

COPY

**COOPERATIVE AGREEMENT
FOR PROJECT REVIEW PROCEDURES BETWEEN
SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND
CITY OF SAN DIEGO**

SANDAG DOCUMENT #5001195

Document No. **C-15015**
Filed **AUG 17 2009**
Office of the City Clerk
San Diego, California

THIS AGREEMENT is entered into as of this ____ day of June, 2009, by and between the San Diego Association of Governments (hereinafter referred to as "SANDAG"), 401 B Street, Suite 800, San Diego, CA, and City of San Diego, a municipal corporation, 202 C Street, San Diego, CA (hereinafter referred to as "CITY"), in view of the following recitals, which are a substantive part of this Agreement:

RECITALS

- A. CITY is a municipal corporation organized pursuant to a charter approved in 1931.
- B. SANDAG is a statutorily-created public agency pursuant to California Public Utilities Code section 132350, et seq.
- C. SANDAG is responsible for the planning, programming, project development, design, and construction of public mass transit projects in the San Diego region.
- D. Many such projects are within CITY limits.
- E. CITY has elected officials who serve on the SANDAG Board of Directors and SANDAG Transportation Committee, work closely with SANDAG in the development of transit projects, and benefit from their expeditious implementation.
- F. CITY maintains extensive public works facilities, provides plan review and inspection services for public works projects, and provides ministerial code review and building inspection.
- G. CITY Engineering and Capital Projects (ECP) Department has a staff position that serves as a liaison to SANDAG and is responsible for coordination of SANDAG projects with affected CITY departments.
- H. CITY Development Services Department (DSD) is responsible for the review and permitting of work by private parties and governmental entities within CITY right-of-way and easements under the authority of the CITY Engineer.
- I. CITY ECP Department is responsible for the acceptance and inspection of public improvements within CITY right-of-way and easements under the authority of the CITY Engineer.

- J. CITY has an interest in reviewing SANDAG plans and inspecting SANDAG construction work as far as such work becomes CITY property or impacts CITY facilities.

~~81071~~ In addition, SANDAG may benefit from ministerial building code review and inspection services offered by CITY for projects which do not directly impact CITY facilities and are otherwise not subject to CITY review.

- L. SANDAG's status and purpose distinguish it from other customers of CITY's development services, plan review, and inspection processes.
- M. CITY and SANDAG desire to define project review procedures specifically for SANDAG projects; and

NOW, THEREFORE, it is mutually agreed between the parties as follows:

1. **Replaces Previous Agreement:** This Agreement replaces and supersedes a Cooperative Agreement for Project Review Procedures between SANDAG (Contract #5000831) and CITY entered into on October 1, 2007.
2. **Exemption from CITY Requirements:** SANDAG is exempt from CITY zoning and building regulations pursuant to Public Utilities Code section 132354.4 and Government Code sections 53090 and 53091.
 - 2.1. ***CITY Permits Not Required:*** Except as specified in this Agreement, SANDAG will not be required to obtain CITY permits or other approvals including but not limited to bond estimates, building permits, community plan amendments, conditional use permits, construction permits, discretionary permits, encroachment removal agreements, engineering permits, grading permits, neighborhood use permits, public right-of-way permits, site development permits, and zoning variances.
 - 2.1.1. **No Conditions Obligating SANDAG to Obtain Permits:** CITY shall not require as a condition of the performance of any CITY service that SANDAG obtain permits or other approvals from the CITY that SANDAG is not otherwise required to obtain under the terms of this Agreement.
 - 2.1.2. CITY may issue construction permits that are not required under the terms of this Agreement as a method for tracking the review, inspection, and acceptance of work.
 - 2.1.3. **Voluntary Permit Application:** If SANDAG chooses to apply for permits or inspection services that are not required under the terms of this Agreement, then SANDAG shall follow requirements that apply to other applicants, or follow a process established in this Agreement.

- 2.2. *SANDAG Concurrence for Additional Requirements:* CITY personnel may not add requirements or obligations to the project review processes beyond those stated in this Agreement without the written approval of SANDAG.
 - 2.3. *State and Federal Requirements:* Wherever SANDAG is subject to state and federal requirements for which CITY provides plan review, permitting, inspection, or other services, then SANDAG may arrange for CITY to provide such services.
3. **Impacts to CITY Facilities:** When SANDAG projects are within CITY right-of-way; impact CITY facilities; or create facilities that are to be owned, operated, and maintained by CITY; then SANDAG and CITY shall follow the provisions of this Agreement.
 - 3.1. *SANDAG Responsibilities:* SANDAG shall be responsible for all design, project review, construction, and inspection costs for changes to CITY facilities within a SANDAG project area arising out of, resulting from, or necessitated by the SANDAG project. Such changes may include but shall not be limited to all work involved in reconstruction or realignment of streets, utilities, drainage, traffic signals, signs, traffic legends, lane markings, street lighting, and all work necessary for traffic rerouting.
 - 3.2. *Design Standards:* SANDAG shall document deviations from CITY design standards in a manner approved by the CITY Engineer. When replacing or relocating existing CITY facilities, SANDAG shall be responsible for replacing the facility in-kind to the adopted design standards and practices then current. The applicable design standards and practices for a project shall be those in effect at the time that the plans are submitted. SANDAG need not expand, upgrade, or increase the level of service of CITY facility replaced unless the betterment is mandated by state or federal law, regulations, or standards, or otherwise required by CITY pursuant to Section 3.2.1, below.
 - 3.2.1. *CITY Required Betterment of CITY Facility:* CITY may require SANDAG to better, expand, or upgrade facilities to increase the level of service or to construct additional facilities beyond what is required by the SANDAG project provided that CITY shall reimburse SANDAG the difference in Total Project Cost between the replacement facility and the betterment, expansion, or upgraded facility required by CITY.
 - 3.2.2. *Total Project Cost:* For the purposes of Section 3.2.1, Total Project Cost shall be defined as those costs incurred for the construction of CITY facility including but not limited to SANDAG staff effort, design support, construction management, construction, testing, and claims resolution services.
4. **Project Development:** Prior to plan submittal, SANDAG shall endeavor to work closely with the CITY personnel from various departments and disciplines to introduce and discuss project concepts and alternatives and to notify CITY of potential impacts to CITY public right-of-way and facilities.

- 4.1. *Project Screening:* Based on project development and determination of potential impacts, SANDAG and CITY personnel shall meet to initiate CITY project review and evaluate other project impacts such as operations and maintenance.
- 4.2. *Appointment of Project Manager:* CITY DSD shall appoint a DSD Project Manager to oversee and coordinate all aspects of project review.
 - 4.2.1. The DSD Project Manager will be the point of contact and is responsible for ensuring that the entire review process is in accordance with the provisions of this Agreement and any other provisions agreed to by SANDAG in writing that may affect the project under review.
 - 4.2.2. The DSD Project Manager shall keep records of project screening meetings and of progress, agreements, and decisions throughout the project development process.
- 4.3. *Option for Preliminary Review:* Following the process in Information Bulletin 513 or its successor documents, SANDAG may submit plans that are less than 100% construction drawings to the CITY for review and comment. Preliminary review is for SANDAG's informational use only and does not replace the need for submittal of plans for construction review.
- 4.4. *CITY Review Scope:* Subsequent to Project Screening and Preliminary Review, the DSD Project Manager shall identify all regulatory and feasibility concerns; physical constraints; relevant design standards; impacts on maintenance and operations; necessary technical reports, studies, areas of inquiry, and calculations; relevant processes such as disability access review, easements, right-of-way dedication and street naming; and identify review disciplines. The identified disciplines may include but are not limited to drainage and grades, environmental, fire prevention, geology, landscaping, storm water, traffic, wastewater, and water.
- 4.5. *Resolution of Major Issues:* The Parties shall endeavor to resolve all major issues identified in the Project Development process. In the event that any major issues remain unresolved, at such point the project shall continue but the Parties will go to Conflict Resolution per Section 5.3.6.
- 4.6. *CEQA and NEPA Documents:* CEQA and NEPA documents submitted to CITY shall be to CITY standards.
5. **Submittals for Construction Plan Review:** SANDAG shall submit 100% construction drawings to CITY DSD for review and comment, including the completion and submittal of the portions of General Application form DS-3032 and the CITY Project Submittal Requirements Manual or their successor documents that conform to this Agreement.
 - 5.1. *Plans:* Plans submitted for CITY review shall highlight the impacts on CITY right-of-way, easements, and CITY facilities.

- 5.1.1. **Formatting:** The plan formatting, pagination, title block, scale, and other elements of the drawings may be to SANDAG standards. Pages that include public improvements to be maintained by CITY shall include a CITY title block or equivalent.
- 5.1.2. **Tracking Numbers:** CITY shall assign appropriate numbers to plans for review and record-keeping purposes. These may include but are not limited to D-sheet number, job order number, project tracking system number (PTS), and work order numbers.
- 5.2. **Reports:** SANDAG shall provide to CITY any technical reports, studies, calculations, and certifications in SANDAG's possession that impact CITY facilities or right-of-way. These may include but are not limited to geology, parking, storm water, traffic, transportation impact, and wastewater reports.
- 5.3. **Process:** CITY shall distribute the plans to the identified disciplines for information, review, and comment.
 - 5.3.1. **Timeframe for Review:** Prior to submittal, SANDAG shall meet with the DSD Project Manager to determine the time required for CITY review. Plans shall be reviewed and returned to SANDAG with all reviewers' comments within the agreed-upon timeframe. The DSD Project Manager will be responsible for providing SANDAG with timely notification of comments and other applicable information.
 - 5.3.1.1. If a longer review time is necessary, then the DSD Project Manager may contact SANDAG for approval of a longer timeframe for review.
 - 5.3.1.2. SANDAG, by notifying the DSD Project Manager in writing, may consider a CITY review to be complete if the agreed-upon timeframe has been exceeded without CITY response.
 - 5.3.2. **Completeness of Comments:** Identified disciplines shall make all relevant comments within the first review cycle based on the information submitted.
 - 5.3.3. **SANDAG Response to Comments:** SANDAG shall use its best efforts and respond to all comments.
 - 5.3.4. **Additional Review Cycles:** If identified disciplines seek additional review cycles, then the DSD Project Manager shall make such request in writing and is subject to SANDAG approval. CITY comments in additional review cycles shall be limited to the resolution of those comments raised in the first review cycle or new documents or designs submitted in additional review cycles.
 - 5.3.5. **Completion of Review:** When CITY has completed its review and comment of the plans, the DSD Project Manager shall notify SANDAG through an

assessment letter. Assessment letters may be issued for an individual plan sheet or for an entire plan set. The assessment letter shall identify the need for and scope of CITY inspection.

5.3.6. Conflict Resolution:

5.3.6.1. If following resubmittal of plans by SANDAG, the CITY and SANDAG disagree as to sufficiency of the plans, then the DSD Project Manager shall arrange for a conflict resolution process with the CITY Engineer or designee. Development Review Procedure 5.35, "Conflict Resolution Model," or successor document, shall be used as a guideline for conflict resolution.

5.3.6.2. If SANDAG has complied with the provisions of this Agreement and considers CITY review to be complete, but the DSD Project Manager declines to issue an assessment letter, then SANDAG may notify the DSD Project Manager, the CITY Engineer, and CITY inspection personnel in writing that the review is complete within the meaning of this Agreement.

5.4. *CITY signatory*: The CITY Engineer or designee may sign plan sheets when review is complete.

5.4.1. Purpose of Signature: The CITY Engineer's signature indicates that the work depicted in the plan sheets are within CITY right-of-way; impacts CITY facilities; or creates facilities that are to be owned, operated, and maintained by CITY have been reviewed by the CITY. A signed set of plans provides guidance for SANDAG contractors and CITY inspectors regarding such work.

5.4.2. SANDAG Right to Work: The presence or absence of a CITY signature on any plan sheet pursuant to this Agreement does not impact SANDAG's right to work in the public right-of-way; imply the granting, withholding, or necessity of any permit; or release the CITY or SANDAG from obligations and duties under this Agreement.

5.5. *Subsequent Review*: If SANDAG's award of contract for construction is more than two years after CITY's completion of the review of plans, then CITY may again review the plans prior to construction for compliance with current standards and practices.

6. **Construction and Inspections**: SANDAG shall be responsible for maintenance and repair of all facilities built under the provisions of this Agreement until the facility is accepted by the CITY Engineer or designee.

6.1. *Construction Bid*: SANDAG shall provide sets of construction bid plans and documents to CITY.

- 6.1.1. Early Bid: SANDAG may open the project to construction bids prior to the completion of the review process described in Section 5. In so doing, SANDAG acknowledges that plans still under CITY review may change prior to construction.
- 6.1.2. Construction Notice-to-Proceed: SANDAG agrees to not issue a Notice to Proceed for construction within CITY right-of-way or for CITY facilities until completion of the review process described in Section 5.
- 6.2. *SANDAG Contractors to Obtain Construction Permits:* SANDAG agrees to require its contractors to obtain and, where applicable, pay for traffic control permits, noise permits, and tree removal permits in accordance with CITY's established standards as to when such permits are required.
 - 6.2.1. Trenching or Potholing: SANDAG also agrees to require its contractors to obtain engineering permits for trenching or potholing in the public right-of-way when such work occurs prior to the completion of the review process described in Section 5.
 - 6.2.2. Other permits: SANDAG may require its contractors to obtain other permits that are not specifically required under the terms of this Agreement. Obtaining any permit not required under the terms of this Agreement does not establish any precedence.
- 6.3. *Notification:* If upon completion of the review process described in Section 5, CITY inspection is required, then the DSD Project Manager shall notify SANDAG through the Assessment Letter, a copy of which shall be sent to CITY inspection personnel.
 - 6.3.1. Unresolved Review Process: If review process described in Section 5 does not result in an assessment letter or CITY Engineer signature, then SANDAG shall notify CITY Engineer and CITY inspection personnel to arrange for inspection.
 - 6.3.2. Issuance and Distribution: SANDAG shall provide CITY with six (6) complete sets of full-size construction documents. CITY shall distribute three sets to CITY inspection personnel.
 - 6.3.3. Pre-Construction Meeting: SANDAG shall schedule a pre-construction meeting with CITY inspection personnel prior to beginning of work.
- 6.4. *Opportunity to Inspect and Review:* SANDAG shall provide CITY inspection personnel with the opportunity to inspect all work, and review construction change orders, requests for information, and submittals related to CITY facilities.
 - 6.4.1. Timeframe for Review and Inspection: CITY shall complete such reviews within ten (10) business days. CITY inspectors shall notify SANDAG of the results of their inspections of CITY facilities and when facilities have been approved.

- 6.4.2. **Traffic Signal Activation:** The CITY shall activate any traffic signal in a SANDAG project that has met the requirements of this Agreement. SANDAG's contractor shall initiate an on-site inspection meeting with the appropriate CITY personnel that must occur at least five working days prior to the desired activation date.
- 6.4.3. **Water and Wastewater Connections:** SANDAG shall provide all information necessary for review by CITY personnel for the approval and activation of water and wastewater connections in construction area. SANDAG shall pay fees and receive service in a manner similar to other customers. SANDAG shall not be required to obtain permits not specifically required by this Agreement.
- 6.4.4. **Final Walkthrough:** To schedule final walkthrough and operational inspection, SANDAG or its contractor shall contact the CITY Engineer or designee stating that the work is complete and requesting final walkthrough and acceptance. The CITY shall then schedule a final walkthrough and prepare a final punch list.
- 6.4.5. **City Acceptance:** Upon satisfactory completion of the punch list, the CITY shall issue an acceptance letter to SANDAG stating that the CITY has assumed ownership, operation, maintenance, and repair responsibilities for the facilities.
- 6.5. **Maintenance Agreements:** Nothing in this Agreement prevents SANDAG and CITY from entering into maintenance agreements, including those involving cost sharing or reimbursement for maintenance and operation services.
- 6.6. **As-Builts:** SANDAG shall provide the CITY with a full set of as-built drawings of affected CITY facilities upon completion of the project. SANDAG shall insert signature blocks, pagination, and other information to the plan title block or legend requested for CITY document control purposes.
- 7. **Costs and Expenses:** SANDAG shall pay all costs for CITY services related to the project including time and materials expended for processing plans, plan and code review, inspection, and other related CITY services on behalf of a SANDAG project. CITY is not obligated to provide services that SANDAG has not paid for. Unless otherwise agreed to in writing, SANDAG shall not be responsible for costs outside the scope of this Agreement.
 - 7.1. **Estimated Cost:** The DSD Project Manager shall provide SANDAG with an estimated cost of CITY services related to the project review under the terms of this Agreement for SANDAG's review and approval. The estimate shall be itemized by services to be provided and include a list of CITY personnel classifications authorized to charge to the SANDAG project.
 - 7.1.1. **Information for Estimates:** SANDAG shall provide the DSD Project Manager with all information necessary for cost estimates.

- 7.1.2. Estimate for Inspection Services: Cost estimates for any needed inspection and other field services shall be made upon completion of the review process described in Section 5.
- 7.2. *Deposit Account:* SANDAG shall establish a deposit account in the amount of the approved estimated cost.
 - 7.2.1. Job Order Number: All CITY services in accordance with this Agreement may be charged to the job order number for the project. The job order number shall be made available to necessary personnel in various CITY departments.
 - 7.2.2. Statements: For deposit accounts, CITY will submit itemized statements on a monthly basis. SANDAG shall identify any inappropriate charges on the statement within ninety (90) days of receipt.
 - 7.2.3. Refunds to SANDAG: Labor charges by unauthorized personnel, other unauthorized charges, or labor charges outside the scope of this Agreement shall be corrected within thirty (30) days of the identification of the unauthorized charges. Refund to SANDAG of surplus deposit account funds shall be initiated within thirty (30) days of the conclusion of the project.
- 7.3. *Additional Funds:* If CITY requires additional funds in the deposit account, then the DSD Project Manager shall submit a revised estimate for SANDAG's review and approval. The estimate shall be itemized by services to be provided and include a list of CITY personnel classifications authorized to charge to the SANDAG project. SANDAG shall pay additional funds into the deposit account within thirty (30) days of approval.
- 7.4. *Other Services:* SANDAG shall pay other fees such as water service fees and traffic control permit fees at the time that they are incurred.
- 7.5. *Maintenance of Records:* All fiscal and accounting records shall be maintained for a minimum of four (4) years following the close of the fiscal year of expenditure or until an audit has been performed, whichever is earlier. All such records shall be available for review, inspection, and audit by SANDAG and federal and state authorities.
- 8. **Options for Ministerial Building Code Review:** For facilities within or outside the public right-of-way that are a part of a public mass transit project but not otherwise subject to CITY review under this Agreement, then SANDAG may follow any of the processes identified below.
 - 8.1. *Preliminary Review:* When SANDAG desires to submit building, structural, or other facility plans for ministerial code review, then it shall follow the process in Section 4. This process does not include building inspection services, building permits, or certificates.

- 8.2. *Full Submittal*: SANDAG may follow the process of CITY Project Submittal Requirements Manual and submit plans for review, building permit, inspection, and occupancy certification.
- 8.3. *Limited Submittal*: SANDAG may submit plans for a portion of the project for ministerial code review and inspection of disciplines agreed upon by SANDAG and CITY Building Official. The disciplines for the limited ministerial code review may include but are not limited to plumbing, electrical, mechanical, and fire suppression. Any permits or certifications issued through this process shall be limited to the elements reviewed, inspected, and approved by CITY.
9. **Changes to the Agreement**: At any time, the Parties may mutually agree to change this Agreement. All such changes shall be in writing and will be incorporated into this Agreement as amendments.
10. **Termination**: At any time, either Party may terminate this Agreement at its sole discretion upon a thirty (30) calendar days' written notice to that effect delivered to the other party. In the event the Agreement is terminated, SANDAG shall promptly (within thirty [30] calendar days) reimburse CITY for all costs incurred in performing work under this Agreement prior to the date of termination.
11. **Indemnification**:
- 11.1. *SANDAG Indemnification of CITY*: With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, injuries, or payments for injury to any person or property, including injury to SANDAG's employees, agents, or officers, caused or claimed to be caused by the acts or omissions of SANDAG, or SANDAG's employees, agents, and officers, arising out of or arising from work or services related to the project, SANDAG agrees to defend, indemnify, protect, and hold harmless the CITY, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the CITY, its agents, officers, or employees that may be in combination with the active or passive negligent acts or omissions of the SANDAG, its employees, agents or officers, or any third party. SANDAG's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the CITY, its agents, officers, or employees. In the event that a court of competent jurisdiction should determine that SANDAG has no authority to provide by agreement the performance of the hereinabove set forth services, SANDAG nevertheless agrees to assume the foregoing obligations and liabilities by which it is intended by both parties that SANDAG agrees to indemnify and to hold CITY harmless from all claims arising by reason of the work done by, or any act or omission of, SANDAG or its agents, employees, or representatives in connection with or in performance of the agreed-upon services of work provide for in this Agreement.
- 11.2. *CITY Indemnification of SANDAG*: With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney

fees, injuries, or payments for injury to any person or property, including injury to CITY's employees, agents, or officers, caused or claimed to be caused by the acts or omissions of CITY, or CITY's employees, agents, and officers, arising out of or arising from work or services related to the project, CITY agrees to defend, indemnify, protect, and hold harmless SANDAG, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of SANDAG, its agents, officers, or employees that may be in combination with the active or passive negligent acts or omissions of the CITY, its employees, agents or officers, or any third party. The CITY's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of SANDAG, its agents, officers, or employees. In the event that a court of competent jurisdiction should determine that the CITY has no authority to provide by agreement the performance of the hereinabove set forth services, the CITY nevertheless agrees to assume the foregoing obligations and liabilities by which it is intended by both parties that the CITY agrees to indemnify and to hold SANDAG harmless from all claims arising by reason of the work done by, or any act or omission of, SANDAG or its agents, employees, or representatives in connection with or in performance of the agreed-upon services of work provide for in this Agreement.

- 11.3. *Survival of Indemnification Language:* The indemnification provision shall survive the termination of this Agreement.
- 11.4. *Enforcement Costs:* Should either party file suit to enforce the indemnity provisions of this section, the prevailing party shall be entitled to recover reasonable attorney fees.
12. **CITY Approvals Not a Waiver of Obligations:** Where approval by CITY, the Mayor, or other representatives of CITY is required or given, it is understood to be general approval only and does not relieve SANDAG of responsibility for complying with all applicable laws, codes, and good consulting, design, engineering, or construction practices.
13. **Jurisdiction:** This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of California.
14. **No CITY Endorsement:** The services and products of this Agreement do not imply endorsement of SANDAG's finished reports, plans, or documents by CITY.
15. **Notice:** Any notice required or permitted under this contract may be personally served on the other party by the party giving notice, or may be served by certified mail/return-receipt requested, to the following addresses:

San Diego Association of Governments
Attn: Executive Director
401 B Street, 8th Floor
San Diego, CA 92101-4231

City of San Diego
Attn: Chief Operating Officer
202 C Street, 9th Floor
San Diego, CA 92101

16. **Signing Authority:** 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 effective as of the date written above.

SAN DIEGO ASSOCIATION
OF GOVERNMENTS

for 
GARY L. GALLEGOS
Executive Director

CITY OF SAN DIEGO


Director, Purchasing and Contracts

APPROVED AS TO SUFFICIENCY
OF FORM AND LEGALITY:


Office of General Counsel


Office of the City Attorney