



MARK PESTRELLA, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

February 28, 2019

IN REPLY PLEASE
REFER TO FILE **TPP-7**

Mr. Rene Guerrero
City Engineer
City of Pomona
505 South Garey Avenue
Pomona, CA 91766

Dear Mr. Guerrero:

STREET REHABILITATION DISTRICT 6 PROJECT PROPOSED CITY OF POMONA – LOS ANGELES COUNTY COOPERATIVE AGREEMENT

Enclosed for your consideration are three originals of the proposed cooperative agreement for the Street Rehabilitation District 6 project jurisdictionally shared between the Cities of Pomona and Claremont and the County. The proposed project will consist of Rehabilitation of the Asphalt Concrete Pavement and construction or modification of curb ramps to meet the Americans with Disabilities Act requirements.

The proposed cooperative agreement was prepared based on discussions between our respective staff. It provides for the City of Pomona to perform the preliminary engineering and administer the construction contract of the project with the City's and the County to finance their respective jurisdictional shares of the project cost. The total project cost is estimated to be \$1,946,750 with the County's share estimated to be \$311,480. Under the terms of the proposed cooperative agreement, the County will deposit with the City following the execution of this agreement and upon demand by the City's sufficient funds to finance its share of the project cost. The County's actual share will be based upon a final accounting after completion of the project.

The California Environmental Quality Act (CEQA) requires public agency decision makers to document and consider environmental implications of their actions. Accordingly and pursuant to Section 15301(c) of CEQA Guidelines, we found that this project is categorically exempt from the provisions of CEQA. If you concur that this project is categorically exempt, please have your duly authorized officials make an Environmental finding.

AUTHOR'S COPY

Mr. Rene Guerrero
February 28, 2019
Page 2

If this proposed cooperative agreement is satisfactory, please present it to your duly authorized officials for approval. Upon approval, please return three original agreements to us for further action. After final approval by the Board, we will return a fully executed City original to you.

If you have any questions or require additional information, please contact Ms. Olga Cruz, Transportation Planning and Programs Division, at (626) 458-5926 or omacruz@dpw.lacounty.gov.

Very truly yours,



MARK PESTRELLA
Director of Public Works

OC:pr

C190276

P:\PDPUB\CITY\CUA\SGVC\POM\ST RHBLTTN DIS 6\2019-01-31 TL

Enc.

cc: Supervisor Hilda L. Solis (Waqas Rehman)

AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF POMONA, a municipal corporation in the County of Los Angeles (hereinafter referred to as CITY), and the COUNTY OF LOS ANGELES, a political subdivision of the State of California (hereinafter referred to as COUNTY):

WITNESSETH

WHEREAS, Towne Avenue is on the Highway Element of CITY and City of Claremont's general plan and on COUNTY'S Highway Plan; and

WHEREAS, CITY, City of Claremont, and the COUNTY propose to improve the roadway pavement of the following segment which is jurisdictionally shared between CITY, City of Claremont, and COUNTY:

Segment	Scope of Work	Thomas Guide	Length (miles)	Jurisdiction Shared
Towne Avenue from Bonita Avenue to Foothill Boulevard	Cold mill and overlay 2-inch asphalt rubber hot mix over 4-inch Asphalt Concrete (AC) over 6-inch crushed miscellaneous base (CMB)	601-B1 to B3 & 571-B7	0.75	CITY, City of Claremont and COUNTY

WHEREAS, the work will consist of cold mill and overlaying 2-inch asphalt rubber hot mix over 4-inch asphalt concrete over 6-inch crushed miscellaneous base for the section as described above, and construction or modification of curb ramps at locations where right-of-way acquisitions, utility relocation, and other improvements beyond the foot print of a standard curb ramp is not required; and

WHEREAS, the aforementioned work, which is included in a CITY-administered project named Street Rehabilitation District 6 project, (hereinafter referred to as PROJECT), includes work on other city street segments not mentioned in this AGREEMENT; and

WHEREAS, PROJECT is within the geographical boundaries of CITY, the City of Claremont, and COUNTY; and

WHEREAS, PROJECT is of general interest to CITY, City of Claremont, and COUNTY; and

WHEREAS, CITY is willing to perform or cause to be performed the PRELIMINARY ENGINEERING, solicitation of construction bids and award of construction contract, and CONTRACT ADMINISTRATION for the PROJECT; and

WHEREAS, the COST OF PROJECT includes the costs of PRELIMINARY ENGINEERING, COST OF CONSTRUCTION CONTRACT, and costs of CONSTRUCTION ADMINISTRATION as more fully set forth herein; and

WHEREAS, COST OF PROJECT is currently estimated to be One Million Nine Hundred Forty-Six Thousand Seven Hundred Fifty and 00/100 Dollars (\$1,946,750.00) with CITY'S share estimated to be One Million Four Hundred One Thousand Five Hundred Ninety Five and 00/100 Dollars (\$1,401,595.00), City of Claremont's share estimated to be Two Hundred Thirty Three Six Hundred Seventy Five and 00/100 Dollars (\$233,675.00) and COUNTY'S share estimated to be Three Hundred Eleven Thousand Four Hundred Eighty and 00/100 Dollars (\$311,480.00); and

WHEREAS, CITY, the City of Claremont, and COUNTY are willing to finance their respective shares of the COST OF PROJECT within their JURISDICTIONS; and

WHEREAS, a separate agreement between the City of Claremont and CITY is being executed covering the portion of PROJECT within the City of Claremont's jurisdiction; and

WHEREAS, such a proposal is authorized and provided for by the provisions of Section 23004, et seq. of the Government Code and Sections 1685 and 1803 of the California Streets and Highways Code.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by CITY and COUNTY and of the promises herein contained, it is hereby agreed as follows:

(1) DEFINITIONS:

- a. JURISDICTION as referred to in this AGREEMENT shall be defined as the area within the geographical boundary of the CITY, City of Claremont and the unincorporated COUNTY areas mentioned in this AGREEMENT.
- b. PRELIMINARY ENGINEERING as referred to in this AGREEMENT shall consist of environmental findings and approvals/permits; design survey; soils report; traffic index and geotechnical investigation; preparation of plans, specifications, and cost estimates; right-of-way engineering; utility engineering; and all other necessary work prior to advertising of the PROJECT for construction bids.
- c. COST OF CONSTRUCTION CONTRACT as referred to in this AGREEMENT shall consist of the total of all payments to the construction contractor(s) for the PROJECT and the total of all payments to utility companies or contractor(s) for the relocation of facilities necessary for the construction of PROJECT, and the cost of any additional unforeseen work that is necessary for the construction of the PROJECT in accordance with plans and specifications approved by the CITY and the COUNTY.

- d. CONSTRUCTION ADMINISTRATION as referred to in this AGREEMENT shall consist of construction contract administration, construction inspection, materials testing, construction survey, traffic detour, signing and striping, construction engineering, utility relocation and coordination matters, changes and modifications of plans and specifications for PROJECT necessitated by unforeseen or unforeseeable field conditions encountered during construction of PROJECT, construction contingencies, and all other necessary work after advertising of PROJECT for construction bids to cause PROJECT to be constructed in accordance with said plans and specifications approved by CITY and COUNTY.
- e. COST OF PROJECT as referred to in this AGREEMENT shall consist of the COST OF CONSTRUCTION CONTRACT and costs of PRELIMINARY ENGINEERING; CONSTRUCTION ADMINISTRATION; right-of-way acquisition and clearance matters; and all other work necessary to complete PROJECT in accordance with the plans and specifications approved by the CITY and the COUNTY and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.
- f. Completion of PROJECT as referred to in this AGREEMENT shall be defined as the date of field acceptance of construction of PROJECT by CITY and a written notification to COUNTY'S Director of Public Works that the improvements within COUNTY'S JURISDICTION are transferred to COUNTY for the purpose of operation and maintenance.

(2) COUNTY AGREES:

- a. To finance COUNTY'S jurisdictional share of COST OF PROJECT, the actual amount of which is to be determined by a final accounting, pursuant to Section (4) a., on page 5.
- b. To deposit with the CITY following execution of this AGREEMENT and upon demand by the CITY Three Hundred Eleven Thousand Four Hundred Eighty and 00/100 Dollars (\$311,480.00) to finance its estimated jurisdictional share of the COST OF PROJECT (COUNTY'S PAYMENT).
- c. To provide CITY with conditions for issuance of encroachment, excavation, and construction permit and any other special conditions at the time of plan approval for construction bids so that the permit conditions are fully incorporated into the PROJECT'S plans and specifications that contractors or any other person in charge of construction shall have no merit to request change in work compensation.

- d. Upon receipt of permit application from CITY and approval of construction plans for PROJECT, to issue CITY any necessary permit(s) authorizing CITY to construct those portions of PROJECT within COUNTY'S JURISDICTION at no cost to CITY.
- e. To cooperate with the CITY in conducting negotiations with and, where appropriate, to issue notices to public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction. COUNTY will take all necessary steps to grant, transfer, or assign all prior rights over the utility companies and owners of substructure and overhead facilities to CITY when necessary to construct, complete, and maintain PROJECT or to appoint CITY as its attorney-in-fact to exercise such prior rights.
- f. To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered during construction of PROJECT within COUNTY'S JURISDICTION.
- g. Upon completion of PROJECT and after receiving written notification from CITY to maintain in good condition and at COUNTY'S expense all improvements constructed as part of PROJECT within COUNTY'S JURISDICTION.

(3) CITY AGREES:

- a. To perform or cause to be performed the PRELIMINARY ENGINEERING, CONSTRUCTION ADMINISTRATION, right-of-way acquisition and clearance matters, and all other work necessary to complete PROJECT.
- b. To finance CITY'S jurisdictional share of the COST OF PROJECT, CITY'S actual share will be determined by a final accounting pursuant to Section (4) a., on page 5.
- c. To obtain COUNTY'S approval of plans for PROJECT.
- d. To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered during construction of PROJECT within CITY'S JURISDICTION.
- e. To furnish COUNTY within one hundred eighty (180) calendar days after final payment to contractor a final accounting of the actual COST OF

PROJECT, including an itemization of actual unit costs and actual quantities for PROJECT.

- f. Upon completion of PROJECT, to maintain in good condition and at CITY'S expense, all improvements constructed as part of PROJECT within CITY'S JURISDICTION.
 - g. To comply with all applicable Federal, State, and local laws, rules, and ordinances in the performance of this AGREEMENT.
 - h. In the event that a preliminary notice, stop payment notice, and/or action to enforce a stop payment notice is filed on the PROJECT, to provide COUNTY with a copy of same within three (3) business days. CITY shall be responsible for withholding the funds in compliance with Civil Code § 9350 et seq.
- (4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:
- a. The final accounting of the actual total COST OF PROJECT shall allocate said total cost between CITY, City of Claremont and COUNTY based on the location of the improvements and/or work done. Thus, the cost of all work or improvements (including all engineering, administration, and all other costs incidental to PROJECT work) located within CITY and/or City of Claremont's JURISDICTION shall be borne by respectively. Such costs constitute CITY and City of Claremont's jurisdictional share of the COST OF PROJECT. The cost of all work or improvements, including all engineering, administration, and all other costs incidental to PROJECT work, located within COUNTY'S JURISDICTION shall be borne by COUNTY. Such costs constitute COUNTY'S jurisdictional share of the COST OF PROJECT.
 - b. On the basis of the scope of work for the PROJECT within COUNTY's JURISDICTION as identified in this AGREEMENT, COUNTY'S jurisdictional share of the COST OF PRELIMINARY and CONSTRUCTION ADMINISTRATION is defined as COUNTY'S actual jurisdictional share of the COST OF PRELIMINARY ENGINEERING AND CONSTRUCTION ADMINISTRATION as provided for in paragraph (4)a., above or twenty percent (20%) of the COST OF CONSTRUCTION CONTRACT, whichever is less.
 - c. That if at final accounting COUNTY'S jurisdictional share of COST OF PROJECT exceeds COUNTY'S Payment, as set forth in Section (2) b. on page 3, COUNTY shall pay to CITY the additional amount upon demand. Said demand shall consist of a billing invoice prepared by CITY. Conversely, if the COUNTY's jurisdictional share is less than COUNTY'S Payment, CITY shall refund the difference to COUNTY without further action by COUNTY.

- d. COUNTY shall review the final accounting invoice prepared by CITY and report in writing any discrepancies to CITY within sixty (60) calendar days after the date of said invoice. Undisputed charges shall be paid by COUNTY to CITY within sixty (60) calendar days after the date of said invoice. CITY shall review all disputed charges and submit a written justification detailing the basis for those charges within sixty (60) calendar days of receipt of COUNTY'S written report. COUNTY shall then make payment of the previously disputed charges or submit justification for nonpayment within sixty (60) calendar days after the date of CITY'S written justification.
- e. During construction of PROJECT, CITY shall furnish an inspector or other representative to perform the functions of an inspector. COUNTY may also furnish, at no cost to CITY, an inspector or other representative to inspect construction of PROJECT within COUNTY'S JURISDICTION. Said inspectors shall cooperate and consult with each other, but the orders of CITY inspector to the contractors or any other person in charge of construction shall prevail and be final.
- f. This AGREEMENT may be amended or modified only by mutual written consent of CITY and COUNTY. Amendments, modifications, and termination of a nonmaterial nature may be made by the mutual written consent of the parties' Directors of Public Works/City Engineer or their delegates.
- g. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

CITY: Mr. Rene Guerrero
City Engineer
City of Pomona
505 South Garey Avenue
Pomona, CA 91766

COUNTY: Mr. Mark Pestrella
Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

- h. Other than as provided below, neither CITY nor any officer or employee of CITY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the

responsibility of COUNTY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully indemnify, defend, and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this AGREEMENT.

- i. Neither CITY nor any officer or employee of CITY shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the PROJECT within the COUNTY'S JURISDICTION or arising from acts or omissions on the part of the COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of the COUNTY under this AGREEMENT, including liability under the Comprehensive Environmental, Response, Compensation and Liability Act of 1980 (CERCLA) the California Health and Safety Code or common law. It is understood and agreed pursuant to Government Code Section 895.4, COUNTY shall fully indemnify, defend, and hold CITY harmless from any such damage, liability, or claim. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the amended CERCLA, and California Health and Safety Code Section 25364.
- j. Other than as provided below, neither COUNTY nor any officer or employee of COUNTY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully indemnify, defend, and hold COUNTY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this AGREEMENT.
- k. Neither COUNTY nor any officer or employee of COUNTY shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the PROJECT within the CITY and City of Claremont's JURISDICTION or arising from acts or omissions on the part of the CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of the CITY under this AGREEMENT,

including liability under the CERCLA, the California Health and Safety Code or common law. It is understood and agreed pursuant to Government Code Section 895.4, CITY shall fully indemnify, defend, and hold COUNTY harmless from any such damage, liability, or claim arising from CITY's and City of Claremont's jurisdiction. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the amended CERCLA, and California Health and Safety Code Section 25364.

- I. In contemplation of the provision of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this AGREEMENT to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each of the parties indemnifies and holds harmless the other party for any liability, cost, or expense that may be imposed upon such other party solely by virtue of Section 895.2. The provision of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.
- m. The provisions of this AGREEMENT shall supersede and control over any provisions inconsistent herewith in the Assumption of Liability Agreement 32382 between CITY and COUNTY, adopted by the Board of Supervisors on November 14, 1977, and currently in effect.
- n. That the CITY authorizes the City Engineer to assign to the COUNTY all of its right, title, and interest in any unelapsed portion of the one-year warranty granted to the CITY by the construction contractor performing the road improvement work. This assignment is effective following completion of PROJECT.
- o. Venue for any litigation shall be Los Angeles County, California, or in the United States District Court for the Central District of California. Any waiver by the CITY or COUNTY of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein. No term, covenant or condition of this AGREEMENT shall be deemed to have been waived by CITY or COUNTY unless in writing. This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together constitute one and the same instrument. Each person

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized by the CITY OF POMONA on _____, 2019, and by the COUNTY OF LOS ANGELES Director of Public Works on _____, 2019.

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

ATTEST:

CELIA ZAVALA
Executive Officer of the
Board of Supervisors of the
County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By _____
Deputy

CITY OF POMONA

By _____
Mayor

Date: _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney