

COOPERATIVE AGREEMENT NO. C14058

BETWEEN

**SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as the SAN
BERNARDINO COUNTY TRANSPORTATION COMMISSION**

AND

CITY OF REDLANDS

FOR

**PREPARATION OF PRELIMINARY ENGINEERING AND ENVIRONMENTAL
DOCUMENT; PLANS, SPECIFICATIONS, AND ESTIMATE; AND CONSTRUCTION
FOR THE REDLANDS BOULEVARD AT ALABAMA STREET AND COLTON
AVENUE AT REDLANDS BOULEVARD INTERSECTION IMPROVEMENTS IN THE
CITY OF REDLANDS**

THIS COOPERATIVE AGREEMENT is made and entered into this 6th day of November, 2013, by and between the San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission (hereinafter referred to as "SANBAG") and the City of Redlands (hereinafter referred to as "CITY"), (SANBAG and CITY are each a "Party" and collectively "Parties").

WITNESSETH

WHEREAS, the Parties wish to enter into this Cooperative Agreement (hereinafter referred to as "AGREEMENT") for the preparation of Project Approval and Environmental Documents (hereinafter referred to as "PA&ED"); Plans, Specifications, and Estimate, (hereinafter referred to as "PS&E"); and construction of the REDLANDS BOULEVARD at ALABAMA STREET and COLTON AVENUE at REDLANDS BOULEVARD INTERSECTION IMPROVEMENTS PROJECT in the City of Redlands (hereinafter referred to as the "PROJECT"); and

WHEREAS, this Agreement is intended to delineate roles, responsibilities, and funding commitments relative to the preparation of the PA&ED, PS&E, and construction for the PROJECT; and

WHEREAS, the PROJECT will involve constructing roadway improvements that will correct a 22 foot offset at Redlands Boulevard at Alabama Street and modify the existing configuration at Redlands Boulevard and Colton Avenue by realigning and signaling the intersection and widening the two roads; and

WHEREAS, said improvements are being completed to improve the vehicular traffic Level Of Service ("LOS") from a LOS F to a LOS C through 2035; and

WHEREAS, the California Public Utilities Commission (CPUC), the governing body of highway-rail grade crossings in the State of California, requires that any modifications to highway-rail grade crossings meet current CPUC requirements; and

WHEREAS, construction of the roadway improvements will require modifications to SANBAG's existing rail crossings across Alabama Street and Colton Avenue in order to comply with the CPUC requirements, and SANBAG is planning to construct the Redlands Passenger Rail Project at a future date, which would require additional modifications to the rail crossings and relocation of the track within the existing rail right of way (the "RAIL IMPROVEMENTS") and wishes to perform such work in conjunction with the PROJECT to minimize costs over the long run; and WHEREAS, SANBAG's California Environmental Quality Act ("CEQA") document to complete the Redlands Passenger Rail Project assumes the PROJECT improvements will be completed; and

WHEREAS, SANBAG and CITY desire to cooperate in the PROJECT.

NOW, THEREFORE, the Parties agree to the following:

SECTION I

CITY AGREES:

1. For purpose of compliance with CEQA requirements, to be the lead agency for the PROJECT. In addition, City will amend its current CEQA documentation to provide adequate CEQA review and approval of the RAIL IMPROVEMENTS.
2. To be responsible for acquisition of any right-of-way needed to accomplish the PROJECT, including any rail facilities necessary to the PROJECT to meet all regulatory requirements for highway-rail grade crossings.
3. To perform and complete the design work for the roadway improvements; to demolish and remove the existing railroad tracks, street crossing panels, and safety warning and signaling devices within the street right-of-way at each of the highway-rail grade crossings to SANBAG's specifications and satisfaction and in coordination with SANBAG and SANBAG'S consultants, contractors and authorized rail operators; to construct the roadway improvements and to coordinate with SANBAG for SANBAG'S demolition and removal of tracks and other facilities and installation of the RAIL IMPROVEMENTS, including permitting necessary street closures and other accommodations reasonably necessary to accomplish the RAIL IMPROVEMENTS.
4. To act as the PROJECT Manager including the selection and retention of consultants, construction managers and contractors to perform the work associated with roadway

improvements on the PROJECT and to include SANBAG in the consultant selection process. Performance of services under these contracts shall be subject to the technical direction of a Project Manager designated by the CITY, with input and consultation from SANBAG's designated Project Manager.

5. CITY is responsible for obtaining and complying with all relevant regulatory permits and approvals, including a Right of Entry Permit and License Agreement from SANBAG for the construction on SANBAG's right-of-way and a General Order 88-B Authorization from the California Public Utilities Commission.
6. To invite SANBAG to PROJECT meetings, if and when such meetings are held, and related communications on PROJECT progress as well as to provide SANBAG with prompt notice of potential claims and weekly updates regarding expenditures, change orders, and other information regarding the PROJECT which SANBAG may request.
7. CITY shall cooperate and comply with SANBAG's inspections, technical oversight and direction regarding the design and construction of improvements within the railroad right-of-way, including but not limited to track, railroad signal, and drainage improvements.
8. CITY shall submit all PROJECT design work to SANBAG for review and approval prior to final design documents. SANBAG's corrections and comments shall be incorporated into the final design documents.
9. To be responsible for the amount of \$4,838,376 for the PROJECT costs allocated to the City as specified in Attachment A, "Project Funding Table", attached to and made part of this Agreement.
10. The final PROJECT cost may ultimately exceed current estimates of PROJECT cost. Any additional costs for roadway improvements over the estimated total of the PROJECT cost related to non-rail improvements, shall be borne by CITY.
11. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CITY's request for reimbursement by SANBAG for, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements, as listed in Attachment A, and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by CITY.
12. To prepare a final accounting of expenditures, including a final invoice for the actual PROJECT costs. The final accounting and invoice shall be submitted no later than one hundred and twenty (120) calendar days following the completion of work and shall be submitted to SANBAG. The invoice shall include a statement that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities.

13. To cooperate in having a PROJECT-specific audit completed by SANBAG, at its option, upon completion of the PROJECT work. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with this Agreement.
14. To reimburse SANBAG for any costs that are determined by a subsequent audit to have been incorrectly charged to SANBAG. Payment shall be made within ninety (90) calendar days of CITY receiving notice of audit findings, which time shall include an opportunity for CITY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and CITY fails to reimburse monies due SANBAG within ninety (90) calendar days of audit finding, or within such other period as may be agreed between both Parties hereto, SANBAG reserves the right to withhold future payments due CITY for any purpose from any source under SANBAG's control. If CITY elects to have the subsequent audit performed, CITY will pay the cost for said audit.
15. CITY prior to commencing work of the construction phase of the PROJECT, shall provide SANBAG with a proposed project schedule to complete the PROJECT for review and approval by the Parties.
16. To prepare and recommend a public outreach and information plan for construction of the entire Project, which will be funded by City. If SANBAG desires to have additional outreach, SANBAG will fund the additional costs associated with the plan additions.

SECTION II

SANBAG AGREES:

1. To procure and fund a separate consultant and contractor to complete the design and construction of the RAIL IMPROVEMENTS, including those within the street right-of-way areas associated with the PROJECT, and meeting the requirements of the General Order 88-B Authorization from the California Public Utilities Commission, including but not limited to track, railroad signal, and drainage improvements within the railroad right-of-way.

Costs associated with the design and construction of the RAIL IMPROVEMENTS are not captured or discussed within this AGREEMENT. However, costs associated with the demolition and removal of the existing rail facilities to be carried out by CITY are included within the amounts referenced in paragraph II 2 below and Attachment A.

2. To be responsible for contributing the following funding amounts to the PROJECT as detailed in Attachment A:
 - a. 74 percent of the Colton Avenue at Redlands Boulevard intersection roadway design, up to a not-to-exceed amount of \$294,372;

- b. 23 percent of design oversight costs on the PROJECT, up to a not-to-exceed amount of \$29,014;
 - c. 74 percent of the Colton Avenue at Redlands Boulevard intersection roadway construction costs, up to a not-to exceed amount of \$1,700,000;
 - d. Not-to-exceed amount of \$85,000 for the removal of existing railroad appurtenances associated with the Alabama highway-rail at grade crossing;
 - e. 32 percent of the CITY's project management costs, up to a not-to-exceed amount of \$170,000;
 - f. 32 percent of contingency used on the PROJECT, up to a not-to-exceed amount of \$305,338.
3. To pay CITY within 30 days of receipt of CITY's invoice. The final accounting and invoice shall be submitted to SANBAG by CITY no later than one hundred and twenty (120) calendar days following the completion of work. The accounting shall include a certification that all PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities.
 4. To designate a staff member that will be SANBAG's representative in attending PROJECT meetings, receiving day to day communication, and reviewing PROJECT documents.
 5. To reimburse CITY for any costs that are determined by a subsequent audit to have been incorrectly allocated to CITY. CITY shall invoice SANBAG and SANBAG shall pay CITY within ninety (90) calendar days of SANBAG receiving notice of audit findings, which time shall include an opportunity for SANBAG to respond to and/or resolve the finding.

If SANBAG elects to have the subsequent audit performed, SANBAG will pay the cost for said audit.

6. To complete a review and provide comments on PROJECT documents within 30 days of receiving the review request from CITY.

SECTION III

IT IS MUTUALLY AGREED:

1. The scope of the PROJECT, as described in this Agreement and shown in Attachment B "Project Scope", attached to and incorporated into this Agreement, shall include improvements that will correct a 22 foot offset at Redlands Boulevard and Alabama Street and correct the existing configuration at Redlands Boulevard and Colton Avenue by realigning and signalizing the intersection. In addition, the associated highway-rail grade crossings at Alabama Street and Colton Avenue will be enhanced to meet current California Public Utility Commission requirements and to accommodate the future Redlands Passenger Rail Project. Railroad related improvements located within the railroad right-of-way will be funded and completed by SANBAG under separate contracts and are not included in the Attachment A,

“Project Funding Table”. Any work beyond what is necessary for the PROJECT shall be part of an independent separate project agreement between the Parties and the terms and conditions of this cooperative Agreement shall not apply.

2. CITY shall submit all PROJECT design work to SANBAG for review and approval prior to final design documents. SANBAG’s corrections and comments shall be incorporated into the final design documents.
3. All Project work within SANBAG’s right-of-way shall be subject to inspection and approval by SANBAG and CITY shall comply with any instructions for corrections issued by SANBAG.
4. Eligible PROJECT reimbursements shall include only those costs incurred by CITY for PROJECT specific work activities as described in this Agreement and Attachment B, “Project Scope”. Payment for reimbursements shall be made as specified in Section II number 3. In the event CITY determines PROJECT work may exceed the amount identified in Section II, Paragraph 2, CITY shall inform SANBAG of this determination and thereafter the Parties shall work together in an attempt to agree upon an amendment to the PROJECT amounts identified in this Agreement.

SANBAG shall be responsible for making the final decision where additional improvements may be necessary that are located within the railroad right-of-way, and shall be responsible for all costs associated with the additional improvements, and other additional costs associated with the improvements located within the railroad right-of-way.

5. The CITY is the PROJECT roadway operator and maintainer of the existing and proposed roadway improvements and this Agreement does not transfer ownership of roadway improvements to SANBAG nor does it transfer any legal responsibilities or liabilities associated with ownership, operation and maintenance of the existing and future improvements. SANBAG is the railroad owner and operator and maintainer of the existing and proposed railroad right of way and improvements and this Agreement does not transfer ownership of the railroad right of way or improvements nor does it transfer any legal responsibilities or liabilities associated with ownership, operation and maintenance of the railroad right of way or existing or future railroad improvements.
6. Neither SANBAG nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless SANBAG, its officers, directors, employees or agents from all claims, costs (including without limitation, attorney’s fees, court costs, discovery costs and expert witness fees), liabilities, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by

CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

7. Neither CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SANBAG under or in connection with any work, authority or jurisdiction delegated to SANBAG under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, SANBAG shall fully defend, indemnify and save harmless CITY, its officers, directors, employees or agents from all claims, costs (including without limitation, attorney's fees, court costs, discovery costs and expert witness fees), liabilities, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANBAG under or in connection with any work, authority or jurisdiction delegated to SANBAG under this Agreement.
8. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by SANBAG.
9. This Agreement shall not be terminated without written consent of all Parties.
10. Except on subjects preempted by federal law, this Agreement shall be governed and construed in accordance with the laws of the State of California. All Parties agree to follow all local, state, county and federal laws, regulations and ordinances with respect to performance under this Agreement.
11. The Parties agree that each Party and any authorized representative of a Party designated in writing to the other Party, upon reasonable notice, shall have the right during normal business hours to examine all Parties' financial books and records with respect to this Agreement. The Parties agree to retain their books and records for a period of three (3) years from the later of; a) the date on which this Agreement terminates; or b) the date on which such book or record was created. If any clause or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, then it is the intention of the Parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.
12. This Agreement cannot be amended or modified in any way except in writing, signed by all Parties hereto.
13. In the event of litigation arising from this Agreement, each Party to this Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 7 and 8 of this Section.
14. This Agreement may be signed in counterparts, each of which shall constitute an original.

15. Any notice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this Agreement shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier or by facsimile addressed to the relevant party at the address/fax number stated below:

If to CITY: Chris Diggs
Deputy Municipal Utilities and Engineering Director
City of Redlands
Post Office Box 3005
30 Cajon Street, Suite 15A
Redlands, CA 92373
Telephone: (909) 798-7658
Fax: (909) 798-7670

If to SANBAG: Justin Fornelli, PE
Chief of Transit and Rail Programs
San Bernardino Associated Governments
1170 West 3rd Street, 2nd Floor
San Bernardino, CA 92410
Telephone: (909) 884-8276
Fax: (909) 885-4407

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the date first written above and is effective on the date signed by SANBAG.

SIGNATURES ON FOLLOWING PAGE:

**San Bernardino County
Transportation Authority**

By: _____

Bill Jahn, President
SANBAG Board of Directors

Date: _____

APPROVED AS TO FORM:

By: _____

Eileen Monaghan Teichert
General Counsel

By: _____

Jeffery Hill
Contract Administrator

City of Redlands

By: _____

Pete Aguilar, Mayor
City of Redlands

Date: 11/5/2013

ATTEST: _____

Sam Irwin, City Clerk

APPROVED AS TO FORM:

By: _____

Attachment A

PROJECT Funding Table:

Expenses				
	Project Estimate	City	SANBAG	SANBAG Percentage
Design				
Road Design - Colton	\$400,000	\$105,628	\$294,372	74%
Design Oversight	\$125,000	\$95,986	\$29,014	23%
Construction				
Road Construction - Alabama	\$3,080,000	\$2,995,000	\$85,000	3%
Road Construction - Colton	\$2,310,000	\$610,000	\$1,700,000	74%
Construction Total	\$5,390,000	\$3,860,000	\$1,785,000	32%
Project Management	\$539,000	\$369,000	\$170,000	32%
Contingency	\$968,100	\$662,762	\$305,338	32%
TOTAL	\$7,422,100	\$4,838,376	\$2,583,724	35%

Attachment B

PROJECT SCOPE

The Redlands Boulevard at Alabama Street and Colton Avenue project in the City of Redlands consists of street and public utility improvements for approximately 3,500 linear feet of street including medians and two highway-rail grade crossings. The proposed project is located within the East Valley Corridor Specific Plan and fits within its guidelines to facilitate industrial, commercial, and residential development in an orderly and aesthetic manner. The proposed project consists of improvements to Redlands Boulevard, Alabama Street, and Colton Avenue, including modifications to existing public highway-rail grade crossings at Alabama Street and Colton Avenue.

The specifics of the improvement are as follows: Alabama Street will be improved to an ultimate six lane road from Industrial Park Avenue to 500 feet south of Redlands Boulevard, including dual left turn lanes for northbound and southbound traffic. The project includes the installation of a raised and landscaped median and a continuous sidewalk and parkway on either side of the roadway. Redlands Boulevard will be improved to an ultimate six lane road from 800 feet west of Alabama Street to 500 feet east of the new Colton intersection. The project includes the installation of a raised and landscaped median and a continuous sidewalk and parkway on either side of the roadway. Colton Avenue will be improved to a four lane road and re-aligned to intersect Redlands Boulevard in a “T” style intersection. The project includes the installation of a raised median island and improvements to match the existing road approximately 500 feet east of Tri-City Center Drive. The grade and elevation of both roadways will be configured to accommodate future double tracking through the reconfigured railroad crossings and consistent with SANBAG plans for such work.

The project will include a new eight-phase traffic signal with interconnectivity at the intersections of Redlands Boulevard and Alabama Street, Industrial Park Avenue and Alabama Street, and the “T” intersection of Redlands Boulevard and Colton Avenue. Each traffic signal controller at these intersections, due to their proximity to the adjacent rail right-of-way, shall be interconnected with railroad signal controls to allow for railroad preemption of the traffic signals upon the approach of trains to these at-grade crossings. The at-grade crossings at Alabama Street and Colton Avenue will be improved as a part of the proposed project, accommodating the realigned roadways and future double tracking through the highway-rail grade crossings, including drainage improvements. Improvements at both crossings will meet California Public Utilities Commission (CPUC) requirements, including installation of safety warning devices and related regulatory approvals by the CPUC.

SANBAG will install new safety warning devices, concrete crossing materials, and will replace the existing track structure to match the future alignment of the proposed Redlands Passenger Rail Project under a separate design and construction contracts managed by SANBAG.