



**Contract Number**

**SAP Number**

## Public Works

<b>Department Contract Representative</b>	Harold Zamora, P.E., Engineering Manager
<b>Telephone Number</b>	(909) 387-8166
<b>Project</b>	Central Avenue Bridge
<b>Contractor</b>	City of Montclair
<b>Contractor Representative</b>	Monica Heredia, Public Works Director/City Engineer
<b>Telephone Number</b>	(909) 625-9441
<b>Contract Term</b>	Expires December 31, 2026
<b>Original Contract Amount</b>	\$0
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	\$0
<b>Cost Center</b>	6650002000 / H15125

### IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (hereinafter referred to as "COUNTY") and the City of Montclair (hereinafter referred to as "CITY"), (COUNTY and CITY are also each referred to herein as "Party" and collectively as "Parties") desire to cooperate and jointly participate in a project that consists of widening and/or reconstructing the Central Avenue bridge over the Union Pacific Railroad (UPRR) and the approaches to and from the bridge (collectively hereinafter referred to as "PROJECT"); and,

WHEREAS, the PROJECT is within the CITY's jurisdiction with the exception of the southerly approach from Mission Boulevard to the centerline of State Street, which is in the COUNTY's unincorporated area; and,

WHEREAS, CITY is requesting COUNTY's participation to grant CITY permission to widen and/or reconstruct the bridge that lies within COUNTY jurisdiction and realign the southerly approach that is also located within the COUNTY's jurisdiction for the PROJECT; and,

WHEREAS, California Streets and Highways Code section 1710 authorizes COUNTY to contract with CITY for CITY's maintenance, construction or repair of COUNTY highways, in this case with the cost being solely the responsibility of CITY; and,

WHEREAS, COUNTY determines that it is necessary for the more efficient maintenance, construction, or repair of the COUNTY roads identified herein to contract with CITY for the PROJECT; and,

WHEREAS, both Parties acknowledge and agree that each Party has the broad power of eminent domain over any property within its jurisdictions necessary for the exercise of its powers; and,

WHEREAS, both Parties also acknowledge and agree that each Party has the specific power to improve pedestrian and vehicular traffic, separate grades of roadways and railways, and connect streets, and that each Party may use the power of eminent domain for accomplishing such actions; and,

WHEREAS, both Parties further acknowledge and agree that the power of eminent domain also extends, in certain situations, to extraterritorial properties existing outside of a Party's immediate jurisdiction and that one Party may consent to the other Party's exercise of the power of eminent domain within the other Party's jurisdiction pursuant to California Code of Civil Procedure 1240.050 and/or an agreement for a joint exercise of powers pursuant to California Code of Civil Procedure section 1240.140; and,

WHEREAS, CITY will serve as lead agency for the PROJECT including, but not limited to, right-of-way activities within the boundaries of the COUNTY, pursuant to Code of Civil Procedure section 1240.140 and Section 6500 of the Government Code; and,

WHEREAS, the total PROJECT cost is estimated to be \$30,200,000 and the PROJECT Schedule is in Exhibit A; and,

WHEREAS, CITY and COUNTY desire to set forth the responsibilities and obligations of each as they pertain to such participation, and to the design, construction and funding of the proposed PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 CITY AGREES TO:

- 1.1 Act as the Lead Agency in the design, engineering, right-of-way acquisition and certification, contract administration, construction, construction management, inspection, materials testing, and construction survey; provide National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliances (Public Resources Code section 21000, *et seq.*); and all other work necessary to construct PROJECT in accordance with approved plans. The CITY shall be responsible for ensuring compliance with all applicable state and federal laws relating to the acquisition of property, including but not limited to, California Constitution Article I, Section 19, California Eminent Domain Law, the Uniform Relocation and Real Property Acquisition Policies for Federal and Federally Assisted Programs, California relocation laws and any implementing regulations, and any other applicable stated and federal laws.
- 1.2 Provide plans and specifications and all necessary construction engineering for the PROJECT to COUNTY, for COUNTY's review and approval prior to advertising the PROJECT for construction bids.
- 1.3 Construct the PROJECT by contract in accordance with the plans and specifications of CITY, which have been reviewed and approved by COUNTY.
- 1.4 Arrange for relocation of all utilities which interfere with construction of the entire PROJECT limits.
- 1.5 Obtain a no-cost permit from COUNTY for work within the COUNTY's right-of-way.
- 1.6 Advertise, award, and administer the construction of the PROJECT, in accordance with the provisions of California Public Contract Code applicable to cities and require, as well as enforce, CITY's contractors to comply with all applicable laws and regulations, including Labor Code sections 1720 *et seq.* and 1770 *et seq.* that concern the payment of prevailing wages.
- 1.7 CITY shall require all contractors and vendors working on the PROJECT to have appropriate and adequate insurance coverage for the mutual protection and benefit of the Parties. Except for Workers Compensation, Errors and Omissions and Professional Liability policies, CITY shall require and ensure that all CITY contractors/subcontractors for the PROJECT have insurance policies that contain endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional insureds 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.

- 1.8 Require CITY's contractors and subcontractors to pay the minimum of prevailing wages as applicable.
- 1.9 Provide adequate inspection of all items of work performed under the construction contract(s) with CITY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by COUNTY. CITY shall provide copies of any records of inspection and materials testing to COUNTY within ten (10) business days of CITY's receipt of written demand from COUNTY for such records. This shall be included as a PROJECT cost.
- 1.10 Include compliance with any applicable requirements of CEQA and NEPA, as well as completing the required CEQA and NEPA documentation.
- 1.11 Pay all costs associated with the PROJECT. The cost of the PROJECT shall include the cost of design, right-of-way, acquisition, construction, construction engineering, construction management, inspection, CEQA and NEPA compliances, and approval for the PROJECT.
- 1.12 Operate and maintain the complete bridge structure, including abutment, approach, and that portion of bridge structure within COUNTY jurisdiction in accordance with CITY regulations, policies and procedures, after CITY's and COUNTY's acceptance of the construction contract work.
- 1.13 Pay all costs presented and agreed to by CITY, associated with the PROJECT's right-of-way acquisition, including reasonable just compensation for real property and any pertinent business and goodwill interests, and relocation costs as deemed necessary in the COUNTY's and CITY's jurisdictions.
- 1.14 In the event that a Resolution of Necessity (RON) is required for the PROJECT, the CITY will serve as the lead agency and will present the RON to CITY Council for consideration.
- 1.15 Require that consultant(s) obtain Railroad Protective Liability Insurance for PROJECT construction surrounding the Union Pacific Railroad and name the COUNTY as an additional insured.

## 2.0 COUNTY AGREES TO:

- 2.1 Allow the CITY to exercise the power of eminent domain on the County's behalf and agrees to the joint exercise of powers as so required to complete the PROJECT and/or the acquisition of properties or to obtain the property necessary for the PROJECT pursuant to California Code of Civil Procedure section 1240.050 and/or section 1240.140 because some of property necessary for PROJECT lies within the COUNTY's jurisdiction but that the PARTIES agree to the CITY acting as the Lead Agency for the PROJECT.
- 2.2 Authorize the CITY to, on its behalf, coordinate the relocation of all of the PROJECT's affected utility company facilities within the COUNTY jurisdiction in a timely manner.
- 2.3 Provide a no-cost permit to the CITY for its work in COUNTY's right-of-way.
- 2.4 At no cost to the CITY, review and approve the plans and specifications provided by the CITY for work to be performed in the COUNTY's jurisdiction.
- 2.5 At no cost to the CITY, provide a representative who shall have the authority to discuss and attempt to resolve issues concerning the PROJECT with the COUNTY.

## 3.0 IT IS MUTUALLY AGREED:

- 3.1 After CITY's and COUNTY's acceptance of completed PROJECT, the COUNTY shall be responsible for performing any maintenance for that portion of the PROJECT that is in the County Maintained Road System and within the COUNTY unincorporated area with the exception of the bridge structure, and the CITY shall be responsible for performing any maintenance for the PROJECT that is in the CITY incorporated area, including the bridge structure from and including abutment to abutment.
- 3.2 That the Parties will enter into a separate maintenance agreement removing the COUNTY as the responsible party for the maintenance of the bridge structure that is located in the unincorporated area and assigning the CITY as the responsible agency for the maintenance of the entire bridge structure and including abutment to abutment.
- 3.3 CITY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY, its officers, employees, agents, and volunteers from any and all claims, actions, or

- losses, damages, and/or liability arising out of CITY's performance of its obligations under this Agreement including the CITY's exercise of eminent domain and relocation obligations in the acquisition of any property necessary for the PROJECT, and the construction, use, maintenance, and operation of the PROJECT.
- 3.4 COUNTY agrees to indemnify and hold harmless the CITY, its officers, employees, agents, and volunteers from any and all claims, actions, or losses, damages, and/or liability arising out of COUNTY's performance of its obligations under this Agreement.
- 3.5 In the event the CITY and/or the COUNTY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the CITY and/or COUNTY shall indemnify the other to the extent of its comparative fault.
- 3.6 In the event of litigation arising from this Agreement, each Party to the 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 3.3, 3.4 and 3.5 indemnification.
- 3.7 CITY and COUNTY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers Compensation and warrant that through their programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.
- 3.8 If either CITY or COUNTY requests additional work that is beyond the scope of the original PROJECT, and not considered by all Parties to be a necessary part of the PROJECT, said work, if approved by all Parties, will be paid solely by the agency requesting the work.
- 3.9 In the event that change orders are required during the course of the PROJECT, said change orders must be approved by COUNTY Department of Public Works Director or his designee and the CITY. Contract Change Order forms will be delivered by email or fax and must be returned within ten (10) business days. The COUNTY shall not unreasonably withhold approval of change orders. If a COUNTY disapproved or modified change order is later found to be a cost of the PROJECT, then the COUNTY shall be responsible for any costs, awards, judgments or settlements associated with the disapproval or modified change order.
- 3.10 This Agreement may be cancelled upon thirty (30) calendar days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after CITY awards a contract to construct the PROJECT. The Parties recognize and agree that the provisions governing utility relocation and construction are dependent upon the Parties first satisfying CEQA and NEPA. As provided in this paragraph, the Agreement may be cancelled with or without cause, before, during or after CEQA and NEPA review/approval.
- 3.11 Except as provided in paragraphs 3.10 and 3.19, and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive Agreement termination, this Agreement shall terminate upon completion of the PROJECT. The PROJECT shall be deemed complete upon both PARTIES recording a Notice of Completion with any and all appropriate jurisdictions.
- 3.12 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 both Parties.
- 3.13 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between CITY 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.
- 3.14 Time is of the essence for each and every provision of this Agreement.
- 3.15 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 business days shall be deemed COUNTY business 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.
- 3.16 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.
- 3.17 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.
- 3.18 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.19 This Agreement will be effective on the date it is signed by both Parties and shall conclude upon satisfaction of the terms identified in paragraph 3.11, or December 31, 2026 (whichever occurs first).
- 3.20 The Recitals are incorporated into the body of this Agreement as if fully set forth herein.

SIGNATURES ON 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  
of San Bernardino County

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

CITY OF MONTCLAIR

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

Name Javier John Dutrey  
(Print or type name of person signing contract)

Title Mayor  
(Print or Type)

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

Address 5111 Benito Street  
Montclair, CA 91763

ATTEST:


By: \_\_\_\_\_  
Andrea Myrick, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Diane E Robbins, City Attorney


**OR COUNTY USE ONLY**

Approved as to Legal Form

 \_\_\_\_\_  
Suzanne Bryant, 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**

**Project Schedule**

<b>Milestones</b>	<b>Estimated Completion Date (Actual)</b>
Environmental Approval	Summer 2021
Design Approval	Fall 2022
Right-of-Way	Fall 2022
Begin Construction	Spring 2023
End Construction	Spring 2025