

COOPERATIVE FUNDING AGREEMENT
BETWEEN
CITY OF REDLANDS
AND
CITY OF SAN BERNARDINO
FOR THE
MOUNTAIN VIEW AVENUE STREET REHABILITATION PROJECT

This Cooperative Funding Agreement ("Agreement") for the Mountain View Avenue Street Rehabilitation Project ("Project") is entered into this 17th day of March 2020 ("Effective Date") by and between the City of Redlands, a general law city ("Redlands"), and the City of San Bernardino, a charter city and municipal corporation organized and operating under the laws of the State of California ("San Bernardino"). Redlands and San Bernardino are sometimes individually hereafter referred to herein as "Party" and, together, as the "Parties."

RECITALS

WHEREAS, the Project is in a portion of Redlands' jurisdiction and in a portion of San Bernardino's jurisdiction, and will be of mutual benefit to Redlands and San Bernardino; and

WHEREAS, the Project is described in Exhibit "A," which is attached hereto and incorporated herein by this reference; and

WHEREAS, the location of the Project is shown in Exhibit "B," which is attached hereto and incorporated herein by this reference; and

WHEREAS, California Streets and Highways Code sections 1685 and 1803 authorize Redlands to contract with San Bernardino for the maintenance, construction, or repair of Redlands streets and roads, if the City Council of Redlands determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads; and

WHEREAS, the legislative body of Redlands determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads to contract with San Bernardino for the Project; and

WHEREAS, it is anticipated that Redlands' share of Project costs will be financed through its local funds and San Bernardino's share of Project costs will be from San Bernardino's General Fund; and

WHEREAS, the total Project cost is estimated to be One Hundred Sixty Nine Thousand Six Hundred One Dollars Thirty Cents (\$169,601.30); and

WHEREAS, Redlands' share of the Project cost is estimated at Eighty Four Thousand Eight Hundred Dollars Sixty Five Cents (\$84,800.65) and San Bernardino's share of the Project cost is estimated to be Eighty Four Thousand Eight Hundred Dollars Sixty Five Cents

(\$84,800.65), as more particularly set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference; and

WHEREAS, the above-described costs are proportioned based on the work to be performed in each Party's jurisdiction;

NOW THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained, the Parties agree as follows:

TERMS

1. RESPONSIBILITIES OF REDLANDS

1.1 Lead Agency. Redlands shall act as the Lead Agency for the Project pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 et seq.), and shall be responsible for coordination of utility relocation work, construction, construction engineering, and inspection for the Project.

1.2 Review of Plans. Redlands shall provide approved plans and specifications for the Project to San Bernardino in order to obtain an encroachment permit from San Bernardino.

1.3 Construction. Redlands shall construct the Project by contract in accordance with the plans and specifications of Redlands.

1.4 Utility Relocation. Redlands shall arrange for relocation of all utilities, which interfere with construction of the Project within the entire Project limits, subject to Section 3.5 below.

1.5 Encroachment Permit. Redlands shall obtain a no-cost permit from San Bernardino for work performed within San Bernardino's right-of-way.

1.6 Contract Award and Administration. Redlands shall advertise, award, and administer the construction of the Project, in accordance with the provisions of the California Public Contract Code applicable to cities. All Redlands' contractors shall maintain and to comply throughout the contract term of any contract awarded by Redlands with the insurance requirements described in the specifications. Redlands shall conduct adequate inspection of all items of work performed under the construction contract with Redlands' contractors or subcontractors for the Project and maintain adequate records of inspection and materials testing for review by San Bernardino. Redlands shall provide copies of any records of inspection and materials testing to San Bernardino within ten (10) days of Redlands receipt of a written demand from San Bernardino for such records. This shall be included as a Project cost.

1.7 Invoices. After bid opening and prior to award of the construction contract, Redlands shall submit to San Bernardino an invoice for the estimated San Bernardino share of Project construction costs based on the Redlands/San Bernardino percentage share determined from the bid result.

1.8 Itemized Final Invoice. Upon Project completion, Redlands shall calculate actual Redlands/San Bernardino Project share percentages based on the final contract work and cost, which shall include any changes made within Redlands and/or San Bernardino as provided in this Agreement. Upon Project completion and the capture of all Project expenses, Redlands shall submit to San Bernardino an itemized accounting of actual Project costs incurred by Redlands and, if said costs exceed the amount paid by San Bernardino pursuant to Section 1.7 and Section 2.3, an invoice for the remainder of San Bernardino's share of the actual Project costs, up to the amount set forth in Section 2.3 hereof, as provided herein. Said invoice shall set forth all actual Project costs incurred by Redlands, together with adequate documentation of said expenditures and a copy of the overall Redlands/San Bernardino percentage share calculation spreadsheet. If the actual Project costs incurred by Redlands are less than the amount paid by San Bernardino pursuant to Section 1.7 and Section 2.3, then Redlands shall refund San Bernardino the difference within thirty (30) days after issuance of the itemized accounting.

2. RESPONSIBILITIES OF SAN BERNARDINO

2.1 Review of Plans. San Bernardino shall review the plans and specifications of the Project before issuing the encroachment permit.

2.2 Encroachment Permit. San Bernardino shall provide a no-cost permit to Redlands for its work in San Bernardino's right-of-way.

2.3 Invoice Payment. Within thirty (30) days after receipt of the invoice from Redlands pursuant to Section 1.9 above, San Bernardino shall pay to Redlands the invoiced amount. Within thirty (30) days after receipt of the itemized accounting and invoice from the Redlands pursuant to Section 1.10 above, San Bernardino shall pay to Redlands the remainder of its share of the actual Project costs based on the Redlands percentage calculated pursuant to Section 1.10. The Project costs shall include the cost of Project design, CEQA compliance, utility relocation work, construction, construction engineering, inspection and Redlands overhead costs. San Bernardino's share of Project costs is currently estimated to be Eighty Four Thousand Eight Hundred Dollars Sixty-Five Cents (\$84,800.65) and shall not exceed One Hundred Six Thousand Dollars Eighty-One Cents (\$106,000.81) (twenty-five percent (25%) increases over the Project cost estimate) absent a written approval from San Bernardino's designated representative).

3. COORDINATION OF THE PROJECT

3.1 Responsibilities after Completion. Except for activities that are impossible to perform during the construction phase of Project, before, during, and after Redlands and San Bernardino's acceptance of completed Project, San Bernardino shall be responsible for performing any and all work (including, but not limited to, maintenance) for the San Bernardino maintained highways in the Project limits that are within San Bernardino's unincorporated area and Redlands shall be responsible for performing any and all work (including, but not limited to, maintenance) for City streets in the Project limits that are in Redlands incorporated area.

3.2 Insurance. San Bernardino and Redlands are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrant that through their respective programs of self-insurance they have

adequate coverage or resources to protect against liabilities arising out of San Bernardino's and Redlands' performance of the terms, conditions, or obligations of this Agreement.

3.3 Increased Costs. The Parties acknowledge that actual Project costs may ultimately exceed current estimates of Project costs. Any additional Project costs (including, but not limited to, additional Project costs caused by an increase in engineering cost, higher bid prices, change orders, or arising from unforeseen site conditions, including utility relocation (but not from requested additional work by San Bernardino or Redlands, which is addressed in Section 3.4 below) over the estimated total of the Project's cost of One Hundred Sixty Nine Thousand Six Hundred One Dollars Thirty Cents (\$169,601.30) (which is the sum of Eighty Four Thousand Eight Hundred Sixty Five Cents (\$84,800.65) from San Bernardino and Eighty Four Thousand Eight Hundred Sixty Five Cents (\$84,800.65) from Redlands) shall be borne by each Party based upon where the work is required (i.e. whether the work is required in San Bernardino's or Redlands' jurisdiction) up to the amounts set forth in Section 1.10 and Section 2.3, respectively.

3.4 Additional Work. If either San Bernardino or Redlands requests additional work that is beyond the scope of the original Project, and not considered a necessary part of the Project by both Parties, said work, if approved by both Parties pursuant to Section 6.1 will be paid solely by the Party requesting the work.

3.5 Utilities. In the case wherein one of the Parties owns a utility that needs to be relocated for the Project and that Party does not have prior rights for that utility, it will be the sole responsibility of that Party to relocate the utility at that Party's cost. This responsibility for utility relocation cost shall not be included as a Project cost. In the case that a utility relocation is determined to be a Project cost based on that utility having prior rights, the relocation of the utility will be included as a Project cost for which San Bernardino and Redlands will be responsible for funding for work located within their respective boundaries.

3.6 Cost Overruns. As design progresses, if it is found by Redlands that a cost overrun of twenty five percent (25%) or more of the estimated total of the Project costs will occur, Redlands shall provide San Bernardino written notice of this fact and San Bernardino and Redlands shall endeavor to agree upon an alternative course of action, including amending the cost estimates. If, after thirty (30) days of the date of Redlands notice an alternative course of action is not mutually agreed upon in writing between the Parties, this Agreement shall be deemed to be terminated by mutual consent.

3.7 Bid Notification. Redlands shall notify San Bernardino of the bids received and the amounts thereof. In the event that either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party in writing, at a reasonable time of at least five (5) days prior to the awarding of a contract to construct the Project, to avoid any detrimental reliance by either Party, contractor, or potential contractor.

A. If after opening bids for the Project, it is found that the responsive and responsible low bid amount is twenty five percent (25%) or less over the construction cost shown in Exhibit "C," which is attached hereto and incorporated herein by this reference, Redlands may award the contract.

B. If, upon opening of bids, it is found that the responsive and responsible low bid amount is twenty five percent (25%), or more, than the construction cost shown in Exhibit "C," or the Amended Exhibit "C," pursuant to Section 3.6 of this Agreement, Redlands shall not award the contract unless: 1) Redlands receives written permission from San Bernardino's City Engineer or designee, to proceed with the award; and 2) Redlands' City Council approves the award of the construction contract. If the above described conditions are not met, the Parties shall endeavor to agree upon an alternative course of action, including re-bidding of the Project. If, after thirty (30) days of the bid opening, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

3.8 Termination. This Agreement may be cancelled upon thirty (30) days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after Redlands awards a contract to construct the Project. In the event of cancellation as provided herein, including termination pursuant to Sections 3.6, 3.7, and 3.7 Sub-section B above, all Project expenses occurred prior to the effective date of cancellation/termination shall be paid by the Parties in the same proportion to their contribution for the Project. The Parties recognize and agree that the provisions governing utility relocation and construction are dependent upon the Parties first satisfying CEQA. As provided in this section, this Agreement may be cancelled with or without cause, before, during, and after CEQA review/approval.

3.9 Survival of Provision. Except as provided in Section 3.8, and except for the Parties' operation, maintenance, and indemnification obligations contained herein which shall survive termination, this Agreement shall terminate upon completion of the Project and payment of final billing by Redlands for its share of the Project costs or refund by San Bernardino pursuant to Section 1.10.

4. INDEMNIFICATION

4.1 Indemnification by San Bernardino. San Bernardino shall indemnify, defend and hold harmless Redlands and its elected and appointed officials, officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from San Bernardino's negligent acts or omissions, or willful misconduct, which arise from San Bernardino's performance of its obligations under this Agreement.

4.2 Indemnification by Redlands. Redlands shall indemnify, defend and hold harmless San Bernardino and its elected and appointed officials, officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability resulting from Redlands' negligent acts or omissions, or willful misconduct, which arise from Redlands' performance of its obligations under this Agreement.

4.3 Comparative Fault. In the event either Party is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, the Parties shall indemnify the other to the extent of its comparative fault.

5. ENFORCEMENT OF AGREEMENT

5.1 Governing Law. This Agreement shall be governed by the laws of the State of California. Any action or proceeding between the Parties concerning the interpretation or

enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the Project, shall be instituted and tried in the appropriate state court, located in the county of San Bernardino, California.

5.2 Attorneys' Fees. In the event any action is commenced to enforce or interpret this Agreement, the prevailing Party in any such action shall be entitled to its costs and reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

5.3 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

6. MISCELLANEOUS PROVISIONS

6.1 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements regarding the same. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

6.2 Time of the Essence. Time is of the essence for each and every provision of this Agreement.

6.3 Interpretation. Because the Parties have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed Redlands work days. The captions of the various articles and sections are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

6.4 Severability. If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this Agreement is frustrated.

6.5 Incorporation. The Recitals are incorporated into the body of this Agreement.

6.6 Authority. The persons executing this Agreement on behalf of each of the Parties represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

6.7 Notice. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the

appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

To Redlands:

City Clerk
City of Redlands
35 Cajon Street
P.O. Box 3005 (Mailing)
Redlands, CA 92373
Email: jdonaldson@cityofredlands.org
Phone: (909) 798-7531

To San Bernardino:

City of San Bernardino
Attention: City Manager
290 North D Street
San Bernardino, CA 92401
Email: Ledoux_Te@sbcity.org
Phone: (909) 384-5122

6.8 Laws and Regulations. The Parties shall keep themselves fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the Parties' performance of this Agreement. A Party shall not be liable for the other Party's violation of any laws or regulations in connection with this Agreement. If a Party identifies any conflict or possible conflict between its obligations hereunder and applicable laws, rules and regulations, that Party shall provide immediate written notice to the other Party.

6.9 Assignment. This Agreement is not assignable by either Party, in whole or in part, without the consent of the other Party in the form of a formal written amendment. Any assignment or attempted assignment without such consent may, in the sole discretion of the non-assigning Party, result in the immediate termination of this Agreement.

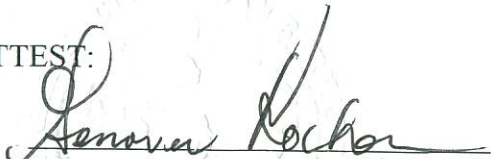
6.10 Independent Contractor. The Parties agree and intend that each Party be deemed an independent entity, and do not create by this Agreement any partnership, joint venture, or similar business arrangement, relationship, or association between them, except as may be agreed to expressly by this Agreement. Each Party shall perform their services hereunder in an independent capacity and not as an employee or agent of the other Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the date first written above.

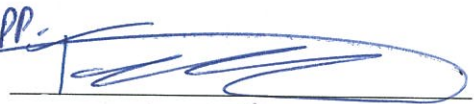
CITY OF SAN BERNARDINO

By: 
Teri Ledoux, City Manager

ATTEST:


By: Genoveva Rocha, CMC,
Acting City Clerk

APPROVED AS TO FORM:

By: 
for Sonia Carvelho, City Attorney

CITY OF REDLANDS

By: 
Paul W. Foster, Mayor

ATTEST:


By: Jeanne Donaldson, City Clerk

APPROVED AS TO FORM:

By: 
Daniel J. McHugh, City Attorney

EXHIBIT A

PROJECT DESCRIPTION

The scope of work shall consist of resurfacing of the street. Resurfacing method includes pulverization of top 9-inch existing pavement in place and place 3-inch asphalt concrete. Asphalt overlay will be the conventional asphalt. All necessary striping will be replaced. The scope of work also includes but not limited to protecting in place all existing utilities, trees, and public and private improvements; pavement striping and restriping; replacing destroyed survey monuments; disposing of excess soil and rock material and restoring all areas and improvements to pre-construction conditions.

EXHIBIT B

LOCATION MAP

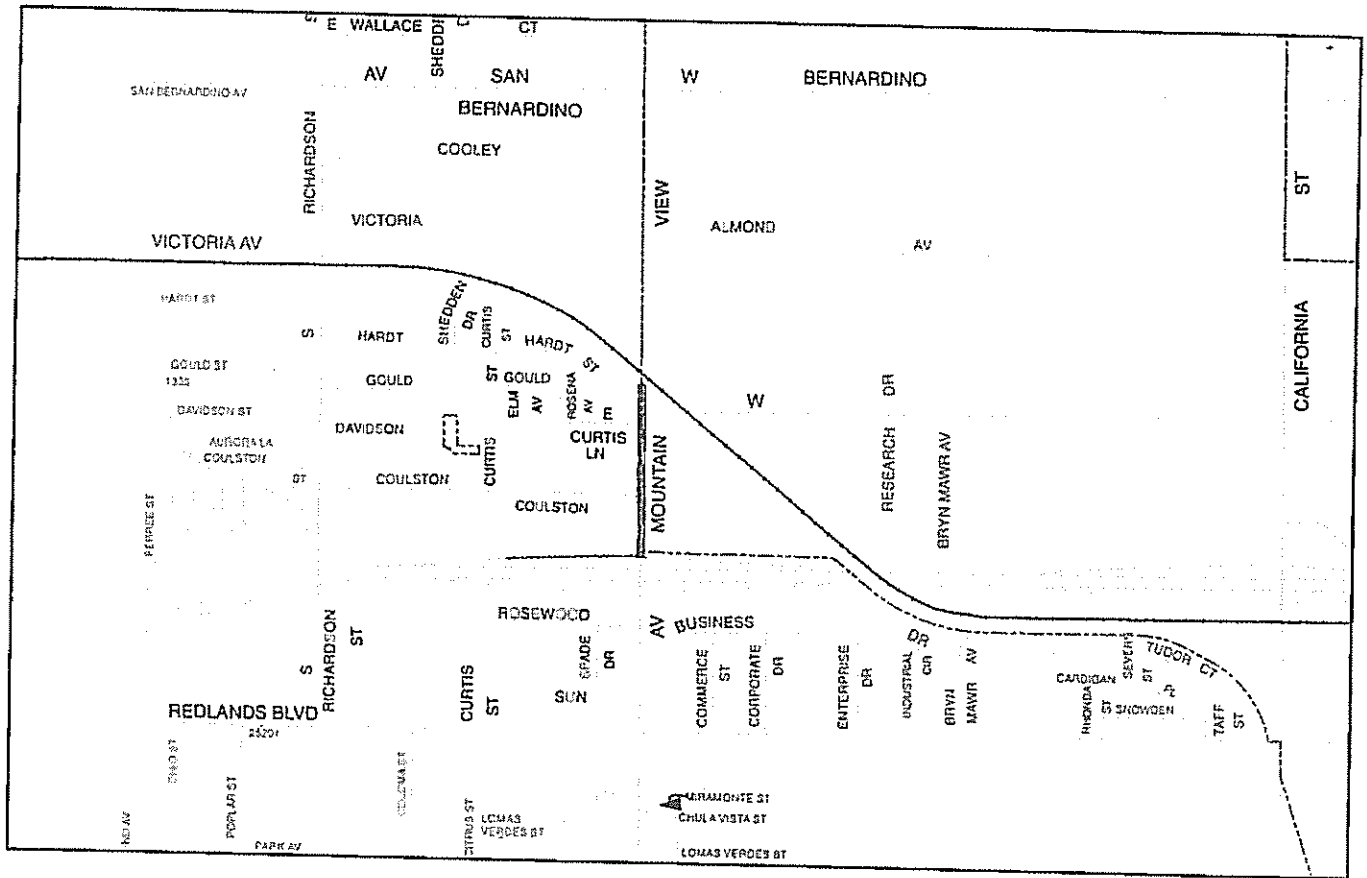


EXHIBIT C

ESTIMATE OF PROJECT COSTS
FOR CITY OF SAN BERNARDINO/CITY OF REDLANDS
MOUNTAIN VIEW AVENUE REHABILITATION PROJECT

DESCRIPTION	AMOUNT	CITY OF REDLANDS SHARE	CITY OF SAN BERNARDINO SHARE
Construction	\$154,183.00	\$77,091.50	\$77,091.50
All Other Costs such as design, survey, CEQA compliance, construction engineering, inspection and City overhead	\$15,418.30	\$7,709.15	\$7,709.15
TOTAL	\$169,601.30	\$84,800.65	\$84,800.65