

AMENDMENT NO. 2 TO COOPERATIVE AGREEMENT NO. 16-1001477

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SAN BERNARDINO

FOR

ENVIRONMENTAL CLEARANCE, PRELIMINARY DESIGN, RIGHT-OF-WAY (ROW), AND DESIGN-BUILD PHASES FOR THE MOUNT VERNON AVENUE VIADUCT OVER BNSF RAILWAY INTERMODAL YARD IN THE CITY OF SAN BERNARDINO

THIS Amendment No. 2 (“Amendment”) to COOPERATIVE AGREEMENT 16-1001477 (“Agreement”) is made and entered into by and between the San Bernardino County Transportation Authority (“SBCTA”) and the City of SAN BERNARDINO (“CITY”). SBCTA and CITY may be referred to individually as a “Party” and collectively as “Parties”.

WHEREAS, the Parties consider the PROJECT to be a high priority and are willing to participate in funding the PROJECT pursuant to the provisions of Measure I 2010-2040 Expenditure Plan and the SBCTA Nexus Study (“Nexus Study”) prepared by the SBCTA and approved by the SBCTA Board of Directors on November 6, 2013; and

WHEREAS, the Parties entered into the Agreement in 2016 to delineate roles, responsibilities, and funding commitments relative to the Environmental Clearance, Design and Right-of-Way (ROW) phases of the PROJECT before delivery of the PROJECT through design-build method was contemplated or authorized; and

WHEREAS, the Parties amended the Agreement on October 26, 2018, to add in the design-build phase of work, clarify right of way activities, and revise the funding table in Attachment A; and

WHEREAS, the lowest responsible, responsive proposer’s costs significantly exceeded the engineer’s estimate and planned funding specified in Attachment A; and

WHEREAS, Parties have worked with the California Department of Transportation, to obtain additional project funding, but there is still a shortfall of \$10,127,219 to fully fund the project; and

WHEREAS, the Parties agree to provide additional funding of \$10,127,219 to fully fund the project and reflect these added funding contributions in a revised funding table as part of an amendment to this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises herein, the Parties agree to amend Agreement as follows:

1. Section 1, item G shall be deleted and replaced in its entirety with the following:

G. To contribute towards the cost of Environmental Clearance, Preliminary Design, ROW, and Design-Build phases of PROJECT and any financing costs associated with the delivery of these phases of PROJECT in an amount not to exceed \$16,165,535 (the Public Share amount) as shown in Attachment A. The actual cost of a specific phase may ultimately vary from the estimates provided in Attachment A, however, under no circumstance is the total combined SBCTA contribution to exceed \$16,165,535 without an amendment to this Agreement.

2. Section II, article A, is deleted and replaced in its entirety with the following:

A. To reimburse SBCTA for its share of the actual costs incurred estimated at \$9,747,979 towards the Environmental Clearance, Preliminary Design, ROW and Design-Build phases of the PROJECT and any financing costs associated with the delivery of these phases of the PROJECT, which includes \$2,000,000 towards Project Management, as shown in Attachment A. If payment is not made within sixty (60) days of the invoice date, SBCTA will withhold CITY's Measure I Local Street Program pass through funds in the invoice amount. As CITY makes payments toward the current amount due, the withheld pass through funds will be released to CITY. The actual cost of a specific phase may ultimately vary from the estimates provided in Attachment A, however, under no circumstance is the total combined CITY contribution to exceed \$9,747,979 (the Development Share amount) without an amendment to this Agreement.

3. All other conditions of the Agreement and its Amendment 1 remain in full force and effect except as amended above.

(Signature page to follow)

**SIGNATURE PAGE TO
AMENDMENT NO. 2 TO COOPERATIVE AGREEMENT NO. 16-1001477
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
AND
CITY OF SAN BERNARDINO**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Darcy McNaboe
President, Board of Directors

Date: _____

APPROVED AS TO FORM:

By: _____
Julianna K. Tillquist
General Counsel

CONCURRENCE:

By: _____
Jeffery Hill
Procurement Manager

CITY OF SAN BERNARDINO

By: _____
Teri Ledoux
City Manager

Date: _____

ATTEST

By: _____
Georgeann Hanna
City Clerk

APPROVED AS TO FORM:

By: _____
Sonia /R. Carvalho
City Attorney

Attachment A

PROJECT DESCRIPTION

The CITY of San Bernardino and SBCTA propose to remove and replace the existing Mount Vernon Avenue Viaduct Bridge over the BNSF Railway Intermodal Yard. It is intended that SBCTA serves as the lead for the Environmental Clearance, Preliminary Design, ROW and Design-Build phases of the work.

PROJECT FUNDING TABLE

Public Share: 67.6%

Nexus Development Impact Fee Share (“DIF”, “Development Share” or “Local Share”): 32.4%

PHASE	TOTAL	BEFORE PROJECT BUY DOWN		INCLUDING PROJECT BUY DOWNS			
		SBCTA SHARE (Public)	CITY SHARE (DIF)	Federal HBP BUY DOWN ¹	Prop 1B/BNSF Contribution ²	SBCTA SHARE (Public) ³	CITY SHARE (DIF) ⁴
ENVIRONMENTAL CLEARANCE AND PRELIMINARY DESIGN	\$7,819,638	\$5,265,244	\$2,523,579	\$6,895,445	\$893,378	\$20,831	\$9,984
RIGHT OF WAY	\$72,060,000	\$48,712,560	\$23,347,440	\$58,571,448	\$13,488,552	\$0	\$0
DESIGN-BUILD	\$147,865,353	\$99,956,979	\$47,908,374	\$105,411,914	\$18,570,740	\$16,144,705	\$7,737,994
PROJECT MANAGEMENT ⁵	\$2,000,000	\$0	\$2,000,000	\$0	\$0	\$0	\$2,000,000
TOTAL	\$229,744,991	\$153,955,614	\$75,789,377	\$170,878,807	\$32,952,670	\$16,165,535	\$9,747,979

*Numbers may not add exactly due to rounding

Notes

¹ Federal Highway Bridge Program (HBP) funds are capped at \$170,878,807. State Proposition 1B Bond funds in the amount of \$3,452,670 will provide a portion of the required HBP match funds.

² BNSF Contribution is estimated at \$29.5 million. BNSF Contribution is expected to provide HBP match of 11.47% and, depending on the terms of agreements to be developed with the State on the use of HBP funds, may be used for Financing Costs and, lastly, Project Management costs. Any BNSF Contribution remaining after funding all other eligible costs will buy down the cost of the Design-Build Phase before application of the HBP Share.

³ Public Share is from the CITY share of Measure I Major Street Program – Arterial Subprogram funds.

⁴ A deposit of \$905,891 from the CITY Development Share has been received to date under Agreement 16-1001477.

⁵ Depending on terms of agreements to be developed with the State on the use of HBP funds, BNSF contribution may be applied to Project Management costs after meeting all HBP match requirements for the PROJECT.