



**Contract Number**

**SAP Number**

## Public Works

<b>Department Contract Representative</b>	Arlene Chun, M.S., P.E., Engineering Manager
<b>Telephone Number</b>	(909) 387-8165
<b>Project</b>	Auto Club Speedway Project – San Bernardino Avenue
<b>DEVELOPER</b>	Speedway SBC Development, LLC
<b>DEVELOPER Representative</b>	Josh Cox
<b>Telephone Number</b>	(909) 380-7156
<b>Contract Term</b>	Expiration December 30, 2027
<b>Original Contract Amount</b>	\$62,000
<b>Amendment Amount</b>	\$0
<b>Total Contract Amount</b>	\$62,000
<b>Cost Center</b>	6650002000 H15191

### IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, Speedway SBC Development, LLC (DEVELOPER) anticipates developing approximately 433 acres of the current Auto Club Speedway (ACS), formerly known as the California Speedway, located in the unincorporated area of Fontana. The project includes logistics and e-commerce uses, and ancillary commercial uses, development of greenbelts, public roads, and water detention areas; and,

WHEREAS, DEVELOPER desires to make modification to the existing At-Grade Railroad Crossing on San Bernardino Avenue, between Commerce Drive and Cherry Avenue, in the unincorporated area of Fontana, which also includes minor road reconfiguration and striping (Project); and,

WHEREAS, Union Pacific Railroad (UPRR) is the owner and operator of the railroad tracks where the At-Grade Crossing will be modified; and,

WHEREAS, San Bernardino County (COUNTY) and UPRR will enter into a separate agreement wherein UPRR will perform Preliminary Engineering (PE) services for the Project and shall be reimbursed by DEVELOPER through the COUNTY; and,

WHEREAS, DEVELOPER shall advance to COUNTY a total amount of \$62,000 for UPRR PE services and COUNTY staff labor cost, as more particularly set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference; and,

WHEREAS, COUNTY and DEVELOPER desire to set forth responsibilities and obligations of each as they pertain to such participation, reimbursement, and funding of the PROJECT; and,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

- 1.1 Serve as a representative between DEVELOPER and UPRR in relation to Project.
- 1.2 Enter into a cooperative agreement with UPRR for preliminary engineering services required for the Project.
- 1.3 Upon execution of the agreement, submit to DEVELOPER an invoice of the estimated cost for UPRR preliminary engineering services, COUNTY's reasonable staff labor costs, and other reasonable miscellaneous costs necessary for the Project.
- 1.4 Provide all documents related to the Project's preliminary engineering work to DEVELOPER promptly after such documents are received by County.
- 1.5 Upon Project completion, submit to DEVELOPER a final itemized accounting of actual costs related to the Project, and if actual costs exceed the amount paid by DEVELOPER pursuant to paragraphs 1.3 and 2.8 of this Agreement, include an invoice for the remainder of DEVELOPER costs. In the case wherein Project costs are less than the advance payment of \$62,000, then COUNTY shall provide DEVELOPER a refund of the difference within 30 days after Project completion.

2.0 DEVELOPER AGREES TO:

- 2.1 Pay one-hundred percent (100%) of the PE services and related costs.
- 2.2 Upon execution of this Agreement and within thirty (30) days of the receipt of COUNTY invoice, pay to the COUNTY the sum of \$62,000, which represents the estimate cost for the UPRR preliminary engineering services, COUNTY's staff labor costs, and other miscellaneous costs necessary for the Project.
- 2.3 During the Project should preliminary engineering services exceed the advanced payment of \$62,000, the DEVELOPER will provide additional payment(s) within 30 days of receipt of invoice from COUNTY.
- 2.4 Pay to COUNTY the sum of actual costs, submitted pursuant to paragraph 1.5, that exceed amount paid by DEVELOPER pursuant to paragraph 2.2.

3.0 IT IS MUTUALLY AGREED:

- 3.1 The PE services shall be paid for by DEVELOPER in accordance with all applicable laws.
- 3.2 The DEVELOPER agrees to indemnify, defend (with counsel approved by County) and hold harmless the County and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of County's performance or obligations under this Agreement. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The DEVELOPER indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.
- 3.3 The DEVELOPER agrees to provide insurance set forth in accordance with the requirements herein. If the DEVELOPER uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the DEVELOPER agrees to amend, supplement or endorse the existing coverage to do so.
  - 3.3.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the DEVELOPER and all risks to such persons under this contract.

- 3.3.2 Commercial/General Liability Insurance – The DEVELOPER shall carry General Liability Insurance covering all operations performed by or on behalf of the DEVELOPER providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- 3.3.2.1 - Premises operations and mobile equipment.
  - 3.3.2.2 - Products and completed operations.
  - 3.3.2.3 - Broad form property damage (including completed operations).
  - 3.3.2.4 - Explosion, collapse and underground hazards.
  - 3.3.2.5 - Personal injury.
  - 3.3.2.6 - Contractual liability.
  - 3.3.2.7 - \$2,000,000 general aggregate limit.
- 3.3.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.
- 3.3.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- 3.3.5 Additional Insured – All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- 3.3.6 Failure to Procure Coverage – In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the DEVELOPER or County payments to the DEVELOPER will be reduced to pay for County purchased insurance. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.
- 3.4 In the event of litigation arising from this Agreement, each party to the Agreement shall bear its own costs, including attorney(s) fees.
- 3.5 The parties acknowledge that all Project costs shall be borne solely by DEVELOPER.
- 3.6 This Agreement may be terminated without cause upon thirty (30) days advance written notice of either Party; provided however, the termination of this Agreement shall not result in a termination of the COUNTY’s agreement with UPRR for the PE Services. In the event that this Agreement is terminated, all Project expenses incurred prior to the effective date of termination shall be paid by DEVELOPER.
- 3.7 This Agreement shall terminate upon completion of the Project and final payment from DEVELOPER or refund to DEVELOPER, pursuant to paragraphs 1.5 and 2.2 of this Agreement.
- 3.8 This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all Parties.
- 3.9 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between DEVELOPER and COUNTY 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 San Bernardino County, California.

- 3.10 Time is of the essence for each and every provision of this Agreement.
- 3.11 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 any or against any party. Any term referencing time, days or period for performance shall be deemed work days. 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, content, or intent of this Agreement.
- 3.12 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.
- 3.13 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.
- 3.14 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.15 The Recitals are incorporated into the body of this Agreement.
- 3.16 This Agreement will be effective on the date it is signed by both Parties and shall terminate pursuant to Paragraphs 3.6, 3.7 or on December 30, 2027, whichever occurs first.

SIGNATURES ON THE FOLLOWING PAGE

SAN BERNARDINO COUNTY



\_\_\_\_\_  
Curt Hagman, Chairman, Board of Supervisors

Dated: \_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Lynna Monell  
Clerk of the Board of Supervisors  
San Bernardino County

By \_\_\_\_\_  
Deputy

SPEEDWAY SBC DEVELOPMENT, LLC,  
a Delaware limited liability company  
\_\_\_\_\_  
(Print or type name of corporation, company, DEVELOPER,  
etc.)

By  \_\_\_\_\_  
(Authorized signature - sign in blue ink)

Name \_\_\_\_\_  
(Print or type name of person signing contract)

Title \_\_\_\_\_  
(Print or Type)

Dated: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**FOR COUNTY USE ONLY**

Approved as to Legal Form



\_\_\_\_\_  
Aaron Gest, Deputy County Counsel

Date \_\_\_\_\_

Reviewed for Contract Compliance



\_\_\_\_\_  
Andy Silao, P.E., Engineering Manager

Date \_\_\_\_\_

Reviewed/Approved by Department



\_\_\_\_\_  
Brendon Biggs, Director

Date \_\_\_\_\_

**Exhibit A**

**Estimate of Project Costs  
For Speedway SBC Development, LLC and San Bernardino County**

**San Bernardino Avenue at UPRR Xing**

Description	Total Cost	Developer Share	San Bernardino County Share
Preliminary Engineering – UPRR	\$50,000	\$50,000	\$0
Permits, Traffic, and other County staff costs	\$12,000	\$12,000	\$0
<b>Total</b>	<b>\$62,000</b>	<b>\$62,000</b>	<b>\$0</b>