



GAIL FARBER, 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

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

April 15, 2014

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

28 April 15, 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

**DELEGATE AUTHORITY TO NEGOTIATE AND ENTER INTO A
COOPERATIVE AGREEMENT WITH THE ALAMEDA CORRIDOR-EAST
CONSTRUCTION AUTHORITY FOR THE VALLEY BOULEVARD BETTERMENT
AS PART OF THE PUENTE AVENUE GRADE SEPARATION PROJECT IN THE
UNINCORPORATED COMMUNITY OF AVOCADO HEIGHTS
(SUPERVISORIAL DISTRICT 1)
(3 VOTES)**

SUBJECT

This action is to authorize the Director of Public Works or her designee to negotiate and enter into a cooperative agreement and any amendments between the Alameda Corridor-East Construction Authority and the County of Los Angeles for construction of road improvements on Valley Boulevard in the unincorporated community of Avocado Heights as a betterment to the Puente Avenue Grade Separation project.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the road improvements on Valley Boulevard are categorically exempt from the provisions of the California Environmental Quality Act.

2. Delegate authority to the Director of Public Works or her designee to negotiate and enter into a cooperative agreement and any amendments between the Alameda Corridor-East Construction Authority and the County of Los Angeles for construction of road improvements on Valley Boulevard in the unincorporated community of Avocado Heights as a betterment to the Puente Avenue Grade Separation project. The cooperative agreement provides for the Alameda Corridor-East Construction Authority to administer the construction and provide construction management with the County paying the cost of the road improvements and providing design support during construction and inspection. The total cost of the road improvements is currently estimated to be \$462,000.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to authorize the Director of Public Works or her designee to negotiate and enter into a cooperative agreement and any amendments between the Alameda Corridor-East (ACE) Construction Authority and the County for ACE to construct road improvements on Valley Boulevard as a betterment to ACE's Puente Avenue Grade Separation project. The betterment will consist of road improvements on Valley Boulevard from approximately 300 feet to 1,500 feet east of Workman Mill Road in the unincorporated community of Avocado Heights. The work consists of reconstructing and resurfacing existing pavement; reconstructing or modifying curb ramps, gutters, sidewalks, and driveways; and traffic signing and striping.

The County's Valley Boulevard Road Improvements project had included this portion of roadway, but due to the scheduling of the County and ACE construction projects and to lessen the impact to the community, ACE has agreed to include this work in the Puente Avenue Grade Separation project at the County's expense. The County Board of Supervisors' approval of this cooperative agreement is necessary for the payment and delegation of responsibilities for the betterment.

ACE has not yet awarded the Puente Avenue Grade Separation project. ACE will award the project based on the lowest bid for their project with the betterment as a bid option. The County has the right to refuse awarding the betterment based on the best interests of the County.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provisions of Operational Effectiveness (Goal 1) and Integrated Services Delivery (Goal 3). The betterment will enhance traffic flow, increase safety, and foster economic vitality for County residents, thereby improving the quality of life.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

The betterment construction contract cost is estimated to be \$400,000 to be paid by the County. In addition to the construction contract cost, the total betterment cost includes construction management costs incurred by ACE estimated to be \$40,000, and the cost for ACE to prepare plans, specifications, and estimate for the betterment as an addendum to the project bid solicitation at a cost not to exceed \$22,000.

Funding for the betterment is included in the First Supervisorial District's Road Construction Program in the Fiscal Year 2013-14 Proposition C Local Return Fund Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

A cooperative agreement similar to the enclosed will be approved, as to form, by County Counsel prior to execution by the Director or her designee.

On January 29, 2013, the Board approved Agreement 77913 between the County and ACE regarding the design and construction of several ACE Puente Avenue Grade Separation projects. This agreement allows for the County to request additions to ACE projects, such as the betterment at the County's expense and upon execution of an additional agreement.

The cooperative agreement provides for ACE to administer construction of the betterment within the County and for the County to pay the cost of the betterment. The County's actual cost will be based upon a final accounting after completion of the project.

ENVIRONMENTAL DOCUMENTATION

This project is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Section 15301(c) and (h) of the California Environmental Quality Act Guidelines and Class 1(j) and (x), Subsections 2, 4, 9, 14, 18, and 22 of the Environmental Reporting Procedures and Guidelines adopted by the Board. These exemptions provide for reconstructing and resurfacing existing pavement; reconstructing or modifying curb ramps, gutters, sidewalks, and driveways in place; and the maintenance of existing roadway facilities.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended action will improve roadway facilities for the traveling public in the San Gabriel Valley and minimize the impact on our communities through the coordination of these two construction projects.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Programs Development Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER
Director

GF:JTW:pr

Enclosures

c: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

**BETTERMENT AGREEMENT
REGARDING THE INSTALLATION OF IMPROVEMENTS ON VALLEY BOULEVARD
ON BEHALF OF THE COUNTY OF LOS ANGELES IN CONJUNCTION WITH THE
PUENTE AVENUE GRADE SEPARATION PROJECT AT THE UNION PACIFIC
RAILROAD ALHAMBRA SUBDIVISION BY THE ALAMEDA CORRIDOR-EAST
CONSTRUCTION AUTHORITY**

THIS AGREEMENT effective this ____ day of _____, 2014, by and between the COUNTY OF LOS ANGELES, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY, a California Joint Powers Authority, hereinafter referred to as "ACE," with the COUNTY and ACE also each individually referred to herein as "PARTY" and collectively as "PARTIES".

WITNESSETH

WHEREAS, ACE is constructing a highway/railroad grade separation on Puente Avenue at the Alhambra Subdivision of the Union Pacific Railroad, hereinafter referred to as "PROJECT;" and

WHEREAS, COUNTY desires to have ACE include COUNTY's design of the Valley Boulevard improvements and construct roadway improvements, as described in Exhibit "A," hereinafter referred to as "BETTERMENT," in conjunction with PROJECT; and

WHEREAS, COUNTY proposes to reimburse ACE for the actual cost ACE incurs for the construction of BETTERMENT performed in conjunction with this AGREEMENT, estimated to be approximately Four Hundred Thousand and 00/100 Dollars (\$400,000.00);

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, it is hereby agreed as follows:

SECTION I

ACE AGREES:

1. To include BETTERMENT as an addendum in the bid solicitation for PROJECT. BETTERMENT shall be shown as a bid alternate in the bid solicitation.
2. To include in the award of the base construction contract the BETTERMENT bid alternate, should COUNTY accept the bid alternate and obtain COUNTY approval prior to award of contract.
3. To assist with required construction management and inspection for BETTERMENT.

4. To track all construction and construction management costs for BETTERMENT separately from PROJECT.
5. To invoice the COUNTY on a monthly basis for BETTERMENT construction contract and construction management costs.
6. To furnish an accounting of final actual cost for BETTERMENT and provide COUNTY an invoice of the same within one hundred twenty (120) days after acceptance of BETTERMENT by ACE and COUNTY.
7. Upon completion of PROJECT, to furnish COUNTY with a complete set of full-size as-built plans and an electronic copy of as-built plans of BETTERMENT within sixty (60) days of acceptance of work.

SECTION II

COUNTY AGREES:

1. To provide ACE all available plans, traffic data, and survey data of existing COUNTY infrastructure for the BETTERMENT at no cost to ACE.
2. To act as lead agency and obtain all applicable approved design plans as required for the BETTERMENT.
3. To pay for the cost of the plans, specifications, and estimate of BETTERMENT as an addendum to the PROJECT bid solicitation, not to exceed Twenty-Two Thousand Dollars (\$22,000.00).
4. To pay for the entire construction contract cost of BETTERMENT, currently estimated to be Four Hundred Thousand and 00/100 Dollars (\$400,000.00), the actual amount of which is to be determined by a final accounting of the construction cost of BETTERMENT.
5. To pay for the construction management costs of BETTERMENT, not to exceed ten percent (10%) of the construction contract cost of BETTERMENT.
6. To assist with ACE's construction management and inspection and cooperate and consult with ACE as required.
7. Upon completion of work by ACE, to accept BETTERMENT and all rights of way and easements acquired for BETTERMENT with the exception of any easements which are not necessary for the permanent operation of the BETTERMENT.
8. To enforce available rights under existing franchise agreements if existing public and/or private utilities conflict with the construction of BETTERMENT.

9. To review the bids and determine if COUNTY will accept the BETTERMENT bid alternate and advise ACE to include BETTERMENT bid alternate in the award of the contract.

SECTION III

IT IS MUTUALLY AGREED AS FOLLOWS:

1. That advertisement and construction by ACE of BETTERMENT work within the PROJECT shall not commence until ACE's final construction plans involving BETTERMENT have been reviewed and approved by the COUNTY's Engineer, or his/her designated agent. Receipt by ACE of BETTERMENT plans signed by COUNTY's Engineer or his/her designated agent shall constitute COUNTY's approval of said plans.
2. If the location of existing facilities of public and/or private utilities conflicts with the construction of BETTERMENT, COUNTY will enforce available rights under existing franchise agreements at no cost to ACE. ACE will identify such facilities located within COUNTY's right of way for protection, relocation, or removal under these rights, to be done by the utilities at no cost to ACE. COUNTY may choose to authorize ACE to coordinate and inspect such protection, relocation, or removal work, at COUNTY's discretion. Nothing in this Agreement shall restrict or affect COUNTY's or ACE's ability to enter into separate agreements with utilities for any purpose, including for reimbursements of utility costs for protection, relocation, maintenance, or removal of their facilities.
3. That in the construction of BETTERMENT, ACE will furnish a resident engineer to oversee BETTERMENT construction and COUNTY may furnish its own representative. Said representative and resident engineer will cooperate and consult with each other, but the decisions of ACE's resident engineer shall remain the sole and primary direction to the contractor for all BETTERMENT work. If material changes to the approved plans and specifications will impact BETTERMENT, the ACE resident engineer will obtain the COUNTY's representative approval before authorizing said changes.
4. Prior to completion of BETTERMENT, under the terms of the PROJECT's construction contract, ACE will confer with COUNTY in good faith to obtain COUNTY's written concurrence that the BETTERMENT has been completed in substantial conformance with the approved plans and specifications.
5. ACE, and their respective elected and appointed boards, officials, officers, agents, employees, and volunteers (individually and collectively, "ACE INDEMNITEES") shall have no liability to COUNTY for, and COUNTY, pursuant to Government Code Section 895.4, shall indemnify, defend (using legal counsel of COUNTY's own choosing), protect and hold harmless ACE INDEMNITEES, from and against any liabilities, as defined in Section III, paragraph 7, or legal challenges to the

PROJECT, including BETTERMENT arising out of any act or omission by COUNTY or any person acting on behalf of COUNTY under or in connection with any work, authority, or breach of any obligation under this Agreement or work activities associated with the BETTERMENT and delegated to COUNTY under this Agreement.

6. COUNTY, its special districts and their respective elected and appointed boards, officials, officers, agents, employees, and volunteers (individually and collectively, "COUNTY INDEMNITEES") shall have no liability to ACE for, and ACE, pursuant to Government Code Section 895.4, shall indemnify, defend (using legal counsel of ACE's own choosing), protect and hold harmless COUNTY INDEMNITEES from and against, any liabilities, as defined in Section III, paragraph 7, or legal challenges to the PROJECT, including BETTERMENT arising out of any act or omission by ACE or any person acting on behalf of ACE under or in connection with any work, authority, or breach of any obligation under the Agreement or work activities associated with the BETTERMENT and delegated to ACE under this Agreement.
7. The term "liabilities" used in Section III, paragraphs 5 and 6, shall mean any and all judgments, awards, claims, demands, liabilities, injury (as defined by Government Code Section 810.8), obligations, litigation, fines, penalties, fees (including, without limitation, expert witness fees, engineering and defense costs, and legal fees), costs (including, without limitation, any and all costs involved in instituting a direct condemnation proceeding, and any and all costs involved in defending an inverse condemnation proceeding, and any and all cost involved in an environmental cleanup or archaeological discovery), expenses (including, without limitation, attorneys' fees and court costs), proceedings, suits, and actions of whatever kind, and damages of any nature whatsoever (including, without limitation, bodily injury, death, personal injury, or property damage).
8. Prior to the start of BETTERMENT construction, which shall be defined for this Agreement as the date on which ACE executes a construction contract for PROJECT, including BETTERMENT, either PARTY may terminate this Agreement and all associated BETTERMENT work by sending a written termination request to the other PARTY and stating a date of termination that is no earlier than sixty (60) days after the date of the written termination request. If ACE requests termination, all work on the BETTERMENT shall cease no later than the date of termination proposed by ACE, and ACE shall refund all payments made by COUNTY for BETTERMENT and cancel all further invoices to COUNTY. If COUNTY requests termination, ACE shall respond to the written termination request by tabulating the actual cost and presenting to COUNTY, within thirty (30) days of the written termination request, all costs already incurred by ACE. After COUNTY has reviewed the Final Cost Estimate, both sides will meet and confer in good faith to negotiate a final termination cost ("Final Cost"). Such Final Cost and associated termination schedule, and all related terms and conditions, will be included in a written amendment to this Agreement. Should COUNTY and ACE

be unable to agree on a Final Cost and termination schedule, COUNTY may unilaterally terminate this Agreement by paying to ACE the actual amount of the work completed effective on the date identified in the COUNTY's written termination request.

Neither PARTY shall be liable to the other for any damages, delay costs, or termination costs of any type or a failure to perform any part of this Agreement due to causes beyond the control of either or both PARTIES. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts or inactions of Federal, State, or local governments, including funding reductions or eliminations, fires, floods, and severe weather.

9. If either PARTY fails to perform a material part of this Agreement, the nonbreaching PARTY may notify the breaching PARTY in writing. Within thirty (30) days of such written notification, the breaching PARTY shall commence curing such breach and shall diligently pursue such cure to completion. If the breaching party fails to pursue such cure to completion, the breaching PARTY shall be in default under the terms of this Agreement. In the event of a default, the nonbreaching PARTY may pursue any legal or equitable remedies available to it including specific performance and the nonbreaching PARTY shall have no obligation to make any payments to or undertake any work for the breaching PARTY until and unless the default is cured.
10. 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.

COUNTY: Mr. Patrick V. DeChellis
Deputy Director
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460
Telephone: (626) 458-4004
Fax: (626) 458-3179

ACE: Mr. Mark Christoffels
Chief Executive Officer
ACE Construction Authority
4900 Rivergrade Road, Suite A120
Irwindale, CA 91706
Telephone: (626) 962-9292
Fax: (626) 962-3552

11. 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.
12. 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 the PARTIES.
13. 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 one or both of the PARTIES would be materially affected or abridged by such interpretation.
14. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
15. No assignment of this Agreement shall relieve the assigning PARTY of its obligations under this Agreement until such obligations have been assumed in writing by the assignee. When duly assigned in accordance with the forgoing, this Agreement shall be binding upon and inure to the benefit of the assignee.
16. Any waiver, modification, consent or acquiescence with respect to any term of this Agreement will be set forth in writing and duly executed by the PARTY to be bound thereby. No waiver of any breach hereunder will be deemed a waiver of any other or subsequent breach.
17. Neither ACE nor COUNTY intend that there be a third party beneficiary to this Agreement.
18. Both ACE and COUNTY will act in good faith in their individual performances under the terms of this Agreement, including taking reasonable steps to mitigate costs.

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

COUNTY OF LOS ANGELES

By _____
Director of Public Works

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By _____
Deputy

ALAMEDA CORRIDOR-EAST
CONSTRUCTION AUTHORITY

By _____
Chief Executive Officer

ATTEST:

By _____
Secretary

APPROVED AS TO FORM:

By _____
ACE General Counsel

Exhibit A

The proposed COUNTY requested improvements (BETTERMENT) consist of the construction of new asphalt and concrete pavement, curbs, gutters, sidewalks, pavement striping, and roadway signage on Valley Boulevard from 300 feet east of Puente Avenue to 1,500 feet east of Puente Avenue. The improvements consist of reconstruction of the eastbound Valley Boulevard lanes with Portland cement concrete pavement, reconstruction of the westbound lanes by milling, and replacement of asphalt pavement.