



401 B Street, Suite 800
San Diego, CA 92101-4231
(619) 699-1900
Fax (619) 699-1905
www.sandag.org

October 4, 2013

File Number 1200201

Dear Interested Property Owners and Land Managers:

SUBJECT: Fiscal Year 2014 Funding for Environmental Mitigation Program
Land Acquisition Grant Program Project Proposals

On September 27, 2013, the San Diego Association of Governments (SANDAG) Board of Directors approved a competitive grant process to solicit proposals to assist with land acquisitions to promote regional habitat conservation plans. The SANDAG Board of Directors allocated \$20 million of *TransNet* Environmental Mitigation Program (EMP) funds for land acquisition, which promotes the success of the Natural Communities Conservation Planning Program, through conservation of habitat areas critical to promote endangered species and wildlife movement.

Attached to this letter are the program overview, instructions, and schedule (Attachment 1); eligibility and evaluation criteria (Attachment 2); an application form (Attachment 3); and sample escrow instructions, conservation easement, and management agreement, are provided for your information (Attachment 4).

If your project proposal is successfully awarded funding by the SANDAG Board of Directors, your organization will be required to enter into a conservation easement, deed restriction, or similar restrictive covenant, in favor of SANDAG, and sign a land management agreement.

Note that all organizations that require a Board action to accept funds will be required to provide a resolution or similar written authorization two weeks prior to the recommendation by the Regional Planning Committee of the list of prioritized project proposals. SANDAG will provide applicants with advance notice of the Regional Planning Committee meeting, tentatively scheduled for **September 5, 2014**.

The **Grant Application Form** and **all required supporting material** (as described within Attachments 1 through 3) are due to SANDAG **no later than 4 p.m. local time, on January 8, 2014**.

In addition to the Grant Application Form, the project proposal submission must include a letter of interest, purchase agreement, or similar commitment from the property owner as a willing seller. The applicant also must provide a preliminary title; map of listed or sensitive species and location in relation to regional open space plans; and letter from the local jurisdiction of consistency/non-objection of habitat conservation/open space designation of the property. See Attachments 1, 2, and 3 for more information on submittal requirement details.

MEMBER AGENCIES

Cities of
Carlsbad
Chula Vista
Coronado
Del Mar
El Cajon
Encinitas
Escondido
Imperial Beach
La Mesa
Lemon Grove
National City
Oceanside
Poway
San Diego
San Marcos
Santee
Solana Beach
Vista
and
County of San Diego

ADVISORY MEMBERS

Imperial County
California Department
of Transportation

Metropolitan
Transit System

North County
Transit District

United States
Department of Defense

San Diego
Unified Port District

San Diego County
Water Authority

Southern California
Tribal Chairmen's Association

Mexico

A **pre-proposal meeting** will be held on **Tuesday, November 5, 2013, from 1 to 3 p.m.** in the SANDAG Board Room to address any questions from applicants.

The Conserved Land Database application is available at: gis1.sandag.org/conservedlandviewer, and can be used as a resource in project proposal preparation.

Please mail the required **one signed hard copy** and **one signed electronic copy as a PDF file** on disc or flash drive by **4 p.m. on January 8, 2014**, at the office of:

Katie Levy, Grant Administrator
San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

Postmarks will **NOT be accepted in lieu of this agreement.**

For more information, please contact Katie Levy at (619) 699-7312 or katie.levy@sandag.org.

Sincerely,



CHARLES "MUGGS" STOLL
Director of Land Use and Transportation Planning

MST/KLE/bga

Attachments: 1. EMP Fiscal Year (FY) 2014 Land Acquisition Grant Program – Overview and Instructions
2. EMP FY 2014 Land Acquisition Grant Program – Eligibility and Evaluation Criteria
3. EMP FY 2014 Land Acquisition Grant Program – Grant Application Form
4. EMP FY 2014 Land Acquisition Grant Program – Sample Escrow Instructions, Conservation Easement, and Management Agreement

Attachment 1

San Diego Association of Governments *TransNet* Environmental Mitigation Program FY 2014 Land Acquisition Grant Program – OVERVIEW AND INSTRUCTIONS

Program Description

The *TransNet* Extension Ordinance and Expenditure Plan, as approved by the voters on November 2, 2004, includes an Environmental Mitigation Program (EMP). The EMP is a funding allocation category for the costs to mitigate habitat impacts for regional transportation projects. The EMP is a unique component of the *TransNet* Extension Ordinance in that it goes beyond traditional mitigation for transportation projects by including a funding allocation for habitat acquisition, management, and monitoring activities as needed to help implement regional habitat conservation plans.

On September 27, 2013, the SANDAG Board of Directors approved the release of the FY 2014 Call for Projects for land acquisitions of up to \$20 million to promote regional habitat conservation plans. The SANDAG Board may choose to acquire one or more properties that will not exceed \$20 million. Project applicants are encouraged to provide matching funds. Funding is contingent on SANDAG Board adoption of the FY 2015 budget and subsequent approval of the prioritized list of land acquisition project proposals.

Eligible Project Proposals

The FY 2014 Call for Projects for the *TransNet* EMP Land Acquisition Grant Program provides up to \$20 million to assist with land acquisition that promotes the success of the Natural Communities Conservation Planning Program (NCCPP) through conservation of habitat areas critical to promoting endangered species and wildlife movement.

All applicants are required to fill out a Grant Application Form (Attachment 3), which will help SANDAG staff determine if a project proposal is eligible for land acquisition grant funding and how it ranks among other eligible project proposals. The Eligibility and Evaluation Criteria for the project proposals are provided as Attachment 2. Project proposals must first be determined to be eligible for funding before being evaluated and ranked.

Process for Allocating Funds

SANDAG will accept project proposals from applicants in San Diego County that will benefit regional habitat conservation planning under the NCCPP. The applicant must own the land or submit documentation that the owner is a willing seller. The owner of the property does not need to be the applicant or co-applicant on the project proposal. Applicants will need to estimate the total cost of the project proposal and provide information on how the costs were determined.

The land must be acquired or conserved as open space for natural resources. The application must include a discussion of who will own the property, who will manage the property, and who will be responsible for the financial management of any funds associated with the acquisition and/or management.

Applicants must complete a Grant Application Form (Attachment 3) that does not exceed 10 pages (not including attachments).

All project proposals will be reviewed for eligibility, evaluated, ranked, and prioritized using the criteria in Attachment 2. The top-ranked project proposals that cumulatively total up to \$20 million will be appraised by SANDAG through its on-call appraisers. The appraisal will follow the Uniformed Standards of Professional Appraisal Practice by a member of the Appraisal Institute. SANDAG will use this appraisal to determine the value of the property for its highest and best use. SANDAG will only fund the appraised value of the property as part of the grant.

A list of recommended project proposals and their appraised value will be submitted for consideration to the Environmental Mitigation Program Working Group (EMPWG) and Regional Planning and Transportation Committees for a recommendation to the SANDAG Board of Directors. The SANDAG Board of Directors would authorize any funding for approved project proposals in FY 2015.

If approved by the SANDAG Board of Directors, successful applicants will be required to enter into escrow for the acquisition of property, provide a conservation easement or similar restrictive covenant, in favor of SANDAG, and sign a land management agreement that spells out the terms of management of the property.

Who Will Score the Project Proposals?

An evaluation committee will be made up of representatives from SANDAG, Caltrans, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and U.S. Geological Survey; and would rank all project proposals.

Submittal Requirements and Application Deadline

One (1) signed hardcopy and **one (1) signed electronic copy as a PDF file** on disc or flash drive of the project proposal shall be submitted. Project proposals submitted by facsimile or email are not acceptable and will not be considered.

The applicant is responsible for submitting its entire project proposal package with all required submittal documents and any modifications or revisions, so as to reach the SANDAG office as designated in the Call for Projects by the time specified below. Any proposal, modification, or revision received by SANDAG after the exact time specified for receipt of proposals is "late" and will not be considered unless it is received before award is made and the Chief Deputy Executive Director determines that accepting the late proposal would not unduly delay the procurement process; and:

- (1) The proposal was received, with all required submittal documents, by SANDAG before proposals were distributed for evaluation or within 24 hours after the exact time specified for receipt, whichever is earlier; or
- (2) There is acceptable evidence to establish that the proposal was received, with all required submittal documents, at the SANDAG location designated for receipt of proposals and was under SANDAG control prior to the time set for receipt of proposals; or
- (3) There is acceptable evidence to establish that the proposer submitted its proposal, with all required submittal documents, to a third-party carrier for guaranteed delivery to SANDAG by the specified "Closing Time/Date" written below; however, due to an unforeseen event beyond the proposer's reasonable control, such as poor weather, an act of God, or a delivery mistake by a third-party carrier, the proposal package arrived after the "Closing Time/Date"; or
- (4) It is the only proposal received.

The project proposal must be addressed to and received no later than 4 p.m., local time, on January 8, 2014, at the office of:

Katie Levy, Grant Administrator
San Diego Association of Governments
401 B Street, Suite 800
San Diego, California 92101

Postmarks will **NOT be accepted in lieu of this requirement.**

Proposed Schedule

October 4, 2013 – FY 2014 Call for Projects for the *TransNet* EMP Land Acquisition Grant Program is provided to interested stakeholders included in the SANDAG EMP stakeholder database. This Call for Projects also will be posted on the SANDAG website and in select local newspapers.

November 5, 2013 – A public workshop will be provided to address any questions on the Call for Projects or the process. Staff from SANDAG will be present to address questions and provide information on the eligibility, approval, contracting, and specific requirements of this grant program.

January 8, 2014 – Project proposal application submissions are due to SANDAG, no later than 4 p.m. local time.

January - February 2014 – SANDAG staff will determine the eligibility of all submitted project proposals. Eligible projects will be distributed to the evaluation committee for review and evaluation. SANDAG staff and evaluation committee members may conduct site visits to any submitted and top-ranking project proposals to confirm the information provided by the applicant.

March 2014 – The list of prioritized project proposals, including those top-ranked project proposals to be appraised, will be presented for information to the Independent Tax Payer Oversight Committee (ITOC), Regional Planning, and Transportation Committees.

March 2014 - May 2014 – Project proposals receiving the top-ranks totaling up to \$20 million will be appraised by SANDAG through its on-call appraisers.

June or July 2014 – The prioritized list of project proposals, including the appraised value of the top-ranked project proposals, will be presented to the EMPWG for its recommendation to the Regional Planning Committee.

July or September 2014 – The prioritized list of project proposals, including the appraised value of the top-ranked project proposals, will be presented to the ITOC, Regional Planning, and Transportation Committees for **information**.

September or October 2014 – The Regional Planning and Transportation Committees will be asked to **recommend** that the Board of Directors consider awarding funds for the top-ranked, appraised project proposals.

September or October 2014 – The prioritized list of project proposals including the appraised value of the top-ranked project proposals, will be presented to the SANDAG Board of Directors for consideration.

October or November 2014 – Approved project proposals will enter into escrow.

Attachment 2

San Diego Association of Governments
TransNet Environmental Mitigation Program
FY 2014 Land Acquisition Grant Program –
ELIGIBILITY AND EVALUATION CRITERIA

PROJECT PROPOSAL INFORMATION (For Use By SANDAG staff)

Project Proposal Title: _____

Jurisdiction: _____

Acreage of land acquisition (break down acreage by parcel if more than one parcel is proposed for acquisition): _____

Estimated total cost of land acquisition: _____

Estimated total cost of land management: _____

Proposed Long-term Management Entity: _____

Percent of cost to be borne by partners (list by entity and % of cost): _____

Applicant Name: _____

Submittal date: _____

PART 1: ELIGIBILITY

SANDAG will utilize the following findings for potential acquisition opportunities to determine their **eligibility**. A project proposal must meet **ALL five** of the findings to be considered eligible:

1. Promotes Natural Communities Conservation Planning Program: The proposed acquisition will contribute to the success of the San Diego regional Natural Communities Conservation Planning Program by acquiring and restoring unique habitat areas, key populations of endangered species, lands adjacent to existing conserved habitat lands, and/or promoting wildlife linkages.
2. Jurisdictional Land Use Plans: Use of the site as habitat conservation/open space is consistent with the long-range land use and transportation policies of one or more local jurisdictions. If the use of the site as habitat conservation/open space is not consistent, the jurisdiction(s) does not object to the site being purchased for habitat conservation/open space.
3. Willing Seller: Owner of the property is a willing seller with clear title to the property and any hazardous material identified in a Phase I environmental site assessment has been evaluated and addressed to the satisfaction of SANDAG.
4. Appraisal: The property must be appraised by a qualified licensed appraiser in accordance with established acquisition and appraisal standards, and reviewed independently by an appraisal specialist working for SANDAG. The first written offer will reflect the fair market value of the property.
5. Owner/Manager: Perpetual ownership of the land has been identified as well as a qualified land manager. The identified owner is a public agency or nonprofit organization willing to provide a conservation easement or deed restriction to SANDAG or mutually agreed-upon third party. SANDAG and the land manager have agreed upon the annual cost to manage the land and the method for funding the annual management costs.

PART 2: EVALUATION CRITERIA

If a potential acquisition opportunity is deemed eligible, then the following Evaluation Criteria will be used to **evaluate and prioritize** the project proposal:

A) SPECIES BENEFITS:

The purpose of this section is to evaluate how beneficial the land acquisition will be for listed and unlisted species.

Listed Species

1. Acquisitions that benefit more listed, proposed, or candidate species will score higher.

Score: Number of state and federally listed, proposed, or candidate species (a species that is both state and federally listed only counts as 1) that will benefit from the land acquisition. (10 points maximum)

0 species (0 pts.) - Skip to Question 3

1 species (1 pt.)

2-5 species (4 pts.)

6-10 species (8 pts.)

11+ species (10 pts.)

2. Acquisitions that provide greater benefit to listed species will score higher. The benefits to the listed species will be considered **major** if, through the acquisition, the majority of the species' range-wide habitat or an essential piece (e.g., core or linkage) of habitat is protected, a major/critical/significant population necessary for recovery is protected, or major threats to the species are eliminated. The benefits to the listed species will be considered **minor** if, through the acquisition, only a small percentage of the species' range-wide habitat is protected, etc.

Score: Magnitude of benefits for listed species that will result from the land acquisition. (10 points maximum)

Score: Magnitude of species benefits for listed species. (10 points maximum)

Mostly minor benefits will result for the listed species (1 pt.)

A combination of major and minor benefits will result for listed species (6 pts.)

Mostly major benefits will result for the listed species (10 pts.)

Unlisted Species

3. Acquisitions that benefit more unlisted sensitive (e.g., on the County of San Diego's Sensitive Plant List; California Department of Fish and Wildlife list of species of special concern) species will score higher. Unlisted species do not include species listed by the state or federal governments as listed as threatened or endangered or that are proposed or candidates for listing.

Score: Number of unlisted, proposed, and candidate species that will benefit from the land acquisition. (10 points maximum)

0 species (0 pts.) - Skip to Question 5

1-5 species (3 pts.)

6-10 species (6 pts.)

11+ species (10 pts.)

4. Acquisitions that provide greater benefit to unlisted species will score higher. The benefits to the species will be considered **major** if, through the acquisition, the majority of the species' range-wide habitat is protected, an essential piece of the habitat is protected, a major population necessary for conservation is protected, or major threats to the species are eliminated. The benefits to the species will be considered **minor** if, through the acquisition, only a small percentage of the species' range-wide habitat is protected, etc.

Score: Magnitude of species benefits for unlisted species. (10 points maximum)

Mostly minor benefits will result for the unlisted species (1 pt.)

A combination of major and minor benefits will result for unlisted species (6 pts.)

Mostly major benefits will result for the unlisted species (10 pts.)

B) ECOSYSTEM BENEFITS

The purpose of this section is to evaluate how beneficial the land acquisition will be for the identified ecosystem function and services.

5. Lands that require little or no management or significant restoration to provide benefits for the identified species will score higher in this evaluation factor. This habitat can include occupied or suitable, unoccupied habitat. The level of management and/or restoration expected to be necessary is based on an evaluation of the biotic and abiotic components and ecological processes and known or anticipated threats. Biotic factors include the structure and composition of plant and animal communities. Abiotic factors include soil, hydrology, natural topography, and salinity gradients. Ecological processes include succession, trophic energy flows, and disturbance regimes.

Score: When considered in the context of the surrounding landscape, what is the anticipated need for management and/or restoration to maintain the ecological processes necessary to maintain a fully functioning ecosystem? (15 points maximum)

Continued management and/or restoration to maintain ecosystem functions

___ Significant (0 pts.)

___ Moderate (10 pts.)

___ Little to none (15 pts.)

6. Land acquisitions that fill in critical components for land protection will score higher (e.g., lands that link two preserves together to reduce habitat fragmentation).

Score: Do the lands proposed for acquisition fill a critical void in the matrix of protected lands, such as a connection between protected areas or protection of a core population area? (15 points maximum)

To some degree for at least one identified listed species (5 pts.)

To a great degree for one identified listed species and some degree for one or more identified listed or unlisted species (10 pts.)

To a great degree for more than two identified listed species (15 pts.)

C) THREATS

This section includes consideration of how the acquisition removes or minimizes threats/stressors on the species identified above.

7. Acquisitions that address an imminent threat will score higher. Examples of threats/stressors include fragmentation; edge effects; loss of habitat from proposed development, conversion to agriculture, or lack of or inappropriate management. (15 points maximum)

Score: What is the lands likelihood that the land targeted for acquisition will be converted from natural habitat in the near term (2 years)?

___ Not likely (0 pts.)

___ Possible (e.g., land owner has been pursuing development permits, infrastructure is in, prime agricultural land adjacent to the site) (10 pts.)

___ Highly likely (e.g., property has an approved development plan, identified species habitat is degrading due to lack of or current management practices) (15 pts.)

8. Land acquisition projects with a focus on climate change adaptation should be addressed here to identify the conservation benefits to be derived through acquisition of the property in support of the identified species (15 points maximum).

Score: Do the lands proposed for acquisition increase the likelihood that species and their habitats will be able to respond/adapt to climate changes (e.g., temperature and precipitation) or remove potential impediments to those responses?

___ Not likely (0 pts.)

___ Possible (8 pts.)

____ Highly likely (15 pts.)

D) SPECIAL CONSIDERATIONS (15 points maximum).

This section documents special considerations that are not addressed in the above point scoring sections. Special considerations may include but are not limited to: percentage of matching funds; cost per acre for acquisition and/or management; significantly facilitates broader management goals beyond the targeted parcel boundaries; ancillary benefits (e.g., supports water quality, flood control, or wildfire management needs); completes or significantly benefits a local or regional acquisition strategy/opportunity; etc.

Project Proposal Evaluation Criteria	Point Range	Maximum Score Possible	Total Score
A) SPECIES BENEFITS			
<i>Listed Species</i>			
1. Number of Listed Species	0-10	10	
2. Magnitude of Benefit	1-10	10	
<i>Unlisted Species</i>			
3. Number of Unlisted Species	0-10	10	
4. Magnitude of Benefit	1-10	10	
B) ECOSYSTEM BENEFITS			
5. Landscape Context	0-15	15	
6. Missing Linkage or Gap in Protection	5-15	15	
C) THREATS			
7. Land Under Imminent Threat	0-15	15	
8. Necessary for Climate Change Adaptation	0-15	15	
D) SPECIAL CONSIDERATIONS	0-15	15	
Total		115	

Total points score _____ (Maximum available = 115)



Grant Application Form

Consideration for *TransNet* Environmental Mitigation Program (EMP)

Fiscal Year 2014 Land Acquisition Grant Program

(Applications cannot exceed ten 10 pages, not including attachments.)

Applicant Name: _____

Applicant Address: _____

Phone and Email Address: _____

Name of Property: _____

General Location: _____

Jurisdiction: _____

Land Use Designation: _____

Total Acres: _____

A.P.N.s _____

Estimated Acres Requiring
Management: _____

Owner(s) of Property: _____

Long-term Management
Entity¹: _____

Financial Manager¹: _____

Brief Project Proposal Summary that includes location of property (200-word maximum)

¹ Attach Statement of Qualifications to Application

FUNDING NEEDS SUMMARY

1. Please indicate how much funding is being requested from SANDAG and any matching funding proposed:

Budget Item	Requested Funding Amount	Proposed Matching Funds*	Description
Estimated Acquisition Cost	\$	\$	Include all estimated closing costs
Personnel Administrative Expenses	\$	\$	Includes all staff time to administer the goal
One-time Management Costs	\$	\$	Include one-time cost to secure and/or restore property
On-going Management Costs	\$	\$	Include total cost for long-term management
Other Costs*	\$	\$	Describe costs
Totals	\$	\$	

*if applicable

Explain how the acquisition cost was determined (200-word maximum). _____

Explain how the management cost was determined (200-word maximum). _____

2. Are there matching funds available? If yes, how are the matching funds assured (200-word maximum)?

☐ Yes ☐ No

Explain how matching funds are assured. _____

PROJECT PROPOSAL SUMMARY

(Maps and/or graphics can be referenced and pasted at the end of this Word document or attached as a separate digital file.)

The summary will include the location of the acquisition property(ies), the proposed strategy for acquisition, identification of matching funds, discussion of both short-term and long-term land management, and the method to assure financial accountability of management funds.

A. Project Purpose

Address the following in the proposal.

1. Describe how the property will contribute to the success of the San Diego regional Natural Communities Conservation Planning Program by acquiring and restoring unique habitat areas, key populations of endangered species, lands adjacent to existing conserved habitat lands, and/or promoting wildlife linkages. Describe the location of the property in relation to the regional open space plans (e.g., Multiple Species Conservation Plan South, Multiple Habitat Conservation Plan, Multiple Species Plan North, etc.) and existing or proposed conserved lands. **PROVIDE A CLEAR, LEGIBLE MAP** as an attachment.
2. Describe the designation of the property in the local jurisdiction's long-range land use and transportation plans, and discuss any conflicts. If the use of the site as habitat conservation/open space is not consistent, a letter from the City Council or its designee will be required indicating that the jurisdiction does not object to the site being purchased for habitat conservation/open space. **PROVIDE LETTER** as an attachment.
3. Describe how the property will provide benefit for federal and/or state-listed species and/or unlisted sensitive species. Identify all known federal or state-listed endangered species, species that are candidate for listing, or unlisted sensitive species (e.g., County of San Diego's Sensitive Plant List, California Department of Fish and Wildlife list of species of special concern), and the source of the information. Discuss to the extent known, if there are any core populations of listed or sensitive species on or near the property. **PROVIDE A CLEAR, LEGIBLE MAP** as an attachment of species on property if available.
4. Describe the property's benefit to ecosystem functions and services. Describe the existing biotic and abiotic condition of the property in relation to its disturbance and need for management. Discuss the level of required management needed to (1) restore and (2) maintain the abiotic, biotic, and ecological processes of the property when considered in context of the surrounding landscape. Biotic factors include the structure and composition of plant and animal communities. Abiotic factors include soil, hydrology, natural topography, and salinity gradients. Ecological processes include succession, trophic energy flows, and disturbance regimes.
5. Include a discussion of how the acquisition of the property would contribute to overall open space connectivity throughout the region and how this acquisition could fill a void in the matrix of protected open space lands.

6. Describe how the acquisition of the property removes or minimizes threats on the species identified in number 2, above. Examples of threats/stressors include fragmentation; edge effects; loss of habitat from proposed development, conversion to agriculture, or lack of or inappropriate management.
7. Describe the likelihood that the land targeted for acquisition will be converted from natural habitat in the near term. Explain why.
8. Describe how the land proposed for acquisition will increase the likelihood that species and their habitats will be able to respond/adapt to climate changes (e.g., temperature and precipitation) or remove potential impediments to response to climate change.
9. Describe who would own the title of the property and who would manage the property. Describe the qualification of the land manager. Describe how the management cost, both one-time and on-going, have been determined. Discuss the proposed funding strategy for long-term management, including who would fund management and where funds would be held. Describe the experience of the financial manager (proposed entity to hold any endowments for management and/or monitoring) and assurances of long-term funding.
10. Describe the approach for the development of a long-term management plan for the property.
11. Describe any special considerations of the proposed acquisition. Special considerations may include but are not limited to: percentage of matching funds; cost per acre for acquisition and/or management; significantly facilitates broader management goals beyond the targeted parcel boundaries; ancillary benefits (e.g., supports water quality, flood control, or wildfire management needs); completes or significantly benefits a local or regional acquisition strategy/opportunity.

NOTICE REGARDING PREVAILING WAGES

The SANDAG EMP Land Acquisition Grant Program is funded with *TransNet* revenues consistent with the *Transnet* Extension Ordinance adopted by the voters in November 2004 (SANDAG Ordinance 04-01). While SANDAG does not require grantees to pay prevailing wages, recent California appellate court opinions (*Reliable Tree Experts v. Baker*, 200 Cal. App. 4th 785 [2011]; *Reclamation Dist. No. 684 v. Department of Industrial Relations*, 125 Cal. App. 4th 1000 [2005]) and Department of Industrial Relations advisory opinions strongly suggest that many potential aspects of EMP Land Acquisition Grant Program projects, especially those involving habitat restoration and maintenance or environmental remediation, will be subject to prevailing wage law. Grant applicants are encouraged to review the provisions of Labor Code §§ 1720 and 1771, and California Code of Regulations, title 8, § 16000. These outline activities constituting public works for purposes of prevailing wage law. Grant applicants are further encouraged to seek advice from an attorney to determine the applicability of the aforementioned statutory provisions and regulation to their proposed grant-funded projects. If awarded EMP Land Acquisition Grant Program funding, the management agreement between SANDAG and the grantee requires grantee's compliance with all federal, state, and local laws and ordinances applicable to the agreement.

REQUIRED STATEMENTS FROM APPLICANT

- ☐ Yes ☐ No The owner of the property is a willing seller and a letter of interest, purchase agreement, or similar commitment from the owner has been attached to this application.
- ☐ Yes ☐ No The site is consistent with the local jurisdiction's land use plan as habitat conservation/open space, or the local jurisdiction does not object to the site being acquired for habitat conservation/open space and a letter from the jurisdiction has been included with this application.
- ☐ Yes ☐ No A preliminary title report to the property(ies) has been included with the application.
- ☐ Yes ☐ No If the property is selected for consideration to be acquired, the applicant understands that SANDAG will conduct through its proxies an appraisal consistent with the Uniformed Standards of Professional Appraisal Practice by a member of the Appraisal Institute. SANDAG will use this appraisal to determine the value of the property for its highest and best use. The applicant understands that SANDAG, at the sole discretion of the SANDAG Board of Directors, only will offer the appraised value of the property.
- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant agrees to use the escrow account and instructions acceptable by SANDAG.
- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant understands that upon review of the title report, hazardous waste assessments of the property, or any other real property document, SANDAG may choose to not pursue acquisition of the property at its sole discretion.
- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant agrees to provide to record a conservation easement, deed restriction, or similar restrictive covenant, in favor of SANDAG, that that will run with the title of the property and be binding on the applicant, heirs, successors, lessees, representatives, and other occupiers of the property.
- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant understands that SANDAG would need to accept the identified land manager and the financial manager for management funds.
- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant agrees to enter into a Land Management Agreement with SANDAG for the perpetual stewardship and biological management of the property.
- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant agrees to complete a resource management plan within one year of the acquisition of the property for review by the state and federal wildlife agencies.

- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant agrees to comply with SANDAG Board Policy No. 035 "Competitive Grant Program Procedures," which outlines project milestone and completion deadlines. SANDAG Board Policy No. 035 is included in the standardized agreement, and also is on the SANDAG website at the following link:
http://www.sandag.org/organization/about/pubs/policy_035.pdf
- ☐ Yes ☐ No If the project proposal is successfully awarded, the applicant understands that a resolution including the requirements of SANDAG Board Policy No. 035, Section 4.1, must be submitted to SANDAG at least two weeks prior to the recommendation by the Regional Planning Committee of the list of prioritized project proposals to be considered by the SANDAG Board of Directors. SANDAG will provide applicants with advance notice of the Regional Planning Committee's anticipated meeting date.
- ☐ Yes ☐ No The applicant understands that only the SANDAG Board of Directors can authorize any funding and costs borne by the applicant prior to SANDAG Board of Director approval is at the risk of the applicant and may not be reimbursed.
- ☐ Yes ☐ No The applicant understands that this grant is an opportunistic purchase by SANDAG and the SANDAG Board of Directors may at its sole discretion choose to fund all, part, or none of the project proposal.

I have the authorization to submit this Grant Applicant Form and agree to the above Required Statements on behalf of my organization.

Applicant Name/Title (print or type)

Applicant Signature **Date** mm/dd/yy

ATTACHMENT 4

On Department of Transportation Letterhead
Month Day, Year

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

We have extended the escrow closing date on the following parcel:

- Parcel Name:
- Project Name:
- Caltrans Project EA:
- SANDAG Project EA:
- APN:
- Itemized total for ROW purchase:
- Amount of *TransNet* funding required for ROW purchase: (closing costs) *Buyer Statement is attached.*
- Date *TransNet* funds need to be transferred by: *Wiring instructions are attached.*
- Escrow number:
- Escrow closing date:

If you have any questions, please feel free to call me at () -

Sincerely,

Name
Right of Way Agent

Enclosures

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)

Name of Applicant)
Address Line 1)
Address Line 2)

AND A COPY TO:)

San Diego Association of Governments)
Attention: Office of General Counsel)
401 B Street, Suite 800)
San Diego, CA 92101)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

This Conservation Easement Deed is made this _____ day of _____, 2014, by The **Name of Applicant**, a **Description of organization**, in favor of the San Diego Association of Governments, a legislatively created regional government agency, based on the following facts:

RECITALS

Whereas, pursuant to California Civil Code Section 815.3(a), **Name of Applicant**, a **Description of organization**; and

Whereas, **Name of Applicant** voluntarily conveys this Conservation Easement Deed to SANDAG; and

Whereas, SANDAG is a regional government agency authorized to acquire and hold title to real property and may acquire and hold Conservation Easement Deeds pursuant to California Civil Code Section 815.3(b); and

Whereas, on **Month Day, Year**, **Name of Property Owner** ("Property Owner") willingly sold its underlying fee title to the **Name of Property** ("Property" or the "**Name of Property**"), which consists of **Number** acres, as more specifically described in EXHIBIT A, which is attached hereto and incorporated herein by this reference, to **Name of Applicant**; and

Whereas, the Property, identified as Assessor's Parcel Number # is located along **Street**, and **Directional cross-street** in the community of **Name of community** in the **unincorporated** or **incorporated** San Diego County. **Description of number of residences and location in relation to the Property. Description of any bodies of water on property**, into **Name of reservoir and/or watershed**; and

Whereas, in October 2011 the SANDAG Board of Directors adopted the 2050 Regional Transportation Plan (RTP) and Sustainable Communities Strategies; and

Whereas, the 2050 RTP/SCS includes a list of transportation network improvements and other transportation programs that are intended to improve the mobility of people and goods throughout the region; and

Whereas, the *TransNet* Extension Ordinance and Expenditure Plan (*Transnet* Extension Ordinance) was adopted by the SANDAG Board of Directors on May 28, 2004, and approved by the voters on November 2, 2004, to provide for continuation of the half-cent transportation sales tax for 40 years to relieve traffic congestion, improve safety, and match state/federal funds; and

Whereas, the *TransNet* Extension Ordinance included the establishment and implementation of an Environmental Mitigation Program (EMP), including 11 principles that further defined the major elements of the EMP; and

Whereas, the *TransNet* EMP is intended, in part, to provide for early acquisition and management of important habitat areas and to create a reliable approach for funding required mitigation for future transportation improvements, thereby enabling the purchase of habitat that may become more scarce in the future, reducing future costs and accelerating project delivery; and

Whereas, proactive mitigation of transportation projects would provide an opportunity to implement the *TransNet* EMP by providing opportunities for early conservation, permit streamlining, and certain cost savings; and

Whereas, the Property possesses wildlife and habitat values (collectively, "Conservation Values") of great importance to the people of the State of California; the United States Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (DFW) (collectively, "Wildlife Agencies") ; the **Name of Applicant** and **SANDAG**; and

Whereas, the Property is located within the **Name of segment** of the County of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan and within the **Name of Habitat Linkage**; and

Whereas, the purpose of the acquisition of the Property is to (1) further implement the Department of Fish and Wildlife's (DFW) Natural Communities Conservation Planning Program (NCCPP) efforts in San Diego County; and (2) enhance a general wildlife corridor and linkage complex between larger habitat areas; and (3) protect a MSCP regionally significant habitat wildlife movement linkage and corridor complex;

Whereas, the acquisition will help to enhance existing efforts to conserve **List type of habitats if any**; and

Whereas, on **Month Day, Year, Name of Applicant** obtained written Commitment letter EXHIBIT C from the Property Owner that the Property Owner is a willing seller; and

Whereas, on **Month Day, Year, Name of Applicant** obtained written Consistency/Non-objection letter EXHIBIT D from the local jurisdiction that the Property is consistent with the local land use plan as habitat conservation/open space or does not object to the site being acquired for habitat conservation/open space; and

Whereas on September 27, 2013, the SANDAG Board of Directors approved the release of the *TransNet* EMP Land Acquisition Grant Program Call for Projects, in conformance with the *TransNet* EMP Memorandum of Agreement signed on March 19, 2008 by SANDAG, Caltrans, and the Wildlife Agencies; and

Whereas, on **Month Day, Year**, the SANDAG Board of Directors, in reliance upon the Property Owner's **Month Day, Year** Commitment letter, authorized SANDAG to provide **Name of Applicant Dollar amount** for acquisition cost and **(if applicable) management** cost of the Property under the *TransNet* EMP; and

Whereas the **Name of Applicant** will grant to SANDAG a "Conservation Easement Deed" (as defined herein) over the Property, which covers the entirety of Property, as described in Exhibit A, in exchange for **Dollar amount** acquisition cost and **(if applicable) management** cost; and

Whereas, concurrently with the execution and delivery of this Conservation Easement Deed, **Name of Applicant** and SANDAG are executing a Land Management Agreement setting forth the obligations of **Name of Applicant**, to manage the Property to maintain its habitat conservation/open space values in perpetuity. Also included in the Land Management Agreement are SANDAG's one-time cost and/or ongoing costs for management of the Property by the **Name of Applicant**. The Land Management Agreement is attached hereto as EXHIBIT B and incorporated herein by this reference; and

Whereas, in reliance upon the **Month Day, Year** Commitment letter sent to SANDAG from the Property Owner attached hereto and incorporated herein by this reference as EXHIBIT C, SANDAG will use the Conservation Easement Deed (defined herein) as acquisition of habitat conservation/open space to promote the success of the NCCPP.

Now, therefore, the Parties agree as follows:

1. COVENANTS, TERMS, CONDITIONS AND RESERVATIONS

In consideration of the above recitals, which are incorporated herein as a substantive part of the Conservation Easement Deed, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including California Civil Code Section 815, et seq., **Name of Applicant** hereby voluntarily grants, transfers and conveys to SANDAG a Conservation Easement Deed in perpetuity over the Property of the nature and character and to the extent defined herein as the "Conservation Easement Deed."

(i) Within one year of the date that this Conservation Easement Deed is recorded, the **Name of Applicant** will develop a Resource Management Plan consistent with the terms of the Land Management Agreement (EXHIBIT B) in a form acceptable to SANDAG.

(ii) This Conservation Easement Deed shall run with the land and be binding on Property Owner and, **Name of Applicant's** and Property Owner's and **Name of Applicant's** heirs, successors, assigns, lessees, representatives, and other occupiers or users of the Property or any portion of it.

2. PURPOSES OF CONSERVATION EASEMENT DEED

The Purposes of this Conservation Easement Deed are to:

(i) Preserve and protect the Conservation Values of the Property; and

(ii) Ensure that this Conservation Easement Deed will confine use of the Property to such activities that are consistent with those purposes, including, without limitation, the preservation, restoration and enhancement of native species and their habitats on the Property; and

(iii) Further implement the DFW's NCCPP efforts in San Diego County; and

(iv) Enhance a wildlife corridor between larger habitat areas; and

3. GRANT OF RIGHTS TO SANDAG

To accomplish the purposes of this Conservation Easement Deed as described in Section 2, **Name of Applicant** hereby grants to **SANDAG**, its successors, assigns, agents, contractors and consultants the following rights:

- (i) To preserve and protect the Conservation Values of the Property; and
- (ii) To enter upon the Property to monitor compliance with and enforce the terms of this Conservation Easement Deed, and the Land Management Agreement; and
- (iii) To grant a revocable license to **Name of Applicant**, its agents, contractors or assigns to perform the duties and obligations under the terms and conditions of the Land Management Agreement; and
- (iv) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement Deed and to require the restoration of such areas or features of the Property that may be damaged or threatened by any act, failure to act, or any use that is inconsistent with the Purposes of this Conservation Easement Deed; and
- (v) To protect all mineral, air and water rights necessary and to sustain the biological resources of the Property, provided that any exercise or sale of such rights by SANDAG shall not result in conflict with the baseline condition of the Property; and
- (vi) The right to transfer, convey, sell, exchange or assign this Conservation Easement Deed, provided any exercise of such right must preserve the Property consistent with the Land Management Agreement and this Conservation Easement Deed; and
- (vii) The right to enforce the terms and conditions of the Conservation Easement Deed by injunctive or other lawful means.

4. PERMITTED AND PROHIBITED USES OF THE EASEMENT PROPERTY

The uses of the Property described in the attached Exhibit E, which is attached hereto and incorporated herein by this reference, are agreed by SANDAG and **Name of Applicant** to be permitted or prohibited at the Property.

5. OBLIGATIONS OF **NAME OF APPLICANT**

To accomplish the Purposes of this Conservation Easement Deed as described in Section 2, **Name of Applicant** shall, of its own accord or through performance of the Land Management Agreement provided, however, that SANDAG shall not have any liability whatsoever to the **Name of Applicant**, its heirs, successors or assigns, or any other party or person, including without limitation, the general public; and the **Name of Applicant** shall:

- (i) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Property; and
- (ii) Comply with the terms and conditions of this Conservation Easement Deed and cooperate with SANDAG in protecting the Property; and
- (iii) Repair and restore damage to the Property directly caused by **Name of Applicant**, **Name of Applicant's** guests, licensees, permittees, representatives, employees or agents; and
- (iv) Undertake all necessary actions to protect SANDAG's rights under this Conservation Easement Deed; and
- (v) Guarantee access to SANDAG, in perpetuity, for SANDAG to accomplish the SANDAG's obligations, as set forth in this Conservation Easement Deed or the Land Management Agreement; and
- (vi) **Name of Applicant** assumes responsibility for confirming whether the Wildlife Agencies, or any other federal, state or local entity must approve **Name of Applicant's** transfer of the underlying fee title

to the Property serving the Conservation Easement Deed (i.e. of the) and obtaining such approvals if necessary; and

(vii) Cooperate with and accommodate reasonable requests made by SANDAG and the Wildlife Agencies related to this Conservation Easement Deed and the Land Management Agreement associated therewith; and

(viii) Maintain and manage the Property consistent with the terms of this Conservation Easement Deed and the Land Management Agreement; and

(ix) Use **Name of Applicant's** reasonable best efforts to prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement Deed; and

(x) This Conservation Easement Deed is not intended to create any rights for third parties.

9. TRANSFER, ASSIGNMENT, SALE OR CONVEYANCE OF CONSERVATION EASEMENT DEED

Consistent with Public Utilities Code Section 132321 et seq., and any amendments thereto, **Name of Applicant** shall have the right to transfer or assign its rights under this Conservation Easement Deed to any entity, and/or entities that is/are qualified under applicable law to hold Conservation Easement Deeds and which assignee or transferee agrees to enforce the terms of this Conservation Easement Deed. In the event the transfers, described herein, occur, **Name of Applicant**, its agents, successors or assigns, agrees to cooperate with SANDAG in effecting any such transfers.

6. NAME OF APPLICANT WARRANTIES

(i) **Name of Applicant**, its heirs, successors or assigns agrees to promptly cooperate with and accommodate any of SANDAG's reasonable requests regarding the baseline condition of the Property; and

(ii) **Name of Applicant** certifies to SANDAG and to County that to the **Name of Applicant** actual knowledge upon the recordation date of this Conservation Easement Deed, there are no structures or improvements, encroachments, debris or hazardous materials of any kind whatsoever existing on the Property; and

(iii) **Name of Applicant** certifies, represents and warrants to SANDAG that to the **Name of Applicant's** actual knowledge, there are no previously granted easements existing on the Property that interfere or conflict with the purposes of this Conservation Easement Deed.

7. SPECIFIC RIGHTS OF SANDAG

SANDAG, its employees, agents or assignees, may, without additional approval or license from **Name of Applicant**:

(i) Erect, maintain, and/or remove, at SANDAG's expense, signs or other appropriate markers in prominent locations on the Property, visible from public roads or other adjoining property, bearing information indicating that *TransNet* Environmental Mitigation Program Acquisition Grant Program funds were used for the purpose of protecting the **Name of Property's** sensitive habitat, and those additional Purposes outlined in this Conservation Easement Deed; and

(ii) Enforce the terms and conditions of this Conservation Easement Deed and the Land Management Agreement and any amendments thereto; and

(iii) Exercise its discretion in taking any reasonable actions necessary to fulfill the Purposes of this Conservation Easement Deed.

10. TRANSFER OF UNDERLYING FEE TITLE

Name of Applicant, its heirs, successors and assigns, agree that **Name of Applicant** shall not transfer the underlying fee title to the Property without the approval of SANDAG.

11. SUCCESSORS

The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns and shall constitute a servitude burdening the Property in perpetuity and running in perpetuity with the Property.

12. TERMINATION OF RIGHTS AND OBLIGATIONS

Except as required by law, and in particular, Public Utilities Code Section 132321 *et. seq.*, a Party's rights and obligations under this Conservation Easement Deed terminate upon transfer of the Party's interest in this Conservation Easement Deed and the underlying servient tenement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

13. VALUATION

On approximately **Month Day, Year**, the SANDAG Board of Directors contributed the following amount towards the purchase of the Property: **Dollar amount**, receipt of which is hereby acknowledged by **Name of Applicant** as full and valuable consideration for the rights transferred hereunder.

14. REVERSION ON A CONDITION SUBSEQUENT

(i) In the event that the **Name of Applicant**, its agents, heirs, contractors, successors or assigns, and/or their agents, heirs, contractors or assigns, fails to substantially comply with the terms and conditions of this Conservation Easement Deed, after an uncured thirty (30) day written notice of default from SANDAG to **Name of Applicant**, its heirs, successors or assigns, for any reason whatsoever, including, but not limited to, inadequate financing or other resources, **Name of Applicant**, on its behalf and on behalf of its heirs, successors and assigns, agrees that fee title of the Property will automatically revert to SANDAG, upon the filing by SANDAG of a Notice of Default and Reversion at the San Diego County Assessor and Recorder.

(ii) **Name of Applicant**, by its acceptance of a grant deed to the fee simple title to the Property, which fee title is subject to the Conservation Easement Deed, agrees for itself, its agents, contractors, successors or assigns further agrees to cooperate with and assist SANDAG in taking any and all actions necessary to effect this reversion, including, but not limited to, immediately recording a quit claim deed or other instrument(s) in SANDAG's favor, or other actions necessary to effectuate an immediate reversion of that portion of the Property covered by the Conservation Easement Deed with SANDAG paying all outstanding debts or encumbrances owing under the then current Land Management Agreement and any amendments thereto; and, upon SANDAG's request, removing any and all waste and transferring title to any real or personal property then remaining upon the Property, without expense to or compensation from SANDAG.

(iii) In the event that a reversion occurs, SANDAG will take such actions as are necessary to continue the intended use of the Property consistent with the terms of this Conservation Easement Deed and the underlying letter of Commitment from the Property Owner. Upon such reversion, the terms and conditions of this Conservation Easement Deed shall constitute covenants, conditions and restrictions running with the property, which, covenants, conditions and restrictions shall run with the land and will be binding upon all successors and assigns of the parties herein in accordance with the provisions of Civil Code Section 1468.

(iv) Any costs, including legal costs, associated with reversion of Conservation Easement Deed and Property shall be the responsibility of the **Name of Applicant**, its successors or assigns.

15. JUDICIAL EXTINGUISHMENT OR TERMINATION

(i) This Conservation Easement Deed may not be extinguished or terminated, except by a final judicial determination that it is impossible or impractical for the Conservation Easement to continue.

(ii) No such extinguishment shall affect the value of SANDAG's interest in the Property, and if the Property, or any interest therein, is sold, exchanged, or taken by the power of eminent domain after such extinguishment or termination, SANDAG will be entitled to receive the proceeds of such sale, exchange, or taking.

(iii) At the time of any proposed extinguishment or termination, any successor SANDAG and/or **Name of Applicant** of this Conservation Easement Deed agrees to make a reasonable effort to give SANDAG and **Name of Applicant** written notice of such proposed extinguishment. Such notice shall include (at a minimum) the right to be heard by the court considering the proposed extinguishment or termination.

16. AMENDMENT

This Conservation Easement Deed may be amended by **Name of Applicant** and SANDAG, their successors or assigns, only by mutual written agreement, and subject to the written approval of the SANDAG Board of Directors or its authorized designee. Any such amendment shall be consistent with the purposes of the Conservation Easement Deed and California law governing conservation easement deeds and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of San Diego County, State of California.

17. DUTY TO DEFEND AND INDEMNIFY

Name of Applicant, its successors and assigns, agrees to defend, indemnify, protect and hold SANDAG, its successors and assigns, and its Directors, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or Property, including environmental claims (Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, etc.), or injury to the **Name of Applicant's** or its subcontractors' 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 **Name of Applicant**, its successors and assigns and its subcontractors and their agents, officers, or employees, in performing the terms and conditions of this Conservation Easement Deed, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that the **Name of Applicant'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 Directors, agents, officers, or employees.

18. LIENS OR SUBDIVISION

Consistent with Public Utilities Code Section 132321, *et seq.*, **Name of Applicant**, its successors or assigns shall not cause liens of any kind to be placed against, nor use the Property as collateral or security for any loan. Neither shall the **Name of Applicant** subdivide the Property. **Name of Applicant** shall ensure that the covenants in this section are passed through to its successors or assigns in written agreements with **Name of Applicant**.

19. SEVERABILITY

If a court of competent jurisdiction voids, invalidates or declares unenforceable any part of this Conservation Easement Deed on its face, or the application thereof to a person, entity or circumstance,

such action shall not affect the remainder of this Conservation Easement Deed, or its application to other persons, entities or circumstances.

20. LIBERAL CONSTRUCTION

Despite any general rule of construction to the contrary, this Conservation Easement Deed shall be liberally construed to affect the purposes of this Conservation Easement Deed and the policy and purpose of Civil Code Section 815, et seq. If any provision in this Conservation Easement Deed is found to be ambiguous, an interpretation consistent with the Purposes described herein that would render the provision valid shall be favored over any interpretation that would render it invalid.

21. ENTIRE AGREEMENT

This instrument sets forth the entire agreement between the Parties regarding this Conservation Easement Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to it that are not incorporated herein by reference. No alteration or variation of this instrument shall be valid or binding unless amended consistent with the Amendment requirements outlined herein. Notwithstanding the foregoing, this Conservation Easement Deed shall not revoke, rescind or amend the terms of the Land Management Agreement Number #.

22. CONTROLLING LAW AND VENUE

The laws of the State of California shall govern the interpretation and performance of this Conservation Easement Deed. Venue shall lie in the County of San Diego, State of California.

23. RECORDING

SANDAG shall record this Conservation Easement Deed in the Official Records of San Diego County, California, and SANDAG may re-record it at any time as SANDAG deems necessary to preserve its rights hereunder.

24. NOTICES

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other party shall be in writing and be delivered by first class mail, postage fully prepaid, or sent by a recognized overnight courier that guarantees next-day delivery, addressed as follows:

Name of Applicant:

SANDAG:

Name of Applicant

Address Line 1

Address Line 2

San Diego Association of Governments

401 B Street, Suite 800

San Diego, CA 92101

With a Copy To:

John Kirk

General Counsel

San Diego Association of Governments

401 B Street, Suite 800

San Diego, CA 92101

25. EXECUTION

Name of Applicant and SANDAG have executed this Conservation Easement Deed on the date first written above.

Name of Applicant:

San Diego Association of Governments:

By:
Title:

By: Gary L. Gallegos
Title: Executive Director

Approved as to Form:

Approved as to Form:

By:
Title:

By: John Kirk
Title: General Counsel

CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this instrument, specifically, the **Name of Property** Conservation Easement Deed* from the **Name of Applicant**, to the San Diego Association of Governments, a public agency, is hereby accepted by the undersigned officer on behalf of the San Diego Association of Governments pursuant to the authority granted to it under Section 132354 of the Public Utilities Code, and the **Name of Applicant** consents to the recordation thereof by its duly authorized officer.

Date: _____

By: _____
Gary L. Gallegos
Executive Director
San Diego Association of Governments

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF **SAN DIEGO**)

On _____ before me _____
in and for said County and State, personally appeared _____
Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal:

Signature of Notary Public

Exhibit A – Legal Description of **Name of Property**
Exhibit B – **Name of Applicant**/SANDAG Land Management Agreement
Exhibit C – **Month Day, Year** letter of Commitment from **Name of Property Owner**
Exhibit D – **Month Day, Year** letter of Consistency/Non-objection from **Name of Local Jurisdiction**
Exhibit E – Permitted and Prohibited Activities and Uses on the **Name of Property**

SAMPLE

**NAME OF PROPERTY LAND MANAGEMENT
AGREEMENT SANDAG Document Number #**

This **Name of Property** Land Management Agreement ("Agreement") is made this _____ day of _____, 2014,

Between:

NAME OF GRANTEE

Address Line 1

Address Line 2

Applicant's Phone Number

("Name of Grantee Abbreviation")

And:

SAN DIEGO ASSOCIATION OF GOVERNMENTS

401 B Street, Suite 800

San Diego, CA 92101

Attn: Office of General Counsel

619-699-6945

("SANDAG")

The purpose of this Agreement is to establish the terms and conditions for the **Name of Grantee (Name of Grantee Abbreviation)** long-term land management of the **Name of Property**, a **Number** acre parcel identified as Assessor's Parcel Number **Parcel Number** (the "Property"), for mitigation purposes consistent with the San Diego Association of Government's (SANDAG) *TransNet* Environmental Mitigation Program and the *TransNet* Extension Ordinance and Expenditure Plan. **Name of Grantee** and SANDAG are to be referred to jointly as "Parties".

RECITALS

Whereas, in October 2011 the SANDAG Board of Directors (SANDAG Board) adopted the 2050 Regional Transportation Plan (RTP) and Sustainable Communities Strategy (SCS); and

Whereas, the 2050 RTP/SCS includes a list of transportation network improvements and other transportation programs that are intended to improve the mobility of people and goods throughout the region; and

Whereas, the *TransNet* Extension Ordinance and Expenditure Plan (*TransNet* Extension Ordinance) was adopted by the SANDAG Board on May 28, 2004, and approved by the voters on November 2, 2004, to provide for continuation of the half-cent transportation sales tax for 40 years to relieve traffic congestion, improve safety, and match state/federal funds; and

Whereas, the *TransNet* Extension Ordinance included the establishment and implementation of an Environmental Mitigation Program (EMP), including 11 principles

Name of Property Land Management Agreement
SANDAG *TransNet* Environmental Mitigation Program Land Acquisition Grant
SANDAG Contract Number:

that further defined the major elements of the EMP; and

Whereas, the *TransNet* EMP is intended, in part, to provide for early acquisition and management of important habitat areas and to create a reliable approach for funding required mitigation for future transportation improvements, thereby enabling the purchase of habitat that may become more scarce in the future, reducing future costs and accelerating project delivery; and

Whereas, proactive mitigation of transportation projects would provide an opportunity to implement the *TransNet* EMP by providing opportunities for early conservation, permit streamlining, and certain cost savings; and

Whereas, on September 27, 2013, the SANDAG Board of Directors approved the release of the *TransNet* EMP Land Acquisition Grant Program Call for Projects, in conformance with the *TransNet* EMP Memorandum of Agreement signed on March 19, 2008, and amended on April 26, 2014, by SANDAG, Caltrans, the United States Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (DFW) (collectively, "Wildlife Agencies"); and

Whereas, the purposes of the acquisition of the Property and Conservation Easement Deed for the Property are to (1) further implement the Department of Fish and Wildlife's (DFW) Natural Community Conservation Planning Program (NCCPP) efforts in San Diego County; (2) enhance a regional wildlife corridor and linkage interface between larger habitat areas; (3) protect a Multiple Species Conservation Program (MSCP) regionally significant habitat wildlife movement linkage and corridor complex; (See EXHIBIT A, "Subarea Plan Map"); and

Whereas, on **Month Day, Year**, **Name of Property Owner** ("Property Owner") willingly sold its underlying fee title to the **Name of Property** ("Property" or the "**Name of Property**"), which consists of **Number acres**, as more specifically described in EXHIBIT A, which is attached hereto and incorporated herein by this reference, to **Name of Grantee**; and

Whereas, the Property, identified as Assessor's Parcel Number # is located along **Street**, and **Directional cross-street** in the community of **Name of community** in the unincorporated or incorporated San Diego County. **Description of number of residences and location in relation to the Property. Description of any bodies of water** on Property, into **Name of reservoir and/or watershed** (See Exhibit B, "Property Location Map") which is attached hereto and incorporated herein by this reference); and

Whereas, the Property is located within the **Name of segment** of the County of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan and within the **Name of Habitat Linkage**; and

Whereas, on **Month Day, Year**, **Name of Grantee** obtained written Commitment letter from the Property owner that the Property owner is a willing seller; and

Whereas the **Name of Grantee** will grant to SANDAG a "Conservation Easement Deed"

over the Property, which covers the entirety of Property, as described in Exhibit A, in exchange for **Dollar amount** acquisition cost and (if applicable) management cost; and

Whereas, on **Month Day, Year**, the SANDAG Board of Directors, in reliance upon the Property Owner's **Month Day, Year** Commitment letter, authorized SANDAG to provide **Name of Grantee Dollar amount** for acquisition cost and (if applicable) management cost of the Property under the *TransNet* EMP; and

Whereas, in exchange for SANDAG's contribution of **Dollar amount** for the Conservation Easement Deed, and immediately following recordation of the grant deed transferring fee title to the Property to **Name of Grantee, Name of Grantee** will grant a Conservation Easement over the Property to SANDAG; and

Name of Grantee assumes responsibility for confirming whether the Wildlife Agencies, or any other federal, state or local entity must approve **Name of Grantee's** transfer of the underlying fee title to the Property serving the Conservation Easement Deed (i.e. of the) and obtaining such approvals if necessary; and

Whereas, SANDAG intends to enter into this Agreement with **Name of Grantee** for management of Property consistent with the terms outlined herein, and as further outlined in the Conservation Easement Deed as acquisition of habitat conservation/open space to promote the success of the NCCPP, recorded in SANDAG's favor on approximately **Month Day, Year**.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, the Parties hereby agree as follows:

AGREEMENT

1. Management of Land: **Name of Grantee** agrees to manage Property consistent with the terms and conditions of this Agreement, and the Conservation Easement Deed so that the Property's Conservation Values (as defined in the Conservation Easement Deed), including its Conservation Value to SANDAG are maintained and protected. The Conservation Easement Deed recorded on this property requires that **Name of Grantee**, or its contractor or agent, manage the **Number of acres** parcel on behalf of SANDAG. Consistent with the terms of this Agreement, **Name of Grantee**, its contractor or agent, will manage the land to assure that the site retains its Conservation Values in perpetuity.

2. One-Time Costs. (IF APPLICABLE) At the close of escrow for the Property acquisition, on or about **Month Day, Year**, SANDAG will deposit **Dollar amount** in an interest-bearing account to be held, maintained and operated by **Name of Grantee** to cover one-time management costs. Initial one-time management costs include activities such as site protection, removing debris and invasive vegetation.

3. Ongoing Cost. (IF APPLICABLE) At the close of escrow for the Property acquisition, on or about **Month Day, Year**, SANDAG will deposit **Dollar amount** in an interest-bearing

account to be held, maintained and operated by **Name of Grantee** to cover ongoing management costs. Ongoing management costs include activities such as annual stewardship and biological management will be the responsibility of the **Name of Grantee**.

4. Unforeseen Changes in Costs. The Parties recognize that natural events may require additional management due to foreseen and unforeseen events. The Parties reserve the right to negotiate additional management costs necessary to maintain the habitat Conservation Value of the property due to unforeseen events above and beyond the control of **Name of Grantee**.

5. Term. This Agreement shall become effective as of the date first written above and will continue in full force and effect for an initial term of **Number** years. The Parties, or their successors, agree to review the terms and conditions of this Agreement at least every two years during the initial **Number** year term to insure **Name of Grantee** is managing the property adequately to maintain biological Conservation Value of the Property.

Unless notice of intent to terminate is given within twelve (12) months of the end of the term, an additional twelve (12) month term shall be automatically added to this Agreement. Such automatic renewal shall continue indefinitely until notice of intent to terminate is given. Such notice of termination shall provide at least twelve (12) months notice before the termination is effective. If this Agreement is extended beyond the initial **Number** year term, the Parties, or their successors, agree to review the terms and conditions of this Agreement at least every five years, beginning in the year **Year**.

7. Modification. This Agreement may not be modified unless the Parties agree to its written modification.

8. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.

9. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to **Name of Grantee** or SANDAG.

10. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated above. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.

11. Performance Audit. The **Name of Grantee** agrees to cooperate with SANDAG or the Independent Taxpayer Oversight Committee with regard to any performance audit that is performed pursuant to the *TransNet* Ordinance on the Project.

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date written above.

SAN DIEGO ASSOCIATION
OF GOVERNMENTS

NAME OF GRANTEE

GARY L. GALLEGOS
Executive Director or designee

NAME
Title

Approved as to Form:

Office of General Counsel

Exhibit A
MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) SUBAREA PLAN MAP

Exhibit B
PROPERTY LOCATION MAP

Exhibit C
NAME OF GRANTEE RESOLUTION

SAMPLE

Exhibit D
SANDAG BOARD POLICY NO. 035

SAMPLE



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.