB | HUBZone Business | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB | | |

Ⓛ As appropriate, Consultant shall indicate if Subcontractor or Supplier is certified by:

- | | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | San Diego Regional Minority Supplier Diversity Council | SRMSDC |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

EXHIBIT D

CONTRACTOR STANDARDS PLEDGE OF COMPLIANCE

Pledge of Compliance

Effective December 24, 2008, the Council of the City of San Diego adopted Ordinance No. O-19808 to extend the Contractor Standards Ordinance to all contracts greater than \$50,000. The intent of the Contractor Standards clause of San Diego Municipal Code §22.3224 is to ensure the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in the contract.

To assist the Purchasing Agent in making this determination and to fulfill the requirements of §22.3224(d), each bidder/proposer must complete and submit this *Pledge of Compliance* with the bid/proposal. If a non-competitive process is used to procure the contract, the proposed contractor must submit this completed *Pledge of Compliance* prior to execution of the contract. A submitted *Pledge of Compliance* is a public record and information contained within will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law.

All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, respondents must use the *Pledge of Compliance Attachment "A"* and sign each page. The signatory guarantees the truth and accuracy of all responses and statements. Failure to submit this completed *Pledge of Compliance* may make the bid/proposal non-responsive and disqualified from the bidding process. If a change occurs which would modify any response, Contractor must provide the Purchasing Agent an updated response within thirty (30) calendar days

A. PROJECT TITLE:

Chollas Creek to Bayshore Bikeway
Multi-use Path Design Project

B. BIDDER/CONTRACTOR INFORMATION:

Groundwork San Diego - Chollas Creek
Legal Name DBA
5706 Federal Blvd. #203 San Diego CA 92105
Street Address City State Zip
Leslie Reynolds 619 543 0430 619 677 2748
Contact Person, Title Phone Fax

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?

Yes No

If Yes, use *Pledge of Compliance Attachment "A"* to list all prior legal and DBA names, addresses and dates when used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner or officer operated a similar business?

Yes No

If Yes, use *Pledge of Compliance Attachment "A"* to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds or has held a similar position in another firm.

D. **BUSINESS ORGANIZATION/STRUCTURE:** Indicate the organizational structure of your firm. Check one only on this page. Use Pledge of Compliance Attachment "A" if more space is required.

Corporation Date incorporated: 2/7/2007 State of incorporation: California
List corporation's current officers: President: Derry Williams
Vice Pres: Bill Ponder
Secretary: Susan Taylor
Treasurer: Susan Taylor

Is your firm a publicly traded corporation? Yes No

If Yes, name those who own five percent (5%) or more of the corporation's stocks:

Limited Liability Company Date formed: / / State of formation: _____
List names of members who own five percent (5%) or more of the company:

Partnership Date formed: / / State of formation: _____
List names of all firm partners:

Sole Proprietorship Date started: _____
List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

Joint Venture Date started: _____
List each firm in the joint venture and its percentage of ownership:

Note: Each member of a Joint Venture must complete a separate *Contractor Standards Pledge of Compliance* for a Joint Venture's submission to be considered responsive.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm in preparation for, in the process of, or in negotiations toward being sold?
 Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances, including name of the buyer and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?
 Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?
 Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?
 Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

2. In the past five (5) years, has a government agency terminated your firm's contract prior to completion?
 Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances and provide principal contact information.

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executives or management been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement for violating any federal, state or local law in performance of a contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees?
 Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances surrounding each instance; include name of entity involved, specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been debarred or determined to be non-responsible by a government agency?
 Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include name of entity involved, specific infraction, dates, and outcome.

EXHIBIT E

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: Chollas Creek to Bayshore Bikeway Multi Use Path Design Project

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

FIRM NAME: Groundwork San Diego - Chollas Creek

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Subconsultants agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed Leslie Reynolds
Printed Name Leslie Reynolds
Title Executive Director
Date 4/3/13

EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE



For additional information, contact:

CITY OF SAN DIEGO

EQUAL BENEFITS PROGRAM

202 C Street, MS 9A, San Diego, CA 92101

Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name: Groundwork San Diego / Cholla Creek Contact Name: Leslie Reynolds
Company Address: 5106 Federal Blvd #203 Contact Phone: 619 543 6430
Contact Email: Leslie@groundwork

CONTRACT INFORMATION

Contract Title: Cholla Creek to Hampshire Bikeway Multi-Use Path Design Project Start Date:
Contract Number (if no number, state location): End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
 - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
- Provides equal benefits to spouses and domestic partners.
 - Provides no benefits to spouses or domestic partners.
 - Has no employees.
 - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

- I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Leslie Reynolds / Executive Director
Name/Title of Signatory

[Signature]
Signature

4/3/13
Date

FOR OFFICIAL CITY USE ONLY

Receipt Date: _____ EBO Analyst: _____ Approved Not Approved - Reason: _____

**EXHIBIT G
REGARDING INFORMATION REQUESTED UNDER THE
CALIFORNIA PUBLIC RECORDS ACT**

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Contractor** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of this information.

It will be the **Contractor's obligation to defend**, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Growthwork San Diego - Chollas Creek
Name of Firm
Leslie Reynolds
Signature of Authorized Representative
Leslie Reynolds
Printed/Typed Name
4/3/13
Date

EXHIBIT H

AMERICAN WITH DISABILITIES ACT (ADA)

COMPLIANCE CERTIFICATION

CONSULTANT CERTIFICATION

PROJECT TITLE: Chollas Creek to Bayshore Bikeway Multi Use Path Design

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the American With Disabilities Act (ADA) outlined in Article IV, "ADA Certification", of the Agreement, and that:

Grombrow SAN Diego - Chollas Creek
(Name under which business is conducted)

has in place workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the policy as outlined.

Signed Leslie Reynolds
Printed Name Leslie Reynolds
Title Executive Director



CERTIFICATE OF LIABILITY INSURANCE

Exhibit I

H136015

DATE (MM/DD/YYYY)

5/20/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Michael Ehrenfeld Company 2655 Camino Del Rio North #200 San Diego CA 92108	CONTACT NAME: Jody Talbott
	PHONE (A/C, No, Ext): (619) 683-9990 FAX (A/C, No): (619) 683-9999 E-MAIL ADDRESS: jodyt@ehrenfeldinsurance.com
INSURED Groundwork San Diego - Chollas Creek 5106 Federal Blvd. #203 San Diego CA 92105-5429	INSURER(S) AFFORDING COVERAGE
	INSURER A: Nonprofits Insurance Alliance NAIC # 121XII
	INSURER B:
	INSURER C:
	INSURER D:
	INSURER E:

COVERAGES CERTIFICATE NUMBER: CL134335933 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOE			201335458NPO	3/3/2013	3/3/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 20,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			201335458NPO	3/3/2013	3/3/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						OCCUR CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Accident Insurance			MHH010307	3/3/2013	3/3/2014	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate holder named as additional insured per attached forms CG2026 07 04. Primary wording applies per attached form NIAC-E61 02 13. Revision of certificate dated 4/3/2013.

CERTIFICATE HOLDER	CANCELLATION
City of San Diego, its elected officials, employees and representatives 1010 Second Avenue San Diego, CA 92101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 

POLICY NUMBER: 2013-35458-NPO
GROUNDWORK SAN DIEGO - CHOLLAS CREEK

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
CITY OF SAN DIEGO, ITS ELECTED OFFICIALS, AGENTS, EMPLOYEES, AND REPRESENTATIVES 1010 SECOND AVENUE SAN DIEGO, CA 92101
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

Policy Number: 2013-35458-NPO
Groundwork San Diego - Chollas Creek



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT FOR PUBLIC
ENTITIES**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION II – WHO IS AN INSURED is amended to include any public entity as an additional insured for whom you are performing operations when you and such person or organization have agreed in a written contract or written agreement that such public entity be added as an additional insured(s) on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of, in whole or in part, by:

1. Your negligent acts or omissions; or
2. The negligent acts or omissions of those acting on your behalf; in the performance of your ongoing operations.

No such public entity is an additional insured for liability arising out of the "products-completed operations hazard" or for liability arising out of the sole negligence of that public entity.

B. With respect to the insurance afforded to these additional insured(s), the following additional exclusions apply.

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. The following is added to **SECTION III – LIMITS OF INSURANCE:**

The limits of insurance applicable to the additional insured(s) are those specified in the written contract between you and the additional insured(s), or the limits available under this policy, whichever are less. These limits are part of and not in addition to the limits of insurance under this policy.

D. With respect to the insurance provided to the additional insured(s), **Condition 4. Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is replaced by the following:

4. Other Insurance

a. Primary Insurance

This insurance is primary if you have agreed in a written contract or written agreement:

- (1) That this insurance be primary. If other insurance is also primary, we will share with all that other insurance as described in c. below; or
- (2) The coverage afforded by this insurance is primary and non-contributory with the additional insured(s)' own insurance.

Paragraphs (1) and (2) do not apply to other insurance to which the additional insured(s) has been added as an additional insured or to other insurance described in paragraph b. below.

b. Excess Insurance

This insurance is excess over:

1. Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is fire, lightning, or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE.
 - (e) That is any other insurance available to an additional insured(s) under this Endorsement covering liability for damages arising out of the premises or operations, or products-completed operations, for which the additional insured(s) has been added as an additional insured by that other insurance.
- (1) When this insurance is excess, we will have no duty under Coverages A or B to defend the additional insured(s) against any "suit" if any other insurer has a duty to defend the additional insured(s) against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured(s)' rights against all those other insurers.
- (2) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (3) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Methods of Sharing

If all of the other insurance available to the additional insured(s) permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any other the other insurance available to the additional insured(s) does not permit contribution by equal shares, we will contribute by limits. Under this method, each Insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.



Groundwork
SAN DIEGO
Chollas Creek

5106 Federal Boulevard, Suite 203
San Diego, CA 92105

T 619 543 0430
F 619 677 2748
Leslie@groundworksandiego.org

<http://www.groundworksandiego.org>

RESPONSE TO CITY OF SAN DIEGO RE:

1. Revised Automobile Liability coverage for "Any Auto", per section 5.4.1 of the agreement. Only coverage for "Hired & Non-Owned Autos" was provided. If Groundwork San Diego does not have and "Owned Autos" they must provide a statement to that effect in lieu of providing revised coverage for "Any Auto".

GROUNDWORK SAN DIEGO-CHOLLAS CREEK DOES NOT OWN AUTOMOBILES.

Leslie Reynolds
Executive Director
5/20/2013



Groundwork San Diego-Chollas Creek
Policy No. 2013-35458-NPO
Effective 3/03/2013- 3/03/2014

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE ONLY


In consideration of the premium charged, it is understood and agreed that the following is added as an additional insured:

City of San Diego, its elected officials, employees and representatives
1010 Second Avenue
San Diego, CA 92101

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

But only as respects a legally enforceable contractual agreement with the Named Insured and only for liability arising out of the Named Insured's negligence and only for occurrences of coverages not otherwise excluded in the policy to which this endorsement applies.

It is further understood and agreed that irrespective of the number of entities named as insureds under this policy, in no event shall the company's limits of liability exceed the occurrence or aggregate limits as applicable by policy definition or endorsement.

 **IRS** Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati OH 45201

In reply refer to: 0248164828
Sep. 19, 2011 LTR 4168C E0
74-3184848 000000 00
00014884
BODC: TE

GROUNDWORK SAN DIEGO - CHOLLAS
CREEK
% LESLIE REYNOLDS
PO BOX 741534
SAN DIEGO CA 92174-1534

043656

Employer Identification Number: 74-3184848
Person to Contact: Tonya Morris
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your Sep. 08, 2011, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in February 2007.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website www.irs.gov/eo for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.

0248164828
Sep. 19, 2011 LTR 4168C E0
74-3184848 000000 00
00014885

GROUNDWORK SAN DIEGO - CHOLLAS
CREEK
% LESLIE REYNOLDS
PO BOX 741534
SAN DIEGO CA 92174-1534

If you have any questions, please call us at the telephone number
shown in the heading of this letter.

Sincerely yours,



S. A. Martin, Operations Manager
Accounts Management Operations

TDA/TRANSNET ACTIVE TRANSPORTATION GRANT PROGRAM
FISCAL YEAR 2011 - 2012

**GRANT AGREEMENT 5001736 BETWEEN
THE SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND
CITY OF SAN DIEGO
REGARDING CHOLLAS CREEK TO BAYSHORE BIKEWAY - MULTI-USE PATH
DESIGN**

THIS GRANT AGREEMENT 5001736 ("Agreement") is made this 21st day of February, 2013, by and between the San Diego Association of Governments (hereinafter referred to as "SANDAG"), 401 B Street, Suite 800, San Diego, California, and the City of San Diego (hereinafter referred to as "Grantee"), 1222 First Avenue, San Diego, California. This agreement expires on December 31, 2014.

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 and the Transportation Development Act (TDA) to support local bicycle and pedestrian transportation projects in the San Diego region through a competitive process.
- B. The *TransNet* Extension Ordinance contains provisions to fund the Bicycle, Pedestrian, and Neighborhood Safety Program (BPNSP), for which funding began on July 1, 2008. The BPNSP encompasses bicycle and pedestrian travel and recognizes the comprehensive effort to integrate smart growth place making, access to transit and environmental justice.
- C. Article 3 of the TDA provides funding for Bicycle and Pedestrian Facilities and Programs.
- D. Together the *TransNet* BPNSP and TDA Article 3 funding are commonly referred to as the Active Transportation Program (AT Program) or Active Transportation Funding (AT Funding).
- E. On April 6, 2012, SANDAG issued a Call for Projects from local jurisdictions in San Diego County wishing to apply for the AT Program for use on capital improvement and planning projects meeting certain criteria.
- F. On September 28, 2012, the SANDAG Board of Directors approved a list of AT Program projects for funding; these totaled approximately \$8.8 million.
- G. Grantee successfully applied for AT Funding for the following project: Chollas Creek to Bayshore Bikeway - Multi-Use Path Design (hereinafter referred to as the "Project"). The scope of work, schedule, and budget for the Project is attached as Attachment A.
- H. The purpose of this Agreement is to establish the terms and conditions for SANDAG to provide Grantee with funding to implement the Project.

- I. Grantee's Project is funded with \$441,250 in *TransNet* funds. The *TransNet* MPO ID is SAN21.
- J. Although SANDAG will be providing financial assistance to Grantee to support the Project, SANDAG will not be responsible for Project Implementation or hold any substantial control of the Project.

NOW, THEREFORE, it is agreed as follows:

Section 1. Definitions

- A. **Application.** 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. **Agreement.** This Grant Agreement, together with all Attachments hereto, which are hereby incorporated into this Agreement and contain additional terms and conditions that are binding upon the parties.
- C. **Approval, Authorization, Concurrence, Waiver.** A 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 this Agreement, which action may not be taken or omitted without such written 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. (See also Notice to Proceed, below at paragraph I in this Section 1.)
- D. **Approved Project Budget.** 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. The Approved Project Budget is attached hereto as a section of Attachment A.
- E. **BPNSP Funds and Funding.** Funding from the *TransNet* Extension Ordinance for the Bicycle, Pedestrian, and Neighborhood Safety Program.
- F. **Grantee.** The local jurisdiction that is the recipient of BPNSP Funding under this Agreement. If the Grantee enters into agreements with other parties to assist with the implementation of the Project, each participant in, member of, or party to that agreement is deemed a "subgrantee" and for purposes of compliance with applicable requirements of the Agreement for its Project will be treated as a Grantee.
- G. **Maximum Percentage of SANDAG Participation.** Grantee submitted an application and was evaluated based on its representation that it would provide matching funds for the Project. Grantee agrees to provide 18 percent of the Approved Project Budget as matching funds from resources other than the *TransNet* Active Transportation/Smart Growth Incentive Program or TDA Article 3 funds. Therefore, the maximum percentage that SANDAG will pay

Grantee for amounts invoiced under this Agreement is 82 percent, or \$441,250, whichever is the lesser of these two amounts.

- H. **Notice to Proceed** means a written notice from SANDAG issued to the Grantee authorizing the Grantee to proceed with all or a portion of the work described in the scope of work. Grantee shall not proceed with the work and shall not be eligible to receive payment for work performed prior to SANDAG's issuance of a Notice to Proceed.
- I. **Subgrantee.** Any contractor or consultant, at any tier, paid directly or indirectly with funds flowing from this Agreement for the Project.
- J. **Term.** The Term of this Agreement begins on the date SANDAG issues the Notice to Proceed and ends on the last date indicated in the Project Schedule, (Attachment A), unless amended consistent with the terms of this Agreement and SANDAG's Board Policy No. 035, as amended.

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 Project Description/Scope of Work attached as Attachment A.
 - 2. **Effective Date.** The effective date of this Agreement or any amendment hereto is the date on which this Agreement or an amendment is fully executed. The Grantee agrees to undertake Project only after receiving a written Notice to Proceed from SANDAG.
 - 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 Schedule.** The Grantee agrees to complete the Project according to the Project Schedule attached hereto as a section of Attachment A and in compliance with SANDAG Board Policy No. 035 ("Competitive Grant Program Procedures"), as amended, attached hereto as Attachment B.
 - 5. **Project Implementation and Oversight.** Grantee agrees to comply with the Project Implementation and Oversight Requirements attached hereto as Attachment C and SANDAG Board Policy No. 035 as amended. Additionally, if Grantee hires a consultant to carry out professional services, funded under this Agreement, Grantee shall: prepare an independent Cost Estimate (ICE) prior to soliciting proposals; publicly advertise for competing proposals for the work; use cost as an evaluation factor in selecting the consultant; document a Record of Negotiation (RON) establishing that the amount paid by Grantee for the consultant services is fair and reasonable; and pass through the relevant obligations in this Agreement to the consultant. If Grantee hires a contractor to carry out construction services funded under this Agreement, Grantee shall: prepare

an ICE, (e.g., a construction cost estimate), prior to soliciting bids; publicly advertise for competing bids for the work; award the work to the lowest responsive and responsible bidder; document a RON establishing that the amount paid by Grantee for the construction services is fair and reasonable; and pass through the relevant obligations in this Agreement to the contractor.

6. **Changes to Project's Scope of Work.** This Agreement was awarded to Grantee based on the application submitted by Grantee, which contained representations by Grantee regarding project parameters, project proximity to transit, and other criteria relevant to evaluating and ranking the Project based on SANDAG AT scoring criteria. Any substantive deviation from Grantee's representations in the Project Justification during project implementation may require reevaluation or result in loss of funding. If Grantee knows or should know that substantive changes in the Project Justification have occurred or will occur, Grantee will immediately notify SANDAG in writing. SANDAG will then determine whether the Project is still consistent with the overall objectives of the AT Program and that the changes would not have negatively affected the Project ranking during the competitive grant evaluation process. SANDAG reserves the right to have BPNSP Funding withheld from, or refunded to SANDAG from Grantee due to Grantee's failure to satisfactorily complete the Project or due to substantive changes to the Project Justification. See Section 9, paragraph F of this Agreement regarding amendments to the Scope of Work.
- B. **Application of Laws.** Should a federal or state law pre-empt a local law or regulation, or the *TransNet 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 that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project or portions thereof expeditiously.
- C. **Notice Regarding Prevailing Wages.** SANDAG encourages the Grantee to seek legal counsel regarding whether a recent California appellate court case (*Asuza Land Partners v. Department of Indus. Relations*, 191 Cal. App. 4th 1 (2010)) and Labor code Sections 1720 et seq will subject the grant project to prevailing wage laws. This Agreement requires Grantee's compliance with all federal, state, and local laws and ordinances as applicable.
- D. **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.
- E. **Grantee's Responsibility to Extend Agreement Requirements to Other Entities.**
 1. **Entities Affected.** 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. **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.
 3. **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.
 4. **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.
- F. **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.
- G. **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 that may adversely affect the Grantee's ability to perform the Project in accordance with the terms of the Agreement and as required by SANDAG Board Policy No. 035 (Competitive Grant Program Procedures). 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. Grantee further agrees to comply with the procedures set forth in SANDAG Board Policy No. 035 attached hereto as Attachment B if it anticipates a delay in performance.
- H. **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, its 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.
- I. **Anti-Discrimination Laws.** 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 upon request and will keep a log of all such complaints. Grantee must notify SANDAG immediately if a complaint is lodged that relates to the Project or program funded by this grant. SANDAG requires Grantee to track its efforts to outreach regarding the Project to all population groups in the area that will be served by the Project, including, but not limited to minority and low income groups. Within 60 days of execution of this Agreement, Grantee will provide SANDAG with a description of the geographic area the Project will serve. With this data, SANDAG will provide Grantee with demographic information regarding the population groups within the service area. Grantee will then keep a record of its outreach efforts to the population groups in the service area, and create a record concerning the population groups who will utilize the Project. All records discussed in this subsection shall be made available by Grantee to SANDAG upon request by SANDAG.

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, council or board members, or agents engaged in the award or administration of subagreements, leases, or third-party contracts supported with BPNSP Funding. 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, council or 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, council or board members, or agents from participating in the selection, award, or administration of any third-party contract or subagreement supported by BPNSP 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 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 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 are 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 BPNSP Funding 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, including, but not limited to, the Grantee's grant application, progress reports and invoices.

Section 4. 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 BPNSP Funding awarded for the Project may be made by SANDAG's Project Manager consistent with applicable laws, regulations, and policies. Prior written SANDAG Project Manager approval is required for transfers of funds between Approved Project Budget line items.

Section 5. Payments

- A. **Funding Commitment.** The Grantee agrees that SANDAG's maximum commitment for Project Costs will not exceed the Maximum SANDAG Contribution of \$441,250. SANDAG's responsibility to make payments under this Agreement is limited to the amounts listed in the Approved Project Budget for the Project. Within 30 days of notification to the Grantee that specific amounts are owed to, or withheld by, SANDAG, whether for excess payments of BPNSP Funding, Grantee's failure to comply with the Agreement, SANDAG Board Policy No. 035 (Attachment B) and any policy amendments thereto, disallowed costs, or funds recovered from third-parties or elsewhere, the Grantee agrees to remit the owed amounts to SANDAG, including applicable interest, penalties, and administrative charges.
- B. **Payment by SANDAG.** Grantee is required to submit invoices no more often and no less frequently than quarterly. Invoices must be accompanied by a quarterly report (Attachment D). SANDAG will make payments for eligible amounts to Grantee within 30 days following receipt of Grantee's invoice(s) if Grantee has complied with the requirements of the Agreement, including quarterly reporting requirements, has satisfied SANDAG that the BPNSP Funding requested is needed for Project purposes in that requisition period, and is making adequate progress toward Project completion consistent with SANDAG Board Policy No. 035 and any policy amendments thereto. After the Grantee has demonstrated satisfactory compliance with the preceding requirements, SANDAG will reimburse the Grantee's apparent allowable costs incurred consistent with the Approved Project Budget for the Project. SANDAG shall retain ten percent (10%) from the amounts invoiced until satisfactory completion of work. SANDAG shall promptly pay retention amounts to Grantee following Grantee's satisfactory completion of work, receipt of Grantee's final invoice, and all required documentation.
- C. **Eligible Costs.** The Grantee agrees that Project costs eligible for BPNSP Funding 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 Scope of Work, 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, only on a reimbursement, not advance basis, after both the Effective Date of the Agreement and following Grantee's receipt of a Notice to Proceed from SANDAG,
 6. Satisfactorily documented with supporting documentation which is to be submitted with each invoice,

7. Treated consistently in accordance with generally accepted accounting principles and procedures for the Grantee and any third-party contractors and subgrantees, (see Section 6 Accounting Records), and
 8. Eligible for BPNSP Funding as part of the AT Program Claim Eligible Costs.
 9. Expended allowable direct and indirect costs. Indirect costs will be reimbursed only if the Grantee has an approved indirect cost allocation plan and prior written approval has been obtained by SANDAG. The Grantee shall annually submit to SANDAG, prior to reimbursement of indirect costs, an approved indirect cost allocation plan in accordance with Office of Management and Budget (OMB), Circular A-87 Cost Principles for State, Local, And Indian Tribal Governments, which can be viewed at <http://www.whitehouse.gov/omb/circulars>. Indirect Costs are only allowable with either: (1) an approved indirect cost rate from a Federal Cognizant agency (or its designee) or an independent certified accounting firm; or (2) the applicant's proposed method for allocating indirect costs must be submitted in accordance with applicable OMB guidelines and approved by SANDAG. If the Grantee does not have an acceptable approved indirect cost allocation plan, then indirect costs are not eligible for reimbursement.
 10. Project generated revenue realized by the Grantee shall be utilized in support of the Project. Project generated revenue and expenditures, if any, shall be reported at the end of the Agreement period.
 11. In the event the Grantee receives payment from SANDAG, for which reimbursement is later deemed ineligible and disallowed by SANDAG, the Grantee shall promptly refund the disallowed amount to SANDAG on request, or SANDAG may offset the amount disallowed from any payment due to or to become due to the Grantee under this Agreement.
- D. **TransNet Project Eligibility.** *TransNet* BPNSP Funds may be expended for all purposes necessary and convenient to the design, right-of-way acquisition, and construction of facilities intended for use by bicyclists, pedestrian, and neighborhood safety programs. These funds also may be used for programs that help to encourage the use of bicycles/pedestrians, such as secure parking facilities, bicycle/pedestrian promotion programs, and safety programs.
- E. **Excluded Costs.**
1. In determining the amount of BPNSP Funding SANDAG will provide for the Project, SANDAG will exclude:
 - a. Any Project cost incurred by the Grantee before either the date SANDAG issues a Notice to Proceed to Grantee or the Effective Date of the Agreement or any 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. Certain costs at times associated with bicycle and pedestrian projects are not eligible when the benefit provided is not the exclusive use of bicyclists or pedestrians. These instances are listed below.
 3. Curb and gutter are part of the roadway drainage system. As such, newly installed curb and gutter cannot be considered an improvement exclusively for the benefit of the sidewalk or bike lane and are not an eligible expense.
 4. Driveway ramps installed across sidewalks are not for the benefit of pedestrians, and in fact, degrade the pedestrian environment. Claimants may not include the cost of driveway ramps in applications for sidewalk projects. However, the distance across the driveway may be included when computing the per-square-foot cost of the sidewalk.
 5. Where roadway design standards require a roadway shoulder width at least as wide as would be required for a standard bike lane, the cost of the shoulder construction will not be eligible. Appropriate bikeway signage is eligible.
 6. Under some circumstances, it may be necessary to remove and replace curb and gutter, driveway ramps, drainage facilities and other existing improvements in order to construct a bikeway or sidewalk. In such cases the cost of this work is most likely eligible, but claimants should carefully document why this is so in the claim submittal.
 7. 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, and/or Board Policy No. 035. 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) has been completed, whichever occurs latest. If SANDAG determines that the Grantee is not entitled to receive any portion of the BPNPSP 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 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.
- F. **Maximum SANDAG Participation.** Upon receipt of an invoice from Grantee documenting Grantee's incurred and eligible expenses, SANDAG agrees to pay its Maximum Percentage/Amount of SANDAG Participation based on the Invoiced amount.

G. **Matching Funds** Grantee has proposed \$100,000 in matching funds for the project and therefore agrees as follows:

1. **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 and/or in-kind contributions 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 the Project. Each of Grantee's invoices must include its pro-rata matching fund contribution as reflected in the Approved Project Budget, along with supporting, descriptive and/or explanatory documentation for the matching funds provided.
2. **Prompt Payment of Matching** The Grantee agrees to provide the minimum proportionate amount of the matching funds upon submittal of reimbursement for each invoice and cumulatively over the life of the project as it incurs Project costs. If the minimum match is not provided with each invoice submittal or cumulatively over the life of the project, the identical amount to make up the difference may be withheld as retention for each invoice until the minimum match cumulatively over the life of the project is satisfactorily provided. The retention withholding would be released upon the minimum match provided, in accordance with the invoice payment terms as stated in this Agreement.
3. **Reduction of Matching Funds** The Grantee agrees that no reduction of the amount of matching funds may be made unless, at the same time, a reduction of the proportional amount of *TransNet* Ordinance Assistance provided is made to SANDAG in order to maintain Maximum Percentage(s) of SANDAG participants. No refunds of matching funds will be made.

Section 6. 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 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. **Documentation of Project Costs and Program Income.** Except to the extent that SANDAG determines otherwise, in writing, the Grantee agrees to maintain all documentation of 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 in which SANDAG has agreed to participate.

Section 7. 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. **Quarterly Reports.** Grantee shall submit written quarterly reports to SANDAG detailing the progress of its work, expenditures incurred, and information regarding whether the Project is projected to be completed within the limits of the Approved Project Budget, Project Schedule, and consistent with Board Policy No. 035 and any policy amendments thereto. Grantee shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG. This includes progress and final reports, plans, specifications, estimates, and other evidence of attainment of the Agreement objectives, which are requested by SANDAG or the ITOC. Grantee may be required to attend meetings of SANDAG staff and committees, including ITOC, to report on its progress and respond to questions.
- G. **Data Collection and Communities Served Report.** If requested, Grantee shall provide SANDAG with data regarding how the Project's benefits and burdens were equitably distributed among socio and economic populations in the area affected by the Project, and associated active transportation data.

Section 8. 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 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 performed financial and compliance audits SANDAG may require consistent with the *TransNet* Extension Ordinance for *TransNet* funds. This Project's MPO ID Number is located in both Recital H, above, and on Attachment A. The Grantee agrees that Project closeout will not alter the Grantee's audit responsibilities.
- C. **Project Closeout.** Project closeout occurs when SANDAG notifies the Grantee that SANDAG has closed the Project, and, if applicable, either forwards the final BPNSP Funding payment and liquidates any remaining funds. 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.
- D. **Project Use.** Grantee was awarded this Agreement based on representations in its grant application regarding the Project's intended use. If the Project is a capital project, Grantee hereby commits to continued use of the Project for the purposes stated in its application for a period of at least five years after completion of construction. SANDAG may require Grantee to refund BPNSP funding provided for the Project in the event Grantee fails to utilize the Project for its intended purposes as stated in the grant application or for any disallowed costs.

Section 9. 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 (Attachment A), and consistent with SANDAG Board Policy No. 035 and any policy amendments thereto. If timely progress is not achieved, SANDAG may, in its sole discretion, review the status of the Project to determine if the remaining funding should be reallocated to another eligible project, as per SANDAG Board Policy No. 035. Grantee understands and agrees that any failure to make reasonable progress on the Project or violation of this Agreement and/or Board Policy No. 035, that endangers substantial performance of the Project shall provide sufficient grounds for SANDAG, in its sole discretion, to terminate this Agreement.
- B. In the event Grantee encounters difficulty in meeting the Project Schedule or anticipates difficulty in complying with the Project Schedule, the Grantee shall immediately notify the SANDAG Project Manager in writing, and shall provide pertinent details, including the reason(s) for the delay in performance and the date by which 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 SANDAG Board Policy No. 035 requirements.
- C. Upon written notice, the Grantee agrees that SANDAG may suspend or terminate all or any part of the BPNSP Funding to be provided for the Project if the Grantee has violated the terms of the Agreement, or SANDAG Board Policy No. 035, or if SANDAG determines that the purposes of the laws or policies authorizing the Project would not be adequately served by the continuation of BPNSP Funding for the Project.
- D. In general, termination of BPNSP 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

BPNSP Funding by failing to make adequate progress, 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 BPNSP 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, 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 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 SANDAG Board Policy No. 035.
- F. **Amendment of Scope.** The grant was awarded 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 Scope of Work (Included in Attachment A). Any substantive deviation from the Scope of Work must be approved by SANDAG if BPNSP Funds are to be used for such changes. If Grantee believes substantive changes need to be made to the Project, Grantee will immediately notify SANDAG in writing. SANDAG will then determine whether the Project is still consistent with the overall objectives of the AT Program, SANDAG Board Policy No. 035 and that the changes would not have negatively affected the Project ranking during the competitive grant evaluation process. SANDAG reserves the right to have BPNSP Funding withheld or refunded due to substantive Project changes.

Section 10. 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 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 appeal to the SANDAG Regional Planning Committee. SANDAG shall respond to a request for mediation within thirty (30) calendar days. The decision of the Regional Planning Committee shall be final.

- 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 11. 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.

Section 12. Project Manager

The Grantee has assigned Lara Gates as the Project Manager for the Project. Project Manager continuity and experience is deemed essential in Grantee's ability to carry out the Project in accordance with the terms of this Agreement. Grantee shall not change the Project Manager without notice to SANDAG.

Section 13. 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 14. Indemnification and Duty to Defend

- 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 wages claims against the Project, 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 15. Relationship of Parties

For purposes of this Agreement, the relationship of the parties is that of independent entities and not as agents of each other or as joint venturers or partners. The parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations. 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 16. Severability and Integration

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. 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 17. 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: Christine Eary

Grantee:
City of San Diego
1222 First Avenue
San Diego, CA 92101
Attn: Lara Gates

and shall be effective upon receipt thereof.


Section 18. 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

CITY OF SAN DIEGO

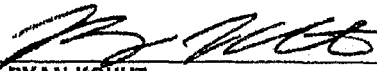

for GARY L. GALLEGOS
Executive Director or designee


JAY GOLDSTONE
Chief Operating Officer

APPROVED AS TO FORM:

APPROVED AS TO FORM:


SHELLEY TUCKER 
Associate General Counsel


RYAN KOHUT
Deputy City Attorney

ATTACHMENT A

SCOPE OF WORK, SCHEDULE, AND APPROVED PROJECT BUDGET

SANDAG ACTIVE TRANSPORTATION GRANT PROGRAM SCOPE OF WORK, SCHEDULE, AND BUDGET							
Project Title:	Chollas Creek to Bayshore Bikeway - Multi-Use Path Design						
Project Type:	Capital						
Project Location/Limits:	Chollas Creek corridor between the Southcrest Trails Park in Southeastern San Diego and the Bayshore Bikeway near Harbor Drive and 32nd Street.						
Project Description:	Class I Multi-Use Path. Environmental clearance and engineering design for the segment of the Chollas Creek extending from the Southcrest Trails						
Task No.	Task Description	Deliverable/s	Start Date	Completion Date	SANDAG Funds	Matching Funds	TOTAL
1	Award Consultant Contract	NTP	Feb-13	Jul-13			
2	Baseline Data Collection	Collected Data & Forms	Jul-13	Jul-13	\$5,000	\$10,000	\$15,000
3	Community Outreach	Outreach Report	Jul-13	Dec-14	\$3,000	\$25,000	\$28,000
4	Preliminary Engineering		Jul-13	Nov-13			\$0
4A	Design Encroachment Permits (Navy, State, City)	Encroachment Permits	Jul-13	Aug-13	\$9,000		\$9,000
4B	Preliminary Mapping	Preliminary Mapping	Jul-13	Aug-13	\$3,000		\$3,000
4C	Preliminary Geotechnical Report	Geotechnical Report	Aug-13	Oct-13	\$5,000		\$5,000
4D	Phase I Hazardous Waste ISA	Phase I ISA	Aug-13	Nov-13	\$9,000		\$9,000
4E	Preliminary Hydrology Study	Hydrology Study	Jul-13	Sep-13	\$7,000		\$7,000
4F	Water Quality Technical Report	WQTR	Sep-13	Nov-13	\$7,000		\$7,000
4G	Preliminary Right of Way Studies	Right of Way Map	Jul-13	Aug-13	\$5,000		\$5,000
4H	Preliminary Trail Engineering	Trail Alignment	Aug-13	Nov-13	\$45,000		\$45,000
	Project Management - Preliminary Engineering (Task 3) (10%)		Jul-13	Nov-13	\$9,000		\$9,000
	TOTAL PRELIMINARY ENGINEERING						\$0

5	CEQA/NEPA Environmental		Jul-13	May-14			\$0
5A	Joint CEQA/NEPA Environmental Documents	CEQA/NEPA Doc	Dec-13	May-14	\$75,000		\$75,000
5B	Environmental Technical Studies		Jul-13	Dec-13			\$0
	Biological Resources Technical	Bio Study	Aug-13	Dec-13	\$30,000		\$30,000
	Phase I Cultural Resources	Cultural Report	Jul-13	Sep-13	\$70,000		\$70,000
	Cultural Resources Phase III	Cultural Evaluation	Sep-13	Nov-13	\$30,000		\$30,000
	Noise Letter Report	Noise Report	Jul-13	Aug-13	\$5,000		\$5,000
	Project Management - Environmental Clearance (Task 4) (10%)		Jul-13	May-14	\$21,000		\$21,000
							\$0
6	Regulatory Permitting		May-14	Dec-14	\$45,000	\$15,000	\$60,000
	TOTAL ENVIRONMENTAL CLEARANCE						\$0
							\$0
	TOTAL PRELIMINARY ENGINEERING & ENVIRONMENTAL CLEARANCE		Jul-13	Dec-14			\$0
	CITY STAFF PROJECT MANAGEMENT				\$58,250	\$50,000	\$108,250
				TOTALS	\$441,250	\$100,000	\$541,250
PROJECT REVENUES							
Source	FY 2012	FY 2013	FY 2014	TOTAL			
AT Grant	\$20,000	\$390,000	\$31,250	\$441,250			
Other (list source)							
County Match	\$5,000	\$85,000	\$10,000	\$100,000			
TOTALS	\$25,000	\$475,000	\$41,250	\$541,250			

TransNet MPO ID NO. SAN21

ATTACHMENT B



BOARD POLICY NO. **035**

COMPETITIVE GRANT PROGRAM PROCEDURES

Applicability and Purpose of Policy

This Policy applies to the following grant programs administered through SANDAG, whether from *TransNet* or another source: Smart Growth Incentive Program, Environmental Mitigation Program, Bike and Pedestrian Program, Senior Mini Grant Program, Job Access Reverse Commute, New Freedom, and Section 5310 Elderly & Persons with Disabilities Transportation Program.

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

Procedures

1. Project Milestone and Completion Deadlines

1.1. When signing a grant agreement for a competitive program funded and/or administered by SANDAG, grant recipients must agree to the project delivery objectives and schedules in the agreement. In addition, a grantee's proposal must contain a schedule that falls within the following deadlines. Failure to meet the deadlines below may result in revocation of all grant funds not already expended. The final invoice for capital, planning, or operations grants must be submitted prior to the applicable deadline.

1.1.1. Funding for Capital Projects. If the grant will fund a capital project, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary construction contract must be awarded within two years following execution of the grant agreement, and construction must be completed within eighteen months following award of the construction contract. Completion of construction for purposes of this policy shall be when the prime construction contractor is relieved from its maintenance responsibilities. If no construction contract award is necessary, the construction project must be complete within eighteen months following execution of the grant agreement.

1.1.2. Funding for Planning Grants. If the grant will fund planning, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary consultant contract must be awarded within one year

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

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

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

2. Project Milestone and Completion Deadline Extensions

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

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

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

2.1.3. If the Executive Director denies an extension request under this Section 2, the grantee may appeal within ten business days of receiving the Executive Director's response to the responsible Policy Advisory Committee by sending the appeal to the SANDAG Program Manager.

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

3. Project Delays and Extensions in Excess of Six Months

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

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

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

4. Resolution and Execution of the Grant Agreement

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

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

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

4.2. Grantee's authorized representative must execute the grant agreement within 45 days from the date SANDAG presents the grant agreement to the prospective grantee for execution. Failure to meet the requirements in this Subsection 4.2 may result in revocation of the grant award.

5. Increased Availability of Funding Under this Policy

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

Adopted: January 2010

ATTACHMENT C PROJECT IMPLEMENTATION AND OVERSIGHT REQUIREMENTS

Capital Grants

1. **Contact Information:** Grantee must provide SANDAG with contact information for the project manager. Grantee must provide SANDAG with updated contact information in a timely manner if there are any changes to staff assigned.
2. **Design Development Meetings:** Grantee must provide SANDAG with advance notice (preferably within two weeks) and agendas of all design development meetings, and a meeting summary following the meeting. SANDAG staff may attend any meetings as appropriate.
3. **Plan Review:** Grantee must submit project design drawings and cost estimates (if available) to SANDAG for review and comment at 30 percent, 60 percent, 90 percent, and 100 percent. SANDAG staff may meet with the grantee to comment on submitted plans and assure substantial conformance. SANDAG may comment on submitted plans regarding:
 - whether they are consistent with the project proposed in the original grant application, and
 - consistency with accepted pedestrian/bicycle facility standards.
4. **Quarterly Reports:** Grantee must submit quarterly reports to SANDAG, detailing accomplishments in the quarter, anticipated progress next quarter, pending issues and actions toward resolution, and status of budget and schedule.
5. **Performance Monitoring:** SANDAG staff may measure performance of the constructed capital improvements against stated project objectives, and evaluate the overall AT Program. Grantee is expected to meet with SANDAG staff to identify relevant performance measures and data sources, and provide available data and feedback regarding the program as appropriate.

Planning Grants

1. **Contact Information.** Grantee must provide SANDAG with contact information for the project manager. Grantee must provide SANDAG with updated contact information in a timely manner if there are any changes to staff assigned.
2. **Stakeholder and Community Meetings.** Grantee must provide SANDAG with advance notice (preferably within two weeks) and agendas of all stakeholder and community meetings, and a meeting summary following the meeting. SANDAG staff may attend any meetings as appropriate.
3. **Request for Proposals and Consultant Selection.** Grantee must submit consultant draft Request for Proposals to SANDAG staff for review and comment. Consultant proposals must also be submitted to SANDAG for review and comment prior to consultant selection.
4. **Quarterly Reports.** Grantee must submit quarterly reports to SANDAG, detailing accomplishments in the quarter, anticipated progress next quarter, pending issues and actions toward resolution, and status of budget and schedule.

ATTACHMENT D
QUARTERLY REPORT AND INVOICE FORMS

See next page.

**ACTIVE TRANSPORTATION GRANT PROGRAM
QUARTERLY PROGRESS REPORT**

Jan. 1 – March 31	April 15th
April 1 – June 30	July 15th
July 1 – Sept. 30	Oct. 15th
Oct. 1 – Dec. 31	Jan. 15th

Project Title
Project Manager Name
Agency
Address
Telephone

Contract #:
Invoice Date:

Invoice #: _____ Invoice Period: (from) (to) _____

Task 1 (Fill in each task from Scope of Work)

- 1. Work Accomplished this Invoice Period**
Add description

- 2. Work Anticipated for Next Invoice Period**
Add description

- 3. Challenges or Problems Experienced and Actions Toward Resolution**
Add description

Task 2

- 1. Work Accomplished this Invoice Period**
Add description

- 2. Work Anticipated for Next Invoice Period**
Add description

- 3. Challenges or Problems Experienced and Actions Toward Resolution**
Add description

Summary of Progress

Task	Scheduled Start Date	Scheduled Completion Date	Completed This Invoice Period? (mark x)	Start Next Invoice Period? (mark x)	Complete Next Invoice Period? (mark x)	Anticipated Completion Date (if not as scheduled)*
Task 1						
Task 2						
Task 3						

Action/s requested of SANDAG (check appropriate box/es):

No action requested

Amendment to*:

Scope of Work

Describe:

Justification:

Project Budget

Describe:

Justification:

Project Schedule

Describe:

Justification:

* For any amendment requested, please describe the amendment and provide justification for why the amendment is needed.

For Project Schedule amendment requests, explain:

- previous efforts to maintain timely progress,
- reasons for the delays and why they were unavoidable, and
- demonstrate how the project will meet the proposed revised deadlines if the schedule amendment is approved.

It is the Grantee's responsibility to ensure compliance with Board Policy No. 035 (Use It or Lose it) milestones and grant agreement terms and conditions. Amendment requests are subject to SANDAG approval.

* Note that any changes from scheduled start and completion dates are subject to approval by SANDAG. Please refer to Board Policy No. 35 in your grant agreement regarding milestones that fall behind schedule, and the actions required for schedule adjustments.

TDA/TransNet ACTIVE TRANSPORTATION GRANT PROGRAM INVOICE

To:		SUCHITRA MURKHERJEE	Project Name:		
		SANDAG	Contract Number:		
		401 B Street, Suite 800			
		San Diego, CA 92101-4231			
			Grant Invoice Number:	#	
From:	Name		Billing Period:	FROM	TO
	Address		Invoice Date:	DATE	
			Grant Award:	\$0.00	
			Balance Remaining	\$0.00	

TASK	Previous Balance	Current	MM/DD/YYYY to MM/DD/YYYY	Total Expenses	SANDAG Total	Match Spent	Balance
1 Prelim Engineering & Design	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2 30% Review	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3 60% Review	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4 90% Review	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
5 100% Review			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
6 Advertise for Construction			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
7 Award Contract			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
8 Begin construction			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
9 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
11 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
12 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
13 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
14 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
15 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
16 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
17 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
18 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
19 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20 Construction Task			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

21	Construction Task			\$0.00				\$0.00			\$0.00
22	Construction Task			\$0.00				\$0.00			\$0.00
23	Construction Task			\$0.00				\$0.00			\$0.00
24	Construction Complete			\$0.00				\$0.00			\$0.00
25	Project Completion/Closeout			\$0.00				\$0.00			\$0.00
Total		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
										Total Current Expenditures:	\$0.00
										Total Amount Due this Invoice:	\$0.00
										Less 10% Retention:	\$0.00
										Match % Met to Date:	#DIV/0!
Other Costs (Column G)	Describe Expenses:	Project Budget									
Task 1		Task 1	\$0.00	\$0.00	\$0.00						
Task 2		Task 2	\$0.00	\$0.00	\$0.00						
Task 3		Task 3	\$0.00	\$0.00	\$0.00						
Task 4		Task 4	\$0.00	\$0.00	\$0.00						
		Task 5			\$0.00						
		Task 6			\$0.00						
		Task 7			\$0.00						
		Task 8			\$0.00						
		Task 9			\$0.00						
		Task 10			\$0.00						
		Task 11			\$0.00						
		Task 12			\$0.00						
		Task 13			\$0.00						
		Task 14			\$0.00						
		Task 15			\$0.00						
		Task 16			\$0.00						
		Task 17			\$0.00						
		Task 18			\$0.00						
		Task 19			\$0.00						
		Task 20			\$0.00						
		Task 21			\$0.00						
		Task 22			\$0.00						
		Task 23			\$0.00						
		Task 24			\$0.00						
		Task 25			\$0.00						
		TOTAL	\$0.00	\$0.00	\$0.00						
		Required Match %	#DIV/0!								
CERTIFICATION OF GRANTEE											
I hereby certify that the above costs are eligible costs incurred in performance of the work required under the grant and are consistent with the amounts evidenced by attached supporting documents and expenditures.											
		Signature		Printed Name and Title							Date