

**BETTERMENT AGREEMENT**  
**BETWEEN THE CITY OF SAN GABRIEL, THE SAN GABRIEL REDEVELOPMENT**  
**AGENCY**  
**AND**  
**THE ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY**  
**OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**  
**REGARDING**  
**CONSTRUCTION OF VARIOUS ITEMS AS PART OF THE CONSTRUCTION OF SAN**  
**GABRIEL TRENCH GRADE SEPARATION PROJECT**  
**AT THE UNION PACIFIC RAILROAD ALHAMBRA SUBDIVISION**

THIS AGREEMENT dated this 9<sup>th</sup> day of March, 2011, is made by and among, the CITY OF SAN GABRIEL, a municipal corporation, hereinafter referred to as "CITY", the SAN GABRIEL REDEVELOPMENT AGENCY, a redevelopment agency established under the laws of the State of California, hereinafter referred to as "AGENCY", and the ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, a California Joint Powers Authority, hereinafter referred to as "ACE". CITY, AGENCY and ACE may hereinafter be referred to individually as "PARTY" or collectively as "PARTIES".

**RECITALS**

- A. CITY and ACE contemplate constructing a grade separation at the Alhambra Subdivision railroad crossings at Ramona Street, Mission Road, Del Mar Avenue, and, San Gabriel Boulevard, including crossing improvements at Walnut Grove Avenue referred to herein as "Project".
- B. Part of the Project takes place within the East San Gabriel Commercial Development Project Area referred to herein as "Project Area". CITY and AGENCY wish to engage ACE to perform certain betterments relating to architectural treatments on the San Gabriel Boulevard grade separation bridge and rehabilitation of haul routes that will be impacted by the Project, hereinafter referred to as the "Work" as elaborated upon in Exhibit A and in the amounts set forth in Exhibit B, both of which are attached hereto and made a part hereof.
- C. AGENCY will be responsible for the architectural treatments of the San Gabriel Bridge and that portion of the rehabilitation of the haul routes that are within the Project Area which are not covered by ACE. CITY will be responsible for that portion of the rehabilitation of the haul routes that are outside of the Project Area but within the boundaries of the CITY which are not covered by ACE.

D. In accordance with Health and Safety Code section 33445, CITY and AGENCY have each consented to AGENCY paying for that portion of the Work in the Project Area and making the necessary findings. Further CITY has agreed to pay for all Work should AGENCY be unable to do so for any reason.

## SECTION I

### ACE AGREES:

To assist CITY and AGENCY in finalizing plans and specifications, administer bids, and construct all requested Work as a part of the Project. Costs for said Work in this set of plans and specifications include construction of CITY and AGENCY provided design and ACE provided construction management services.

## SECTION II

### CITY AND AGENCY JOINTLY AND SEVERALLY AGREE:

To pay ACE for all the costs for construction and products associated with the Work as described in Exhibit B. ACE will be paid for its actual costs and expenses for the Work which are currently estimated to not exceed the amount of:

1. \$2,925,257.00, as set forth in Exhibit B. The not to exceed estimate specified herein may be adjusted to reflect actual bids in the proposed alternate bid schedule of the Project in the scope of Work and/or changes to the Work and/or changed conditions. All parties shall agree in writing to any change in the estimate, and such agreement shall not be unreasonably withheld. ACE expenses will be calculated based on the Caltrans-approved indirect cost rate applied to direct expenses.
2. CITY and AGENCY will make deposits into an escrow account established and maintained for the benefit of ACE during calendar years 2012, 2013, and 2014 with the final deposit to be made by April 1, 2014. The AGENCY will make deposits in the escrow account as follows: \$100,000 in 2012, \$100,000 in 2013, and \$485,000 by April 1, 2014 for an estimated total of \$685,000 in the escrow account to pay ACE. The CITY will make deposits in the escrow account as follows: \$100,000 in 2012, \$100,000 in 2013, and \$2,041,402 by April 1, 2014. for an estimated total of \$2,241,402 in the escrow account to pay ACE. ACE will withdraw funds from the escrow account in accordance with invoices provided to CITY and AGENCY and no sooner than 30 days after invoice transmittal to CITY and AGENCY.

### SECTION III

#### IT IS MUTUALLY AGREED AS FOLLOWS:

1. Should any portion of the Work be financed with funds with specific expenditure requirements or limitations, all applicable laws, regulations and policies relating to the use of such funds shall apply notwithstanding other provisions of this Agreement.
2. Should ACE determine at any time prior to the commencement of construction of the Project that the requested Work cannot be reasonably accommodated in the Project, ACE may at its own discretion, delete the Work from the Project. If such occurs, all plans and specifications prepared for the Work will be given to the CITY and AGENCY along with an invoice for all mutually agreed engineering, construction-related, and administrative costs incurred for the Work.
3. If at the final Project accounting, regardless of whether the Work has been completed or deleted from the Project as stipulated in this Agreement, the actual costs of the Work exceed the CITY's and AGENCY's deposit into escrow, ACE shall invoice the CITY and the CITY shall pay within thirty (30) days the difference. Conversely, if at final accounting, the amount of the CITY and AGENCY's deposit into escrow exceeds the CITY and AGENCY's Work costs, ACE shall refund the difference within thirty (30) days.
4. CITY and AGENCY shall review the final accounting invoice prepared by ACE and report in writing to ACE any discrepancies within thirty (30) days after date of said invoice. Undisputed charges shall be paid in accordance with this Agreement. Should ACE, and CITY and AGENCY be unable to agree on remaining costs, then ACE, CITY, and AGENCY shall meet and confer, in good faith, to resolve the disagreement. If the disagreement has not been resolved at the end of thirty (30) days, then the disagreement will be submitted to mediation in accordance with the Mediation Rules of the American Arbitration Association. ACE shall be responsible for 50% of the costs of mediation and the CITY and AGENCY would be responsible for the remaining 50%, and the mediator shall be acceptable to ACE and CITY and AGENCY, If ACE, CITY and AGENCY are unable to agree on the selection of a mediator, then assistance will be obtained from the American Arbitration Association. ACE, CITY and AGENCY agree to participate in mediation and any associated negotiations for the total combined period of at least sixty (60) days. If the disagreement cannot be resolved through mediation, the disagreement may be submitted to binding arbitration if ACE, CITY, and AGENCY so agree at the time.
5. The design, construction, oversight, acceptance, ownership, maintenance, salvage and indemnification provisions of the Agreement regarding the

Construction of Grade Crossing Safety Improvements and Grade Separation Projects by the Alameda Corridor – East Construction Authority between ACE and CITY, dated March 9, 2000 (specifically Paragraphs 2,6,9,10,11,12,13 and 14 of Section III) shall be incorporated into and specifically made a part of this Agreement.

6. Every notice, demand, request, or other document or instrument delivered pursuant to this Agreement shall be in writing, and shall be either personally delivered by Federal Express or other reputable overnight courier, sent by facsimile transmission with telephonic confirmation of actual receipt and the original subsequently delivered by other means, or sent by certified United States mail, postage prepaid, return receipt requested, to the addresses set forth below, or to such other address as a party may designate from time to time:

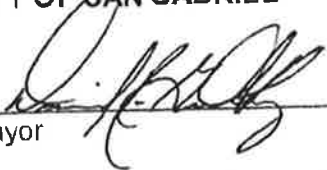
To CITY AND AGENCY:      City of San Gabriel  
425 South Mission Drive  
San Gabriel, CA 91776  
Attention: Mr. Steven Preston,  
City Manager/Executive Director  
Phone: (626) 308-2810  
Fax: (626) 458-2830  
Email: [spreston@sgch.org](mailto:spreston@sgch.org)

To ACE:                      Mr. Rick Richmond, Chief Executive Officer  
ACE Construction Authority  
4900 Rivergrade Road, Suite A120  
Irwindale, CA 91706  
Phone: (626) 962-9292  
Fax: (626) 962-3552  
Email: [rickr@theaceproject.org](mailto:rickr@theaceproject.org)

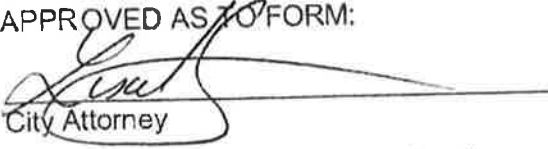
7. This Agreement constitutes the entire understanding and agreement of the PARTIES and integrates all of the terms and conditions mentioned herein or incidental hereto with respect to the subject matter hereof, and supersedes all negotiations or previous agreements between the PARTIES with respect to all or part of the subject matter hereof.
8. This Agreement may be amended in writing at any time by the mutual consent of the PARTIES. No amendment shall have any force or effect unless executed in writing by both PARTIES.
9. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall continue in full force and effect, unless all PARTIES would be materially altered or abridged by such interpretation.
10. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
11. Except as set forth herein, no PARTY shall assign or otherwise transfer this Agreement or its right of interest or any part thereof to any third party without the prior written consent of the other PARTIES. Such consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning PARTY of its obligations until such obligations have been assumed in writing by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and inure to the benefit of the assignee.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by their respective officers as of the date first written above.

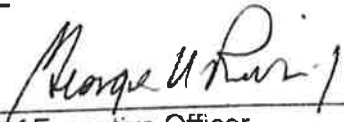
**CITY OF SAN GABRIEL**


  
\_\_\_\_\_  
Mayor  
Date 3-9-11

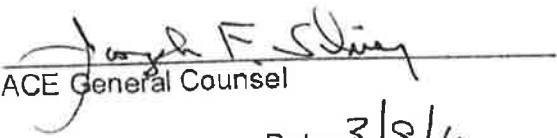
ATTEST:  
  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney  
Date 3-8-11


**ACE**


  
\_\_\_\_\_  
Chief Executive Officer  
Date March 9, 2011

ATTEST:  
  
\_\_\_\_\_  
Secretary  
Date 3/9/11

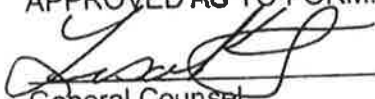
APPROVED AS TO FORM:  
  
\_\_\_\_\_  
ACE General Counsel  
Date 3/8/11

**SAN GABRIEL REDEVELOPMENT AGENCY**

  
\_\_\_\_\_  
Executive Director  
Date 3.8.11

ATTEST:  
  
\_\_\_\_\_  
Commission Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
General Counsel

Date 3.8.11

**Exhibit A**

**BETTERMENT AGREEMENT  
BETWEEN THE CITY OF SAN GABRIEL, THE SAN GABRIEL REDEVELOPMENT AGENCY  
AND THE ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY  
OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS REGARDING  
CONSTRUCTION OF VARIOUS ITEMS AS PART OF THE CONSTRUCTION OF SAN GABRIEL  
TRENCH GRADE SEPARATION PROJECT AT THE UNION PACIFIC RAILROAD ALHAMBRA  
SUBDIVISION**

**Scope of Work:**

**Architectural treatments to San Gabriel Blvd grade separation bridge structure:**

REDEVELOPMENT AGENCY'S responsibilities: Final architectural plans and specifications and various reviews as required to complete the incorporation of the betterments into the overall bid package.

ACE's responsibilities: Incorporate architectural plans and specifications provided by the REDEVELOPMENT AGENCY into the San Gabriel Trench Grade Separation Project as part of the overall bid package and not as an alternative bid segment. Incorporation of said plans includes modifying bridge structure plans, details, and specifications to accommodate the final architectural plans provided by the CITY. ACE will administer the bid for the requested betterments. ACE will construct and manage the construction of said betterments.

**Haul Route rehabilitation on the following selected streets:**

CITY's and REDEVELOPMENT AGENCY's responsibilities: Assist ACE in finalizing plans of Haul Route rehabilitation.

ACE's responsibilities: Finalize design, administer the bid, and construct and manage the requested work.

**Non REDEVELOPMENT AGENCY Areas:**

Street	Limits	
Madera Street	Mission	Main
Main Street	Ramona St	Montecito Dr
Main Street	West End	Del Mar
Main Street	Del Mar	Lafayette
Main Street	Lafayette	California
California Street	Main	Angeleno
Angeleno Avenue	California	300 ft west of San Gabriel
Del Mar Avenue	RR xing	Mission
Mission Road	Del Mar	Pine
Mission Road	Junipero Serra	Del Mar
San Gabriel Blvd	Central	Chestnut
San Gabriel Blvd	Chestnut	Valley
San Gabriel Blvd	Valley	Marshall
San Gabriel Blvd	Marshall	I-10 Ramps



**REDEVELOPMENT AGENCY Areas:**

<b>Street</b>	<b>Limits</b>	
<b>Grand Avenue</b>	San Gabriel	City Limit (Charlotte)
<b>Mission Road</b>	California	San Gabriel
<b>Angeleno Avenue</b>	300 ft west of San Gabriel	San Gabriel
<b>San Gabriel Blvd</b>	RR xing	Mission
<b>San Gabriel Blvd</b>	Mission	Central
<b>Santa Fe Avenue</b>	San Gabriel	End of Street

**Exhibit B**

**BETTERMENT AGREEMENT  
BETWEEN THE CITY OF SAN GABRIEL, THE SAN GABRIEL REDEVELOPMENT AGENCY  
AND THE ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY  
OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS REGARDING  
CONSTRUCTION OF VARIOUS ITEMS AS PART OF THE CONSTRUCTION OF SAN GABRIEL  
TRENCH GRADE SEPARATION PROJECT AT THE UNION PACIFIC RAILROAD ALHAMBRA  
SUBDIVISION**

**REDEVELOPMENT AGENCY designated area Architectural treatments to San Gabriel Blvd grade separation bridge structure:**

1. ACE Labor and Fringe Benefit Costs 1 week:  $\$4,667.07/\text{week} \times 1 \text{ week} = \$4,667.07$
2. Moffatt & Nichol Design Costs:  $\$85,856.00$
3. Public Outreach/Environmental Costs: No Charge to the REDEVELOPMENT AGENCY
4. CM Costs 3 days, 8 hour days of RE for submittal review, and various management:  $\$155.00/\text{hr} \times 8 \text{ hrs/day} \times 3 \text{ days} = \$3,720.00$
5. Estimated Construction Costs:  $\$325,000.00$
6. Total Costs:  $\$419,243.00$

**Haul Route Rehabilitation CITY and REDEVELOPMENT AGENCY Areas:**

1. ACE Labor and Fringe Benefits Costs 12 weeks:  $\$4,667.07/\text{week} \times 12 \text{ weeks} = \$56,004.84 \times 50\%$  for 50/50 share =  $\$28,002.42$
2. Moffatt & Nichol Design Costs: No Charge to the CITY and REDEVELOPMENT AGENCY
3. Public Outreach/Environmental Costs: No Charge to the CITY and REDEVELOPMENT AGENCY
4. CM Costs 60 days, 8 hour days of an inspector's time:  $\$113.00/\text{hr} \times 8 \text{ hrs/day} \times 60 \text{ days} = \$54,240.00 \times 50\%$  for 50/50 share =  $\$27,120.00$
5. Estimated Construction Costs:  $\$2,478,894.00$
6. Total Costs:  $\$2,506,014.00$

**Estimated Costs for REDEVELOPMENT AGENCY Haul Route Areas:**

1. ACE Labor and Fringe Benefits Costs proportioned by 11.6%:  $\$56,004.84 \times 11.6\%$  for REDEVELOPMENT AGENCY areas =  $\$3,248.00$
2. Moffatt & Nichol Design Costs: No Charge to the REDEVELOPMENT AGENCY
3. Public Outreach/Environmental Costs: No Charge to the REDEVELOPMENT AGENCY
4. CM Costs proportioned by 11.6%:  $\$27,120.00 \times 11.6\%$  for REDEVELOPMENT AGENCY areas =  $\$3,146.00$
5. Estimated Construction Costs for REDEVELOPMENT AGENCY areas:  $\$258,218.00.00$
6. Total Costs for REDEVELOPMENT AGENCY areas:  $\$264,612.00$

**Estimated Costs for CITY Haul Route Areas:**

$\$2,506,014.00 - \$264,612.00 = \$2,241,402.00$

**TOTAL THIS BETTERMENT AGREEMENT BOTH CITY AND  
REDEVELOPMENT AGENCY AREAS:**

**\$2,925,257.00**

C:\Documents and Settings\mgrilley\Local Settings\Temporary Internet Files\Content.Outlook\MBMLKQVN\FINAL SGT - BETTERMENT AGREEMENT Exhibits 20110304.docx