



## **SAN DIEGO ASSOCIATION OF GOVERNMENTS STANDARD TERMS AND CONDITIONS FOR SERVICE BUREAU PRODUCTS AND SERVICES**

### **1. DEFINITION OF PARTIES**

Parties of the Agreement refer to San Diego Association of Governments (SANDAG), acting through its Service Bureau division, (hereinafter referred to collectively as "Service Bureau") and the requestor of the product or service (hereinafter referred to as "Project Owner").

### **2. TIME OF PERFORMANCE**

Service Bureau acknowledges that timely performance is an important element of this Agreement. Accordingly, the Service Bureau shall put forth professional and good faith efforts to complete its services in accordance with the agreed-upon schedule. Project Owner understands that the Service Bureau has multiple clients and projects with various project schedules. In the event the Service Bureau encounters difficulty in meeting a deadline or anticipates difficulty in complying with a task schedule, the Service Bureau shall immediately notify the Project Owner.

Specific to transportation modeling services, the Parties agree that some activities involve the review, comment, and submittal of land use inputs by the Project Owner and that the overall project schedules are dependent on receiving inputs in a timely fashion. Failure of Project Owner staff to meet critical deadlines could adversely affect an entire project's schedule. Therefore, Project Owner will be responsible for ensuring that the Project Owner provides data, comments, and feedback to the Service Bureau in accordance with the proposed schedule. The Parties understand that at times, substantial coordination may be needed with selected staffs from other agencies or selected engineering or transportation consultants working under separate agreement with the Project Owner who may be reviewing data, or providing inputs and comments, and/or direction to Project Owner. Therefore, the Project Owner will be responsible for ensuring that such staffs or consultants provide data, comments and feedback, and/or direction in accordance with proposed schedule.

### **3. SANDAG BOARD POLICY NO. 012: SANDAG SERVICE BUREAU**

All work will be performed subject to the provisions in SANDAG Board Policy No. 012: SANDAG Service Bureau and other relevant SANDAG Board Policies.

### **4. TRAVEL DEMAND MODEL DISCLOSURE**

The disclosures are intended to help users understand the limitations of the Travel Demand Model. It is the responsibility of the users to independently evaluate the content and usefulness of the information, given the limitations stated below.

#### 4.1 Series 12 Transportation Model Disclosure

The Series 12 Travel Demand Model is based on a four-step model platform. It has a base year of 2008 and a horizon year of 2050. It was developed using travel behavior information from the 1996 San Diego Household Travel Behavior Survey, data from the 2000 U.S. Census, and traffic and transit observations from the mid-2000s. Future year transportation scenarios in the Series 12 Travel Demand Model are derived from policy and investment decisions made by the SANDAG Board of Directors in the 2050 Regional Transportation Plan (2050 RTP) adopted in 2011. The 2050 RTP and Series 12 Travel Demand Model were superseded by San Diego Forward: The Regional Plan and the Series 13 Transportation Demand Model in 2015.

While care was taken to ensure the information in the Series 12 Travel Demand Model was accurate and current, the science and knowledge upon which they are based are dynamic, and the data upon which they relied have continued to evolve. The Series 12 Travel Demand Model was developed in 2008 and does not reflect the impact of the Great Recession, which resulted in slower than anticipated population growth rates. In addition, due to errors discovered in early 2017 in the household income inputs into the Series 12 Travel Demand Model, data regarding future household incomes likely are overestimated.

For these and other reasons, there is no guarantee the information provided in the travel model and forecast is correct, complete, and/or up-to-date with conditions in the region, or the current state of scientific opinion or analysis, or as to its acceptability by any third party.

#### 4.2 Series 13 Transportation Model Disclosure

The SANDAG Series 13 Travel Demand Model is based on an activity-based model platform. It has a base year of 2012 and a horizon year of 2050. It was developed using travel behavior information from the 2006 San Diego Household Travel Behavior Survey, data from the American Community Survey, U.S. Census Bureau, and the most current traffic and transit observations available through 2014.

Many of the Series 13 Travel Demand Model inputs such as population, households, jobs, and income are derived from the Series 13 Regional Growth Forecast. Future year transportation scenarios in the Series 13 Travel Demand Model are derived from policy and investment decisions made by the SANDAG Board of Directors in San Diego Forward: The Regional Plan. SANDAG does not endorse policies or investment scenarios that deviate from the San Diego Forward: The Regional Plan.

While care is taken to ensure the information in the Series 13 Travel Demand Model and growth forecast is accurate and current, the science and knowledge upon which they are based are dynamic, and the data upon which they rely continually evolve. Therefore, there is no guarantee given by SANDAG that the information provided by the transportation model and growth forecast is correct, complete, and/or up-to-date with conditions in the region, or the current state of scientific opinion or analysis, or as to its acceptability by any third party.

Project Owner understands that the SANDAG travel model is a regional model. Caution should be taken when using the model for subregional analysis.

## **5. TRANSPORTATION MODEL OUTPUTS**

5.1 Service Bureau will not be responsible for any changes made to Service Bureau work product nor its uses after delivery of product to Project Owner. Should the Project Owner modify modeling output delivered by Service Bureau in any manner, the Project Owner assumes full responsibility for all resulting analyses and outputs, and releases SANDAG from any responsibility or liability therefore.

5.2 Project Owner acknowledges that Service Bureau has made no guarantees concerning whether the model outputs and related data results will be of assistance to Project Owner. Project Owner agrees to pay Service Bureau the amount stated in the Agreement for the work products Service Bureau provides whether or not the work product is likely to result in an outcome that is advantageous to Project Owner.

## **6. INDEPENDENT CONTRACTOR**

It is agreed that Service Bureau is an independent contractor and is not an agent or employee of Project Owner.

## **7. OWNERSHIP OF WORK PRODUCT**

All documents and other information developed or received by Service Bureau in conjunction with this Agreement shall be the property of Project Owner. Service Bureau shall provide Project Owner with all original work products arising from this Agreement upon demand or upon termination of this Agreement and payment by Project Owner. Project owner acknowledges that SANDAG is a public agency, and as such all records including but not limited to communications, documents, drawings, plans, specifications, and other materials in SANDAG's possession, including materials submitted by Project Owner, are subject to the provisions of the California Public Records Act (Government Code Section 6250 et seq.). Any reports, information, data, etc., given to SANDAG under this Agreement that the Project Owner has marked as confidential or for deliverables prepared or assembled by Service Bureau that Project Owner instructs Service Bureau to mark as confidential, will not be disclosed to the public without Project Owner's prior written permission or a court order. Upon request by Service Bureau and written approval by Project Owner, Service Bureau shall have the right to use such work product for other projects.

## **8. ADMINISTRATION**

Service Bureau will assign a Project Manager to each project to provide supervision and have overall responsibility for this Agreement. The Project Manager shall not be removed from the project or reassigned without prior approval of Project Owner.

## **9. INDEMNIFICATION**

- 9.1 Service Bureau and Project Owner agree to hold each other and their respective elective and appointive boards, officers, agents, and employees harmless from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, and any and all other forms of injury whether physical, economic, or reputation-based, arising out of or in any way connected with their respective comparative fault under the Agreement.
- 9.2 To the fullest extent permitted by law, Service Bureau excludes and disclaims liability for any losses or expenses of whatever nature and no matter how they arise, including without limitation, direct, indirect, general, special, exemplary, punitive, incidental or consequential, loss of revenue or profits, loss of or damage to property, claims of third parties, or losses of any kind or character, even if Service Bureau was advised of the possibility of such damages or losses, arising out of or in connection with the services or work products provided under the Agreement.
- 9.3 Service Bureau cannot guarantee the success of Project Owner's project or the results of Service Bureau's model outputs, nor provide any warranties or indemnities in relation thereto. Service Bureau shall not be responsible for any claims or liability arising out of the accuracy of the data provided by Project Owner. Service Bureau makes no warranties, express or implied, statutory or otherwise, including but not limited to warranties of merchantability, fitness for use, or usefulness of Service Bureau work products. If notwithstanding the provisions of this Agreement, a determination is made that liability lies in whole or in part with Service Bureau pursuant to the Agreement, the aggregate limit on Service Bureau's liability shall be the amount of payment to which Service Bureau is entitled from Project Owner under the Agreement.

## **10. TERMINATION**

The parties may at any time terminate this Agreement for any reason, or no reason, by giving fifteen (15) calendar days written notice of termination. Upon termination, the Service Bureau will be paid the reasonable value for services actually performed, based upon the compensation and payment provisions set forth in the Agreement.

## **11. MODIFICATION**

The Agreement constitutes the entire Agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by the parties.

## **12. LAW AND VENUE**

This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the San Diego County Superior Court. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the court.

### **13. INTERPRETATION**

This Agreement shall be interpreted as though prepared by both parties. Article headings in this Agreement shall not be used to alter the plain meaning of the text in this Agreement.

### **14. AUTHORITY TO EXECUTE**

The persons executing the Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

### **15. FEDERAL, STATE, AND LOCAL LAWS**

Service Bureau and Project Owner warrant that in the performance of this Agreement they shall comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder.

### **16. DISPUTES**

In the event Project Owner has a dispute with Service Bureau during the performance of this Agreement, Service Bureau shall continue to perform, unless Project Owner informs the Service Bureau Project Manager in writing to cease performance. Project Owner shall submit a statement of the grounds for the dispute including all pertinent dates, names of persons involved, and supporting documentation to the Service Bureau Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Project Owner within twenty (20) days. Upon receipt of an adverse decision by SANDAG, Project Owner may submit a request for reconsideration to the SANDAG Executive Director. The request for reconsideration must be received within ten (10) days from the postmark date of the SANDAG reply. The Executive Director will respond to the request for reconsideration within ten (10) working days. The decision of the Executive Director will be final and in writing. If Project Owner is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Project Owner shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within thirty (30) calendar days. If SANDAG agrees mediation is appropriate, a mutually acceptable mediator shall be selected by the parties and the parties will proceed to mediation of the dispute. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

### **17. INSURANCE**

Service Bureau shall procure and maintain for the duration of the Agreement, sufficient insurance against claims for injuries to persons, or damages to property, which may arise from or in connection with the performance of the work hereunder by Service Bureau, its agents, representatives, or employees.

## **18. CONFORMITY TO LEGAL REQUIREMENTS**

Service Bureau shall comply with all federal, state, and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and payment in accordance with California Labor Code Section 1775 when applicable. Service Bureau shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local. Service Bureau shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are included in this Agreement. Service Bureau represents and warrants to Project Owner that it has all necessary licenses, permits, qualifications, and approvals, of whatever nature, that are legally required for Service Bureau to carry out the work under the Agreement.

Updated 5/4/2018