

**COOPERATIVE AGREEMENT
BY AND AMONG THE CITY OF SAN BERNARDINO, THE INLAND VALLEY
DEVELOPMENT AGENCY AND THE CITY OF REDLANDS
(MOUNTAIN VIEW AVE PROJECT)**

This COOPERATIVE AGREEMENT (this "Agreement"), dated as of Nov. 18, 2013 (the "Effective Date"), by and among the City of San Bernardino, a charter city ("San Bernardino"), the Inland Valley Development Agency, a joint powers authority (the "IVDA"), and the City of Redlands, a general law city ("Redlands"). San Bernardino, Redlands and the IVDA are sometimes individually referred to each as a "Party" and collectively referred to as the "Parties."

Recitals

Whereas, the borderline between the cities of San Bernardino and Redlands is located on the centerline of Mountain View Avenue. The IVDA has constructed a bridge (the "Bridge") over the Santa Ana River that extends and connects Mountain View Avenue to Central Ave. The Bridge is aligned with Mountain View Avenue with the approximately east half of the Bridge located in Redlands and the west half located in San Bernardino.

Whereas, the Parties desire by this Agreement to provide for the cooperation of the Parties to initiate and process a LAFCO Application to adjust the boundary between Redlands and San Bernardino so the entire Bridge is located within the city limits of San Bernardino.

Whereas, the Parties further desire to provide for the maintenance and repair of the Bridge by the IVDA during the term of this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties agree as follows:

Section I. Definitions. As used in this Agreement, the following words and terms shall have the meaning as provided in the Recitals or in this section unless the specific context of usage of a particular word or term may otherwise require:

"Bridge" means the bridge constructed by the IVDA that connects Mountain View Avenue to Central Ave.

"Deposit Account" means the account established by the IVDA pursuant to Section 5.

"Deposit Account Holder" means First American Title Insurance Company.

"Effective Date" means the date first above referenced in the introductory paragraph of this Agreement.

"IVDA" shall mean the Inland Valley Development Authority, a joint powers authority created pursuant to Government Code Sections 6500, et seq.

"LAFCO" means the Local Agency Formation Commission for San Bernardino County.

"LAFCO Application" means an application filed with LAFCO to annex Redland's portion of the Bridge into San Bernardino.

"Redlands" means the City of Redlands and its officials, officers, employees, volunteers and agents

"San Bernardino" means the City of San Bernardino, a charter city, and its officials, officers, employees, volunteers and agents.

Section 2. Term. The term of this Agreement shall be for five (5) years from and after the Effective Date, unless otherwise terminated or extended by mutual agreement of the Parties. Notwithstanding the foregoing, this Agreement shall terminate upon the completion of the LAFCO Application and the annexation of the Bridge into San Bernardino.

Section 3. LAFCO Application.

Section 3.1 The Parties agree to cooperate with the filing of the LAFCO Application to remove the Bridge from Redlands and annex the same into San Bernardino. The Parties will do all of the following in connection with the LAFCO Application:

(a) IVDA will initiate the LAFCO Application on behalf of Redlands and San Bernardino. Redlands and San Bernardino will cooperate as parties to the LAFCO Application and execute such documents as necessary to process the same.

(b) The IVDA will pay all LAFCO fees for the processing of the LAFCO Application. Such costs will be disbursed out of the Deposit Account as provided in Section 5 below.

(c) The IVDA will pay for the surveying and engineering work necessary to support the LAFCO Application. Such costs will be disbursed out of the Deposit Account as provided in Section 5 below.

Section 3.2 Except as provided in sections 3.1(b) and (c) above, each of the Parties will be responsible for their own costs and expenses, including all staff and administrative expenses, in connection with the filing and processing of the LAFCO Application.

Section 4. Maintenance of the Bridge.

Section 4.1 It is the intent of the Parties that the Bridge be maintained and kept in a safe condition and repair and in compliance with all applicable laws and safety regulations. During the term of this Agreement the IVDA shall be responsible for the maintenance and repair of the Bridge as provided in this Section 4.

Section 4.2 The IVDA shall arrange for an annual inspection of the Bridge by a Caltrans approved inspector in the month of March each year during the term of this Agreement and provide a copy the report issued by the inspector to both San Bernardino and Redlands. The IVDA shall be responsible for performing all maintenance and repair of the Bridge as recommended in the inspection report together with such other maintenance and repairs as reasonably necessary to maintain the Bridge in accordance with the standards in 4.1 above.

Section 4.3 San Bernardino or Redlands shall have the right to perform inspections of the Bridge independent from the annual inspection under 4.1 above, which inspections shall be made at the expense of the Party electing to make such inspection. If such inspection reveals any necessary maintenance or repairs the inspecting Party shall provide a written report to the IVDA and the other Party detailing the required maintenance or repairs. The IVDA will have a reasonable period of time in view

of the requested maintenance or repairs to inspect the Bridge itself and either undertake such work or respond to Party providing the inspection report as to the necessity and scope of the requested work. In the event if any difference of opinion as to any necessary maintenance or repairs to the Bridge all of the Parties will meet and cooperate in good faith to determine the necessary work to maintain the Bridge in accordance with the standards in 4.1 above.

Section 4.4 The IVDA shall be entitled to withdraw funds from the Deposit Account established under Section 5 below to perform maintenance and repairs to the Bridge hereunder; provided, that the IVDA's maintenance obligations shall not be limited to the expenditure of funds contained in the Deposit Account.

Section 5. Deposit Account.

Section 5.1 The IVDA shall establish a deposit account with the Deposit Account Holder and place the sum of \$49,500.00 ("Deposit Account") into such account for processing of the LAFCO Application under Section 3 above and performing maintenance and repair work for the Bridge under Section 4 above. The Deposit Account shall be in the IVDA's name and neither San Bernardino nor Redlands will be a party to the Deposit Account agreement with the Deposit Account Holder.

Section 5.2 The IVDA shall have the right to withdraw funds from the Deposit Account on its sole signature for purposes of paying the LAFCO Application expenses as provided in Sections 3.1(b) and (c) above and the cost of maintaining and repairing the Bridge as provided in Section 4 above. Upon the request of San Bernardino or Redlands the IVDA will provide the requesting Party with an annual report of the payments and expenses made out of the Deposit Account.

Section 5.3 In the event the funds in the Deposit Account shall be depleted prior to the expiration of the term of this Agreement, the IVDA will deposit additional funds into the Deposit Account as reasonable estimated to pay any additional costs of the LAFCO Application under Section 3.1(b) and (c) above and the maintenance and repair costs for the Bridge for the remaining balance of the term.

Section 5.4 Upon the expiration of this Agreement the IVDA shall be entitled to receive all remaining funds in the Deposit Account.

Section 6. Future Development.

Section 6.1. San Bernardino and Redlands have each determined that upon any future development of the properties identified on Exhibit "A-1" and "B-1" attached hereto it will be beneficial to have full width improvements constructed to Mountain View Avenue. In further thereof, San Bernardino and Redlands agree as follows:

(a) San Bernardino agrees to condition any future development of the property located at the North-West corner of Mountain View and San Bernardino Avenue and described on Exhibit "A-1" to construct full width street improvements to Mountain View Avenue along such property line as shown on Exhibit "A-1" attached hereto.

(b) Redlands agrees to condition any future development of the property located on the East side of Mountain View Avenue and south of Mission Creek and described on Exhibit "B-1" to construct full width street improvements to Mountain View Avenue along such property line as shown on Exhibit "B-1" attached hereto.

Section 6.2. To the extent permitted by applicable law, the provisions of this Section 6 shall survive the expiration or termination of this Agreement.

Section 7. Dispute Resolution.

Section 7.1. In the event of a dispute, claim or controversy arising from or in relation to this Agreement, the Parties agree to undertake good faith attempts to resolve said dispute, claim or controversy within fourteen (14) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists or in the event of a claimed default fourteen (14) calendar days after the dated of the notice provided under Section 8 below. The Parties additionally agree to cooperate with the other Party or Parties in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, any Party may then request that the matter be submitted for mediation or arbitration as determined by the Parties; provided that no Party shall be required to submit to mediate or arbitration.

Section 7.2. The Parties agree that those Parties participating in mediation or arbitration shall share the fees of the mediator, arbitrator and all costs associated with mediation and arbitration proceeding; provided, however, each Party that is subject to the proceeding shall be responsible for its own legal costs, including attorneys' fees and the costs associated with experts.

Section 8. Default.

Section 8.1. The failure or delay by any Party to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that if the Party or Parties who are otherwise claimed to be in default by the other Party or Parties commences to cure, to correct or to remedy the alleged default within thirty (30) calendar days after receipt of written notice specifying such default and thereafter diligently undertakes efforts to complete such cure, correction or remedy, such Party or Parties shall not be deemed to be in default hereunder. The Party or Parties claiming that a default has occurred shall give written notice of default to the defaulting Party or Parties specifying the deficiencies causing the alleged default. Delay in giving such written notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the non-defaulting Party or Parties shall have no right to exercise any remedy for a default hereunder without first delivering the written default notice as specified herein.

Section 8.2. In the event that the defaulting Party or Parties fails to commence to cure, to correct or to remedy a default within thirty (30) calendar days following receipt of written notice, or thereafter fails to diligently complete such cure, correction or remedy, a breach of this Agreement shall be deemed to have occurred. In the event of a breach the non-defaulting Party or Parties shall have all rights and remedies available under applicable law, including the right to terminate this Agreement through a written notice of termination. Disputes regarding the facts that may have given rise to termination under this section shall be subject to the dispute resolution provisions provided in Section 7 above.

Section 9. Force Majeure. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, or considered to be a default, where delays or defaults are due to the force majeure events of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation, weather-caused delays, inability to secure necessary labor, materials or tools, delays of any contractors, subcontractor or supplier, which are not attributable to the fault of the Party claiming an extension of time to prepare or acts or failure to act of any public or governmental agency or entity. An extension of time for any such force majeure event shall be

for the period of the enforced delay and shall commence to run from the date of occurrence of the delay; provided, however, that the Party that claims the existence of the delay has first provided each of the other Parties with written notice of the occurrence of the delay within seven (7) calendar days after the commencement of such occurrence or delay. A Party's failure to timely submit such notice of the occurrence of the delay pursuant to this Section shall be precluded from asserting the occurrence of an enforced delay or force majeure event.

Section 10. Approvals. Approvals required of the Parties, or any officers, agents or employees of any Party, shall not be unreasonably withheld and approval or disapproval shall be given within a reasonable time.

Section 11. Notices, Demands and Communications Between the Parties.

Section 11.1. Formal notices, demands and communications between the Parties shall be deemed sufficiently given if: (i) dispatched by registered or certified mail via the United States Postal Service, postage prepaid, return receipt requested, as designated in this section, or (ii) by messenger service for immediate personal delivery, or (iii) by electronic transmittal, including fax transmissions with telephonic verification receipt. Such written notices, demands and communications may be sent in the same manner to such other addresses as the Parties may from time to time designate by written notice to the other Parties.

Section 11.2. All notices, demands and communications shall be sent, as follows:

TO SAN BERNARDINO:

City of San Bernardino
Attn: City Manager
300 North "D" Street, 6th Floor
San Bernardino, CA 92418

TO REDLANDS:

City of Redlands
Attn: City Manager
35 Cajon Street, Suite 200
Redlands, CA 92373

TO IVDA

Inland Valley Development Agency
Attn: Executive Director
1601 E. Third Street, Suite 100
San Bernardino, CA 92408

Section 12. Amendment. This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing signed by all of the Parties.

Section 13. Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

Section 14. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

Section 15. Time is of the Essence. For each provision of this Agreement which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed of the essence.

Section 16. Third Party Beneficiaries. This Agreement and the performance of the Parties' obligations hereunder are for the sole and exclusive benefit of the Parties. No person or entity who or which is not a signatory to this Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against the Parties hereunder as a result of any Party's performance or nonperformance of their respective obligations under this Agreement.

Section 17. Governing Law. This Agreement shall be governed by the laws of the State of California without regard to conflicts of laws principles. This Agreement shall be deemed to have been made in the County of San Bernardino, State of California, regardless of the order of the signatures of the Parties affixed hereto. Any litigation or other legal proceedings which arise under or in connection with this Agreement shall be conducted in a federal or state court located within or for the County, in the State. The Parties consent to the personal jurisdiction and venue in federal or state court located within or for the County, in the State, and hereby waive any defenses or objections thereto including defenses based on the doctrine of forum non conveniens.

Section 18. Construction; References; Captions. Since the Parties or their agents 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 calendar days and not work days. All references to San Bernardino, to Redlands and to the IVDA include all officials, officers, employees, personnel, agents, volunteers, contractors and subcontractors of San Bernardino, Redlands and the IVDA, except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, the content, or the intent of this Agreement.

Section 19. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party or Parties on any default shall impair such right or remedy or be construed as a waiver. Any Parties' consent or approval of any act by the other Party requiring its consent or approval shall not be deemed to waive or to render unnecessary its consent to or approval of any subsequent act of the other Party. Any waiver by any Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

Section 20. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 21. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder.

Section 22. Binding Effect. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assigns.

Section 22. Authorized Representatives. The person or persons executing this Agreement on behalf of the Agency, of San Bernardino and Redlands warrant and represent that he/she has the authority to execute this Agreement on behalf of that Party and that they have the authority to bind that Party to the performance of its obligations hereunder.

Section 23. Entire Agreement. This Agreement constitutes the entire and integrated agreement of the Agency, of the County and of the City with respect to the subject matter hereof and supersedes any and all prior and contemporaneous oral or written negotiations, representations or agreements.

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE TO COOPERATIVE AGREEMENT

SAN BERNARDINO

City of San Bernardino,
a charter city

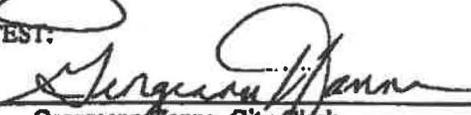
By: 
Allen Parker, City Manager

Dated: 12-3-13

APPROVED AS TO FORM:

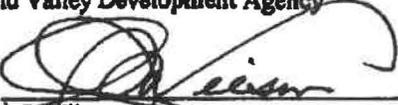
By: 
Gary D. Saenz, City Attorney

ATTEST:

By: 
Georgeann Hanna, City Clerk

IVDA

Inland Valley Development Agency

By: 
A.J. Wilson,
Executive Director

Dated: 3-18-2014

APPROVED AS TO LEGAL FORM:

By: Mirau, Edwards, Cannon, Lewin & Tooke
Agency Counsel

By: 
Michael Lewin

ATTEST:

By: 
Kelly Berry, Clerk of the Board

REDLANDS

City of Redlands

By: 

Dated: 3/18/14

APPROVED AS TO LEGAL FORM:

By: 
City Attorney

ATTEST:

By: 
City Clerk

RIVERVIEW DR.

APN 0280-312-06

APN 0280-312-08

APN 0280-312-09

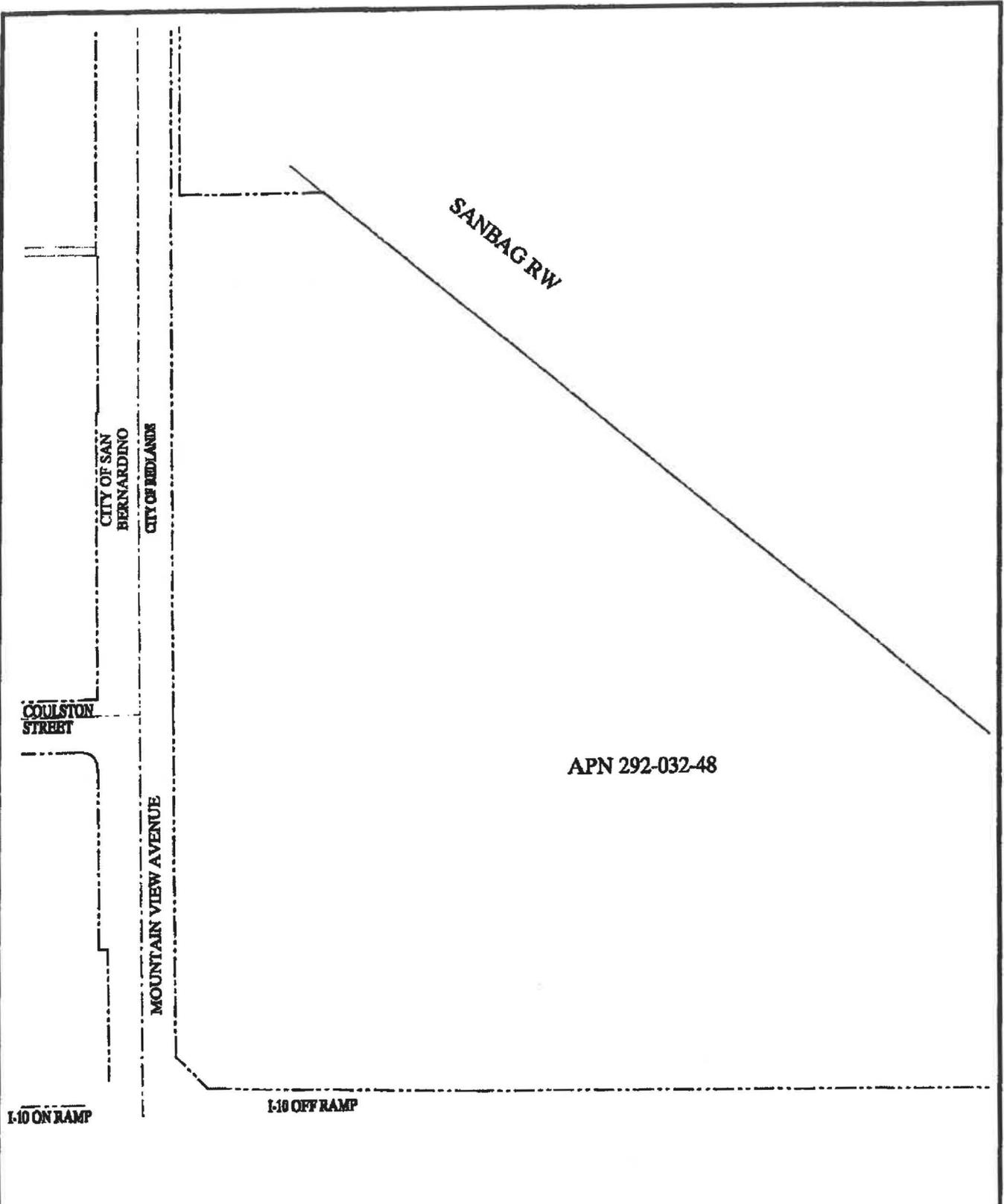
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APN 0280-312-11

APN 0280-312-27

SAN BERNARDINO AVE

CITY OF SAN BERNARDINO
CITY OF REDLANDS
MOUNTAIN VIEW AVENUE



**PARSONS
BRINCKERHOFF**

451 E. Vanderbilt Way Suite 200, San Bernardino CA
TEL: 909.888.1106 FAX: 909.889.1884

EXHIBIT "B-1"

IVDA
LAFD -

**ADDENDUM TO COOPERATIVE AGREEMENT
BY AND AMONG THE CITY OF SAN BERNARDINO, THE INLAND VALLEY
DEVELOPMENT AGENCY AND THE CITY OF REDLANDS
(MOUNTAIN VIEW AVE PROJECT)**

This Addendum to Cooperative Agreement (this "Addendum"), is made by and among the City of San Bernardino, a charter city ("San Bernardino"), the Inland Valley Development Agency, a joint powers authority (the "IVDA"), and the City of Redlands, a general law city ("Redlands"). San Bernardino, Redlands and the IVDA are sometimes individually referred to each as a "Party" and collectively referred to as the "Parties."

Whereas, the Parties have entered into that certain Cooperative Agreement with respect to the Bridge over the Santa Ana River that connects Mountain View Avenue to Central Ave as further described in the Cooperative Agreement.

Whereas, the Parties desire by this Addendum to supplement the Cooperative Agreement to add the provisions provided below.

Whereas, all capitalized terms used herein shall have the same meaning as given in the Cooperative Agreement unless otherwise defined herein.

NOW THEREFORE, the Parties hereby agree to amend and supplement the Cooperative Agreement as follows:

1. **Additional Provisions to Agreement.** The following provisions are hereby added to the Cooperative Agreement as a new Section 4.5 and 4.6 respectively

Section 4.5. Insurance. All insurance required by this Agreement is to be maintained by the IVDA for the term of this Agreement, and all such insurance shall be primary with respect to Redlands and San Bernardino and non-contributing to any insurance or self-insurance maintained by Redlands or San Bernardino. The IVDA shall provide Redlands and San Bernardino with certificates of insurance and endorsements evidencing such insurance within ten (10) days of the Effective Date of this Agreement. No contractor of the IVDA shall perform any maintenance or repair work for the Bridge unless the IVDA provides to Redlands and San Bernardino certificates of insurance and endorsements evidencing the contractor's compliance with the requirements of this Section prior to the commencement of such work.

a. **Workers' Compensation and Employer's Liability.** The IVDA shall secure, and require its contractors to secure, workers' compensation and employer's liability insurance in an amount which satisfies statutory requirements with an insurance carrier reasonably acceptable to Redlands and San Bernardino in connection with any construction, maintenance or repair work performed for the Bridge by the IVDA and its contractors pursuant to the IVDA's obligations under this Agreement.

b. **Comprehensive General Liability Insurance.** The IVDA shall secure, and require its contractors to secure, comprehensive general liability insurance covering all maintenance or repair work performed for the Bridge by the IVDA and its contractors pursuant

to the IVDA's obligations under this Agreement, with carriers reasonably acceptable to Redlands and San Bernardino. Minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for public liability, property damage and personal injury is required. Redlands and San Bernardino, and their elected officials, officers and employees, shall be named as additional insureds, and the insurance policies shall include a provision prohibiting modification of the coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to Redlands and San Bernardino.

c. **Business Auto Liability Insurance.** The IVDA shall secure, and require its contractors to secure, business auto liability coverage, with minimum limits of one million dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all IVDA and its contractor owned vehicles, hired and non-owned vehicles, and employee non-ownership vehicles used in connection with any maintenance or repair work performed for the Bridge by the IVDA and its contractors pursuant to the IVDA's obligations under this Agreement. Redlands and San Bernardino and their elected officials, officers and employees shall be named as additional insureds, and the insurance policies shall include a provision prohibiting modification of the coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to Redlands and San Bernardino.

Section 4.6. Indemnity/Hold Harmless. Redlands and San Bernardino and their elected officials, officers, employees and agents (collectively, the "Indemnified Parties") shall not be liable for any injuries (as defined by Government Code section 810.8) to persons or property occasioned by reason of the negligent acts or omissions, or willful misconduct, of the IVDA, or its employees, contractors and agents, in the performance of the IVDA's maintenance obligations for the Bridge under this Agreement. The IVDA further agrees to protect, defend, indemnify and hold harmless the Indemnified Parties from any and all claims, demands, causes of action, injuries, liability or loss of any kind, resulting from, or arising out of, the negligent acts or omissions, or willful misconduct, of the IVDA, or its employees, contractors and agents in the performance of any maintenance or repair work performed, or caused to be performed, by the IVDA for the Bridge pursuant to the IVDA's obligations under this Agreement. The indemnity and hold harmless provided by the IVDA hereunder shall not extend to any claims, actions, demands, damages or losses related to the design of the Bridge or the initial construction of the Bridge, it being the understanding of the Parties that the indemnity and hold harmless hereunder shall only be applicable to the IVDA's performance of maintenance work to the Bridge in accordance with this Agreement.

2. **Controlling Agreement-Conflict.** Except as otherwise expressly provide herein, the Cooperative Agreement shall remain in full force and effect and unmodified. The terms and provisions of this Addendum shall prevail over any conflicting or inconsistent provisions of the Cooperative Agreement.

SAN BERNARDINO

City of San Bernardino,
a charter city

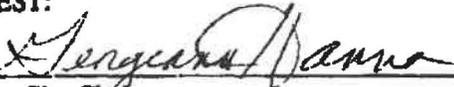
By: 
Allen Parker, City Manager

Dated: 6/12/14

APPROVED AS TO LEGAL FORM:

By: 
Gary D. Saenz, City Attorney

ATTEST:

By: 
City Clerk

IVDA

Inland Valley Development Agency

By: 
A.J. Wilson
Executive Director

Dated: 3-18-14

APPROVED AS TO LEGAL FORM:

By: Mirau, Edwards, Cannon, Lewin & Tooke
Agency Counsel

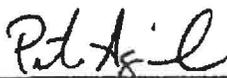
By: 
Michael Lewin

ATTEST:

By: 
Kelly Berry, Clerk of the Board

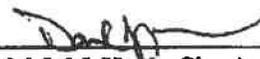
REDLANDS

City of Redlands

By: 
Pete Aguilar, Mayor

Dated: 3/18/14

APPROVED AS TO LEGAL FORM

By: 
Daniel J. McHugh, City Attorney

ATTEST:

By: 
Sam Irwin, City Clerk