

**MEMORANDUM OF UNDERSTANDING
BETWEEN SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND THE CITY OF CHULA VISTA
REGARDING ENVIRONMENTAL DOCUMENT FOR LRT GRADE SEPARATIONS
AND STATIONS**

SANDAG Document: 5004169

This Memorandum of Understanding ("MOU") is made and entered into effective as of this 20 day of June, 2013, by and between the San Diego Association of Governments ("SANDAG"), and the City of Chula Vista ("Chula Vista") for the purpose of working cooperatively on a project report and environmental document (PR/ED) for a rail/highway grade separation project at Palomar Street in Chula Vista (Project). Individually, SANDAG and Chula Vista may be referred to as "Party" and collectively as "Parties."

RECITALS

The following recitals are a substantive part of this MOU:

WHEREAS, Chula Vista has approximately \$800,000 funds remaining in the I-5 Multi-Modal Corridor Improvement Study to be used for the preparation of the PR/ED.

WHEREAS, Chula Vista has appropriated local match funding in the amount of at least \$200,000 for the preparation of said PR/ED; and

WHEREAS, the PR/ED is estimated to cost \$900,000 of which \$150,000 will be retained by Chula Vista for administrative costs and will be funded with I-5 Multi-Modal Corridor Improvement Study funds and Chula Vista local match funds; and

WHEREAS, the PR/ED is a resulting effort of the Interstate 5 Multimodal Corridor Study and the Light Rail Trolley Improvement Study, which is included in the Regional Transportation Improvement Program (RTIP) as project CHV30; and

WHEREAS, the current estimate for the Project is \$40,000,000.

WHEREAS, the grade crossings at Palomar Street is ranked number 4 in the Rail Grade Separation Rankings which are part of the SANDAG 2050 Regional Transportation Plan (2050RTP); and

WHEREAS, the 2050RTP includes Table A.2 titled "Capital Improvements - Revenue Constrained Plan" a project titled "Blue Line Grade Separations (Taylor St, Washington/Sassafras St, 28th St, 32nd St, E St, H St, Palomar St) at an estimated cost of \$861 million; and

WHEREAS, the project is of regional importance to the Metropolitan Transit System (MTS), the California Department of Transportation (Caltrans), Chula Vista, SANDAG, and the public; and

WHEREAS, the project implementation is expected to reduce delays attributed to traffic congestion, permit increased frequencies of the Trolley, and improve mobility, goods movement, and safety in the I-5 Corridor; and

WHEREAS, Chula Vista and SANDAG will be the co-lead agencies and administer the project in cooperation with MTS and Caltrans; and

WHEREAS, the Parties wish to memorialize their agreement in this MOU to carry out the purposes set forth above.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

1. The purpose of the PR/ED is to environmentally clear the construction of the Project as well as related improvements to the Trolley station. The PR/ED report will be prepared with input from and in cooperation with the MTS, Caltrans, Chula Vista, and SANDAG.
2. The SANDAG budget for its efforts related to the PR/ED shall not exceed \$750,000; however, in the event that SANDAG needs to exceed this amount, Chula Vista will meet with Caltrans and SANDAG to discuss whether an amendment to this MOU is appropriate. In no event shall SANDAG move forward with the PR/ED until the parties are able to identify sufficient funds to complete the projected PR/ED scope of work, nor shall SANDAG be liable for any level of effort in excess of \$750,000 unless an amendment is agreed to by the parties.
3. SANDAG shall receive an amount not to exceed \$750,000 for PR/ED costs. All expenses incurred by SANDAG for the ED, including consultant costs, claims, litigation, administrative costs, or other liability, shall be reimbursed by Chula Vista.
4. The funds for the ED shall be expended as follows:
 - a. An amount not to exceed \$650,000 for consultant services, including SANDAG administrative costs.
 - b. An amount not to exceed \$100,000 as consultant contract contingency.
5. SANDAG shall use one or more of its on-call engineering consultants to perform work on the PR/ED.
6. SANDAG shall invoice Chula Vista no more than once per month. Chula Vista shall make payment to SANDAG within 45 days of receipt of an invoice submitted by SANDAG for PR/ED costs. SANDAG shall have no obligation to perform under this MOU and shall not assign work to any of its consultants on the PR/ED until after the related agreement between Chula Vista and Caltrans is executed. SANDAG may terminate work on the PR/ED if it is not reimbursed by Chula Vista within 45 days of submitting an invoice.
7. Chula Vista agrees to provide staff support and cooperation on the PR/ED, including, but not limited to, any staff support or cooperation needed to defend any claims or litigation that may arise related to the Study. To the extent that staff support or cooperation is needed to

defend claims or litigation, such support and cooperation shall not include any monetary expenditures or cost sharing.

8. During the term of this MOU, the Parties shall be responsible for the storage and maintenance of their respective electronic data collected for use on the PR/ED. The Parties shall provide a secure site to allow access to this data by selected staff who shall be designated by the respective Party. All work products resulting from this MOU and consultant deliverables shall be the property of Chula Vista.
9. Subject to the limitation set forth in Section 2, neither Chula Vista nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by SANDAG under or in connection with any work, authority, or jurisdiction delegated to SANDAG under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, SANDAG shall fully defend, indemnify, and save harmless Chula Vista, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANDAG under or in connection with any work, authority, or jurisdiction delegated to SANDAG under this MOU.
10. Neither SANDAG nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Chula Vista under or in connection with any work, authority, or jurisdiction delegated to SANDAG under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, Chula Vista shall fully defend, indemnify, and save harmless SANDAG, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring in whole or in part by reason of anything done or omitted to be done by Chula Vista under this MOU.
11. Any notice required or permitted under this MOU may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

For SANDAG
401 B Street, Suite 800
San Diego, CA 92101
Attn: John Dorow

For the City of Chula Vista
Engineering Department
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Frank Rivera

12. That unless it is amended by the Parties in writing, this MOU shall terminate on December 31, 2014, or on such earlier or later date as the Parties may agree to in writing.
13. The indemnification provisions of this MOU shall survive termination of the MOU.
14. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.
15. All terms, conditions, and provisions hereof shall inure to and shall bind each of the Parties hereto and each of their respective heirs, executors, administrators, successors, and assigns.

16. For purposes of this MOU, the relationship of the Parties is that of independent entities and not as agents of each other or as joint venturers or partners. The parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.
17. No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
18. Nothing in the provisions of this MOU is intended to create duties or obligations to or rights in third Parties to this MOU or affect the legal liability of the Parties to this MOU to third parties.
19. This MOU may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each Party has signed one such counterpart.

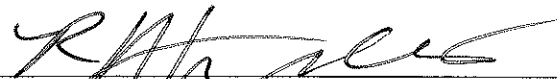
IN WITNESS WHEREOF, the Parties hereto have executed this MOU effective on the day and year first above written.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

CITY OF CHULA VISTA



GARY L. GALLEGOS
Executive Director



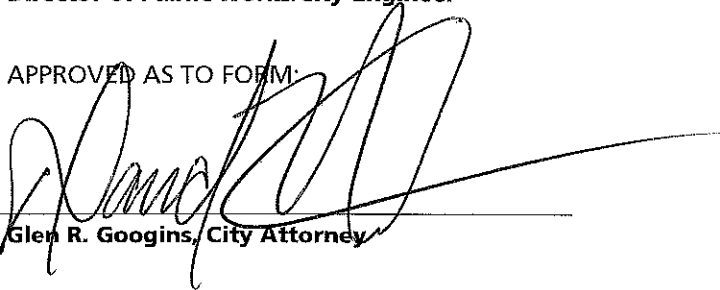
RICHARD A. HOPKINS
Director of Public Works/City Engineer

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Office of General Counsel



Glen R. Googins, City Attorney