



Bob J. Archuleta, Mayor
Gustavo V. Camacho, Mayor Pro Tem
David W. Armenta, Councilmember
Gregory Salcido, Councilmember
Brent A. Tercero, Councilmember

Tuesday, November 13, 2012
Regular Meeting 6:00 p.m.
Council Chamber
6615 Passons Blvd.
Next Resolution No. 6705
Next Ordinance No. 1073
Next Agreement No. 12-1358

COMMISSIONERS SCHEDULED TO BE PRESENT:

Ruben Garcia, Planning Commission
John Garcia, Parks & Recreation Commission

INVOCATION:

(In accordance with the Court’s Decision in Rubin v. City of Burbank, only nonsectarian prayers/invocations are allowed during the invocation)

PLEDGE OF ALLEGIANCE:

SPECIAL PRESENTATIONS:

- Rio Hondo College Presentation State of the College Address – President Teresa Dreyfuss and Cindy Santana
- Pico Rivera Alliance to Keep Youth Tobacco-Free – Presenters: Kristine Glaze, Carmela Capinpin, Joe Price, Emily Peyton
- Los Angeles County Sheriff’s Department Public Safety Report presented by Captain James Thornton

PLEASE TURN OFF ALL PAGERS AND/OR PHONES WHILE MEETING IS IN SESSION AND PLEASE REFRAIN FROM TEXTING DURING THE MEETING

In compliance with the Americans with Disabilities Act of 1990, the City of Pico Rivera is committed to providing reasonable accommodations for a person with a disability. Please call the City Clerk’s office at (562) 801-4389, if special accommodations are necessary and/or if information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.

PUBLIC HEARING(S):

1. **Public Hearing - Zoning Code Amendment No. 168 – Amending the Zoning Code of the Pico Rivera Municipal Code Chapter 18.46 Signs and Advertising Pertaining to Building Identification Signage and Creative Signage in Commercial and Industrial Zones.** (1300)
 - a. Open Hearing
 - b. Memo from City Manager
 - c. Written Communications
 - d. Oral Communications
 - e. Close Hearing
 - f. **Recommendation:**
 1. Adopt the resolution approving Zone Code Amendment No. 168; and
 2. Introduce the ordinance pertaining to building identification and creative signage within commercial and industrial zones.

Resolution No. _____ A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, ADOPTING AN AMENDMENT TO CHAPTERS 18.46 OF THE PICO RIVERA MUNICIPAL CODE AMENDING REGULATIONS PERTAINING TO BUILDING IDENTIFICATION SIGNAGE AND CREATIVE SIGNAGE WITHIN COMMERCIAL AND INDUSTRIAL ZONES DESIGNATED HEREIN AS ZONING CODE AMENDMENT NO. 168

Ordinance No. _____ AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AMENDING CHAPTER 18.46 (SIGNS & ADVERTISING) OF THE PICO RIVERA MUNICIPAL CODE PERTAINING TO BUILDING IDENTIFICATION SIGNAGE AND CREATIVE SIGNAGE FOR DEVELOPMENTS WITHIN COMMERCIAL AND INDUSTRIAL ZONES DESIGNATED HEREIN AS ZONE CODE AMENDMENT NO. 168 (FIRST READING AND INTRODUCTION)

1st PERIOD OF PUBLIC COMMENTS - IF YOU WOULD LIKE TO SPEAK ON ANY LISTED AGENDA ITEMS, PLEASE FILL OUT A GREEN PUBLIC COMMENT REQUEST FORM AND PROVIDE IT TO THE STAFF MEMBER AT THE BACK TABLE BEFORE THE MEETING STARTS.

When you are called to speak, please come forward and state your name and city of residency for the record. You have three (3) minutes to make your remarks. In accordance with Government Code Section 54954.2, members of the City Council may

only: **1)** respond briefly to statements made or questions posed by the public; **2)** ask a question for clarification; **3)** provide a reference to staff or other resources for factual information; **4)** request staff to report to the City Council at a subsequent meeting concerning any matter raised by the public; and **5)** direct staff to place a matter of business on a future agenda. City Council members cannot comment on items that are not listed on a posted agenda.

CONSENT CALENDAR ITEMS:

All items listed on the Consent Calendar may be acted on by a single motion without separate discussion. Any motion relating to a Resolution or Ordinance shall also waive the reading of the titles in full and include its adoption as appropriate. If discussion or separate vote on any item is desired by a Councilmember or staff, that item may be pulled from the Consent Calendar for separate consideration.

2. Minutes:

- City Council meeting of October 23, 2012

Recommendation: Approve

3. 8th Warrant Register of the 2012-2013 Fiscal Year. (700)

Check Numbers: 254194-254389; 254392-254462

Special Checks Numbers: 254390-254391

Recommendation: Approve

4. Concrete Improvements in Community Development Block Grant (CDBG) Areas, CIP No. 21244 – Authorization to Bid. (500)

Recommendation:

1. Approve Plans, Specifications and Estimates (PS&E) for Concrete Improvements in CDBG Areas, CIP No. 21244;
2. Authorize the City Clerk to publish the Notice Inviting Bids; and
3. Approve the Notice of Exemption for the subject project and authorize the City Clerk to file with the County Recorder.

5. Telegraph Road Landscape Median Improvements, CIP No. 21232 – Award Construction. (500)

Recommendation:

1. Award a construction contract in the amount of \$2,098,000 to All American Asphalt, for the Telegraph Road Landscape Median Improvements Project, CIP No. 21232, and authorize the Mayor to execute the contract in a form approved by the City Attorney.

Agreement No. _____

6. Durfee Avenue Grade Separation Project, CIP No. 21241 – Amendment No. 1 to Agreement No. 00-772. (500)

Recommendation:

1. Approve Amendment No. 1 to Agreement No. 00-772 with Alameda Corridor-East (ACE) Construction Authority for the engineering, construction, financing, operation and maintenance of the Durfee Avenue Grade Separation Project and authorize the Mayor to execute Amendment No. 1 in a form approved by the City Attorney.

Agreement No. 00-772-1

CONSENT CALENDAR ITEMS PULLED:

LEGISLATION:

7. Alameda Corridor East Joint Powers Authority – Approval of Joint Exercise of Powers Agreement. (500)

Recommendation:

1. Approve the Alameda Corridor East Joint Powers Authority (ACE JPIA), Joint Exercise of Powers Agreement (JPA Agreement) to ensure that Pico Rivera’s interest continue to be considered in the ACE Project and authorize the Mayor to execute the agreement in a form approved by the City Attorney.

Agreement No. _____

8. Donation of Surplus Playground Equipment to Non-Profit Organizations.

Recommendation: (700)

1. Council selects the non-profit organizations to receive the surplus equipment.

Option 1 a) Bridges Church – Middle Playground Structures;
b) Montebello Rotary – Traditional Frame – three bay swings set;
c) St. Philip Neri- Spiral Slide.

Option 2 a) Bridges Church – Miracle Playground Structures;
b) St. Philip Neri – Spiral Slide and Traditional Frame – three bay swing set.

Option 3 a) Other distribution at the discretion of the City Council.

NEW BUSINESS:

OLD BUSINESS:

2ND PERIOD OF PUBLIC COMMENTS - THIS TIME IS RESERVED FOR COMMENTS THAT HAVE NOT BEEN ADDRESSED ALREADY OR THAT ARE NOT LISTED ON THE AGENDA. PLEASE FILL OUT A BLUE PUBLIC COMMENT REQUEST FORM AND PROVIDE IT TO THE STAFF MEMBER AT THE BACK TABLE BEFORE THE MEETING STARTS.

When you are called to speak, please come forward and state your name and city of residency for the record. You have three (3) minutes to make your remarks.

ADJOURNMENT:

AFFIDAVIT OF POSTING

I, Anna M. Jerome, Assistant City Clerk, for the City of Pico Rivera, DO HEREBY CERTIFY, under penalty of perjury under the laws of the State of California, that the foregoing notice was posted at the Pico Rivera City Hall bulletin board, Pico Rivera Post Office and Parks: Smith, Pico and Rivera and full agenda packets distributed to the Pico Park and Serapis Libraries, which are available for the public to view. Additionally, agenda was distributed to members of the media on this the 8th day of November, 2012.

Dated this 8th, day of November 2012

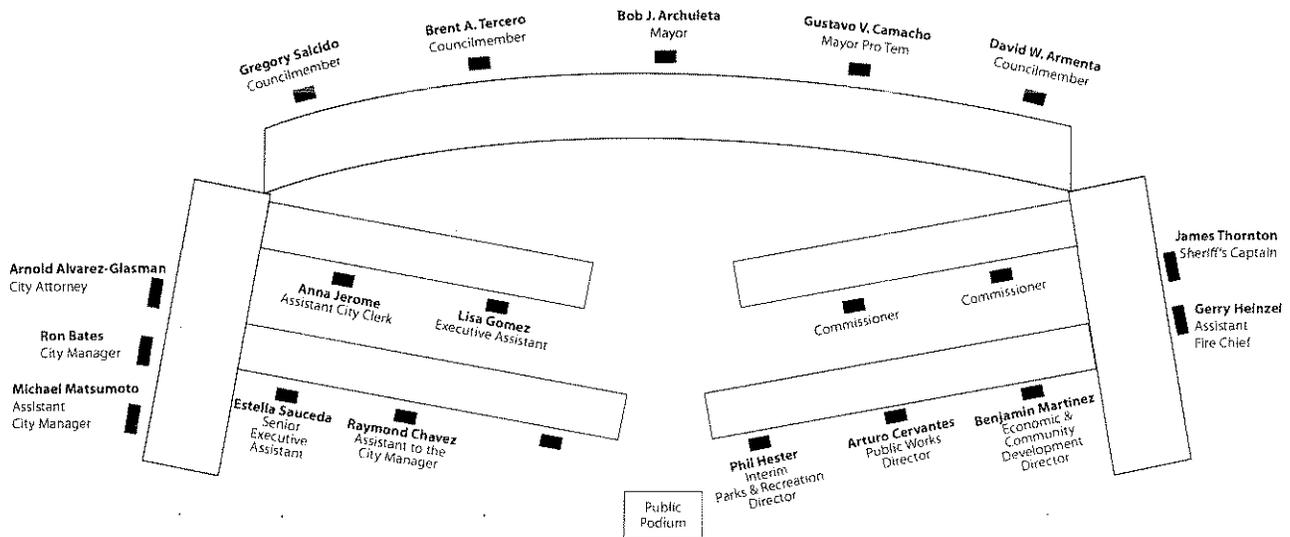


Anna M. Jerome, CMC
Assistant City Clerk

SB343 NOTICE

In compliance with and pursuant to the provisions of SB343 any public writing distributed by the City Clerk to at least a majority of the City Council Members regarding any item on this regular meeting agenda will be available on the back table at the entrance of the Council Chamber at the time of the City Council meeting and at the counter of City Hall at 6615 Passons Boulevard, Pico Rivera, California during normal business hours.

Council Meeting Seating Chart



STATEMENT REGARDING DECORUM AT CITY COUNCIL MEETINGS

If you wish to speak at the time set aside for public comments, the City Council has established the following standards and Rules of Decorum as allowed by State law.

- Public comment is limited to those portions of the meeting referred to as Public Comments. These portions are intended for members of the public to address the City Council, Redevelopment Agency, Housing Assistance Agency or Water Authority on matters related to agendas or any other items under the subject matter jurisdiction of the City Council or Agencies.
- A yellow Public Hearing Comment Request card must be completed to speak during a Public Hearing.
- A green Public Comment Request – Agenda Items Only card is for those wishing to address the Council/Agency on agenda items only during the 1st Period of Public Comments.
- A blue Public Comment Request – All other City-Related Business card is for those wishing to address the Council/Agency on any other items under the subject matter jurisdiction of the Council/Agency during the 2nd Period of Public Comments.
- Citizens may address the Council, Redevelopment Agency or Housing Assistance Agency once for a **maximum of three minutes**. After each speaker returns to his/her seat, the Mayor shall determine the time and manner of response, but typically if answers are available, they will be given after all speakers have had an opportunity to address the City Council.
- Members of the audience are asked to refrain from clapping or otherwise speaking from their seats. Those not meeting the standards for decorum may be escorted from the meeting.

RULES OF DECORUM CAN BE FOUND IN THE PICO RIVERA MUNICIPAL CODE SECTION 2.08.050 AS ESTABLISHED BY ORDINANCE 783 ADOPTED ON AUGUST 20, 1990 AND AMENDED BY ORDINANCES 822 (SEPTEMBER 21, 1992) AND 1020 (MARCH 21, 2006).



To: Mayor and City Council

From: City Manager

Meeting Date: November 13, 2012

Subject: PUBLIC HEARING – ZONING CODE AMENDMENT NO. 168 – AMENDING THE ZONING CODE OF THE PICO RIVERA MUNICIPAL CODE CHAPTER 18.46 SIGNS AND ADVERTISING PERTAINING TO BUILDING IDENTIFICATION SIGNAGE AND CREATIVE SIGNAGE IN COMMERCIAL AND INDUSTRIAL ZONES

Recommendation:

- 1) Adopt the Resolution approving Zone Code Amendment No. 168; and
- 2) Introduce the Ordinance pertaining to building identification and creative signage within commercial and industrial zones.

Fiscal Impact:

No fiscal impact.

Discussion:

On November 5, 2012, the Planning Commission approved Resolution No. 1201 recommending the City Council amend Chapter 18.46, *Signs & Advertising*, of the Pico Rivera Zoning Ordinance pertaining to building identification and creative signage within commercial and industrial zones. The proposed amendment resulted from recent commercial development activity and the vital need to provide businesses with sign design options to help them attract clientele via modern and unique signage.

The City's current regulations only allow businesses to install wall-mounted building identification signage, a sign mounted flush against a building's façade. Pedestrian-oriented, parallel-projecting, and creative signs, as defined later in this report, are not permitted within the City.

In an effort to update the City's sign code, staff proposed and the Planning Commission approved the following amendments:

- Pedestrian-oriented signage: A small double-faced sign installed perpendicular to a building's façade hanging over a walkway, legible to pedestrian traffic within a shopping center, and utilized for the purpose of locating a business' entrances when larger building identification signage is not visible.
- Parallel-projecting building identification signage: A business' primary signage installed on-top of, affixed to, or supported by an architectural projection, such as a metal canopy or awning, and fronting a public street or parking area.
- Creative signage: A sign exhibiting a high degree of creativity and inventiveness or signage integral to the businesses' trademark or logo that attracts the interest of consumers while making a positive visual contribution to the surrounding area. Due to its uniqueness, creative signs usually do not fit within a city's existing signage regulations, so approval may be granted if specified design criteria are met.

The aforementioned regulations were generated to provide a means for businesses to create a more pedestrian-friendly retail experience, incorporate aesthetically designed signage to modernize a business' overall image, and encourage economic development activity by attracting clientele to businesses with an identity based on contemporary and captivating signage.



Ronald Bates

RB:BM:CG:ll

Enclosures:

- 1) Resolution
- 2) Ordinance
- 3) Draft Minutes of November 5, 2012 Planning Commission meeting
- 4) Resolution No. 1201-November 5, 2012 Planning Commission recommendation to City Council

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, ADOPTING AN AMENDMENT TO CHAPTERS 18.46 OF THE PICO RIVERA MUNICIPAL CODE AMENDING REGULATIONS PERTAINING TO BUILDING IDENTIFICATION SIGNAGE AND CREATIVE SIGNAGE WITHIN COMMERCIAL AND INDUSTRIAL ZONES DESIGNATED HEREIN AS ZONING CODE AMENDMENT NO. 168

WHEREAS, the existing Zoning Code, Ordinance No. 543, was adopted on April 7, 1975; and

WHEREAS, the Planning Commission of the City of Pico Rivera conducted a public hearing on the matter of amendments to Chapter 18.46 of the Pico Rivera Municipal Code at a legally noticed public hearing held on November 5, 2012; and

WHEREAS, the Planning Commission adopted Resolution No. 1201 recommending approval to the City Council for Zone Code Amendment No. 168; and

NOW, THEREFORE, be it resolved by the City Council of the City of Pico Rivera that:

SECTION 1. The City Council concurs with the Community and Economic Development Department and Planning Commission determination that there is no possibility that the project will have a significant effect on the environment and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15061 (b)(3) of the CEQA Guidelines that states, a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 2. Pursuant to Article II of Chapter 18.62 of the Pico Rivera Municipal Code, the City Council of the City of Pico Rivera hereby approves this Resolution and introduce Ordinance No. _____ amending Title 18 of the Pico Rivera Municipal Code, Chapter 18.46, *Signs & Advertising*, as specifically described in Sections 5, 6, and 7 of the draft ordinance attached hereto as Attachment "A" made a part hereof as though set forth in full herein and further designated as Zone Code Amendment No. 168.

SECTION 3. Further, this Resolution with reports and findings and recommendations herein contained and the recommended Ordinance attached hereto in this matter shall constitute a report of the City Council.

SECTION 4. The City Council finds that the amendment to Title 18 of the Pico Rivera Municipal Code shall be approved for the following reasons and findings:

- a) The proposed amendment is consistent with the spirit and integrity of the Municipal Code as the intent of Chapter 18.46, *Signs & Advertising*, which is to recognize the significant fact that "the city's resources for attracting commerce, trade, industry and servicing the community constitutes one of its leading economic activities" and to "recognize and strongly subscribe to the right to advertise, and to keep such right within reasonable boundaries consistent with the

goals and objectives of the community by restraining its image, character, community design, and the economic advantages which rest largely on the quality of the City's appearance".

- b) That due to the continuously evolving nature of the sign industry it is necessary to take into consideration the modification and establishment of sign types that offer the opportunity for businesses to incorporate innovative, unique, and thoughtful permanent signage creating interesting designs attracting consumers and improving the overall image of the City.
- c) That by amending the current building identification signage regulations and establishing standards for creative signage, to provide the necessary flexibility for businesses to incorporate more contemporary design options and improve the overall appearance of commercial and industrial developments, businesses will be encouraged to operate within a city that permits creative signs that are a significant part of their identity while having a positive aesthetic impact on the surrounding area thus creating and maintaining a positive community image within the City's commercial centers and major thoroughfares, which is consistent with Objective A.1 of the General Plan.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution and hereafter the same shall be in full force and effect.

APPROVED AND ADOPTED this 13th day of November, 2012.

Bob J. Archuleta, Mayor

ATTEST:

APPROVED AS TO FORM:

Anna M. Jerome, Assistant City Clerk

Arnold M. Alvarez-Glasman, City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AMENDING CHAPTER 18.46 (SIGNS & ADVERTISING) OF THE PICO RIVERA MUNICIPAL CODE PERTAINING TO BUILDING IDENTIFICATION SIGNAGE AND CREATIVE SIGNAGE FOR DEVELOPMENTS WITHIN COMMERCIAL AND INDUSTRIAL ZONES DESIGNATED HEREIN AS ZONE CODE AMENDMENT NO. 168.

THE CITY COUNCIL OF THE CITY OF PICO RIVERA DOES ORDAIN AS FOLLOWS:

SECTION 1. The official Zoning Ordinance of the City of Pico Rivera is hereby amended as provided in this Ordinance pursuant to public hearings both before the Planning Commission and City Council.

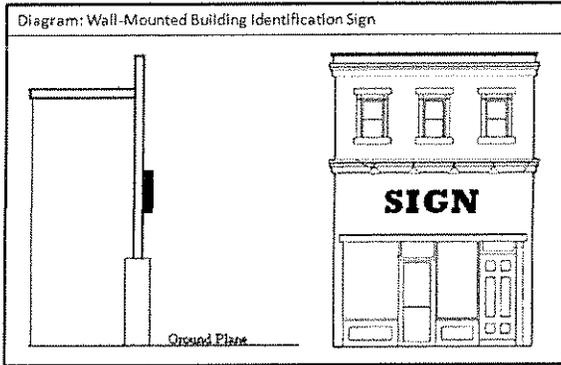
SECTION 2. Pursuant to the State of California Public Resources Code and State Guidelines for the California Environmental Quality Act (CEQA), the City Council finds that there is no possibility that the project will have a significant effect on the environment, and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15061 (b) (3) of the CEQA Guidelines that states: "a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

SECTION 3. The City Council finds that the proposed amendment to the Zoning Code is consistent with the General Plan.

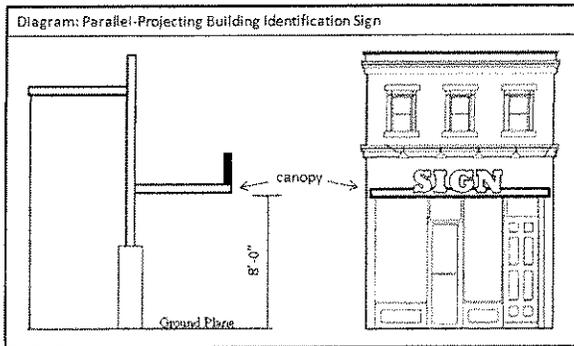
SECTION 4. The City Council further finds that the proposed amendment is consistent with the spirit and integrity of Chapter 18.46, *Signs & Advertising*, of the Pico Rivera Municipal Code.

SECTION 5. Section 18.46.040 of Chapter 18.46, *Signs and Advertising*, of Title 18 of the Pico Rivera Municipal Code is hereby amended as follows:

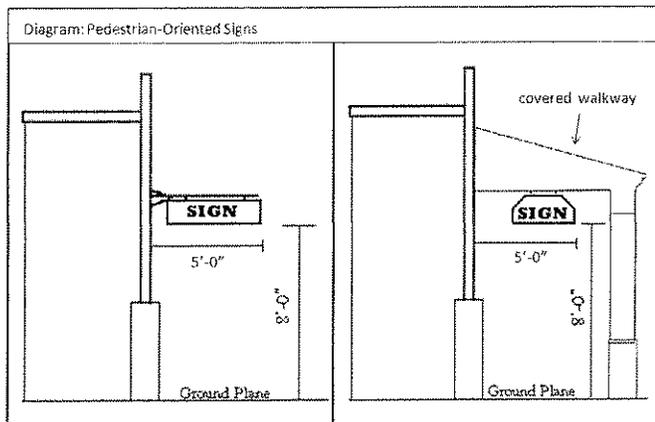
- L. Building Identification Signage. ~~A sign attached parallel to a wall, painted on the surface of, or erected and confined within the limits of an outside wall of any building or structure. A sign is not to project from the face of a wall more than twelve inches, and shall have only one display surface, oriented toward a public street or right-of-way.~~
- 1. Wall-Mounted: A sign attached parallel to a wall erected and confined within the limits of an outside wall of any building. The sign shall have only one display surface, oriented toward a public street or right-of-way. See following diagram:



2. Parallel-Projecting: A sign located parallel to a wall erected and confined within the limits of an outside wall of any building or structure; affixed to, supported by, or an integral part of a projecting architectural feature, such as a metal awning or canopy, that is permanent and not retractable. The sign shall have only one display surface. See following diagram:



- M. Pedestrian-Oriented Signage: A double-faced non-illuminated identification sign installed perpendicular to a building's façade that is either directly attached to the façade or installed under a canopy so as to be suspended perpendicular above the nearest entrance. The sign shall contain only the name of the business. See following diagram:



N. Creative Signage: An accessory sign with a high quality of design that meets the creative design criteria within Section 18.46.060 (B) Note 46.

SECTION 6. Table 18.46.050 of Chapter 18.46, *Signs and Advertising*, of Title 18 of the Pico Rivera Municipal Code is hereby amended as follows:

Table 18.46.050				
SIGNS AND ADVERTISING REGULATIONS				
A. Permitted Signs and Advertising Regulations	O-S, Public Facilities and P Zones	CPD Zone	IPD Zone	
Signs and advertising generally	(12)	(13)	(27)	
B. Permitted Signs and Advertising Regulations	R-E, S-F, R-I, and PUD Zones			
	Regulations			
Type Sign	Size	Height	Number	Location
Nameplate	1 sq. ft.	42 inches	2 per lot	(3)
Real estate	9 sq. ft.	6 feet	2 per lot	(3)
Subdivision (17)	150 sq. ft.	12 feet	2 per tract	(3)
Construction	12 sq. ft.	6 feet	1 per lot	(3)
Building identification (36)	20 sq. ft.	6 feet	1 per lot (15)	
Monument signage (36, 38)	40 sq. ft.	5 feet	1 per lot (37)	(3)
Other conditions			(1—5, 10, 14)	
C. Permitted Signs and Advertising Regulations	R-M Zone			
	Regulations			
Type Sign	Size	Height	Number	Location
Nameplate	1 sq. ft.	42 inches	1 per dwelling unit	(3)
Real estate	9 sq. ft.	6 feet	2 per lot	(3)
Subdivision (17)	150 sq. ft.	12 feet	2 per tract	(3)
Construction	16 sq. ft.	6 feet	1 per lot	(3)
Building identification (18, 36)	20 sq. ft.	6 feet	1 per lot (15)	On the wall of a building fronting a dedicated public street
Monument signage (36, 38)	40 sq. ft.	5 feet	1 per lot (37)	(3)
Other conditions			(1—5, 10, 14)	

D. Permitted Signs and Advertising Regulations	P-A Zone Regulations			
Type Sign	Size	Height	Number	Location
Nameplate	2 sq. ft.		1 per business	Above entrance doorway
Real estate	24 sq. ft.	6 feet	2 per lot	(3)
Subdivision (17)	150 sq. ft.	12 feet	2 per tract	(3)
Construction	30 sq. ft.	6 feet	1 per lot	(3)
Directional	6 sq. ft.	42 inches	1	Next to each driveway entrance or exit from off-street parking facilities
Building identification; <u>wall-mounted</u> (21,26)	2 sq. ft. for each front linear foot of building. 75 sq. ft. maximum.		1 per business (2)	Exterior building wall fronting a public street (20)
Freestanding identification (23,24)	1 sq. ft. for each front linear foot of building. May increase 3 sq. ft. for each 1 foot setback from nearest property line to a maximum of 150 sq. ft.	20 feet	1 per lot (19)	On same lot with business it is intended to serve (22)
Freestanding complex (24,25)	1 sq. ft. for each front linear foot of building. May increase 3 sq. ft. for each 1 foot setback from nearest property line to a maximum of 150 sq. ft.	20 feet	1 per lot (19)	On same lot with business it is intended to serve (22)
<u>Creative signage</u> (46)				<u>On same lot with business it is intended to serve</u>
Other conditions			(1—11)	
E. Permitted Signs and Advertising Regulations	C-N Zone Regulations			
Type Sign	Size	Height	Number	Location
Nameplate	2 sq. ft.		1 per business	Above entrance doorway
Real estate	24 sq. ft.	6 feet	2 per lot	(3)
Subdivision (17)	150 sq. ft.	12 feet	2 per tract	(3)
Construction	30 sq. ft.	6 feet	1 per lot	(3)
Directional	6 sq. ft.	42 inches	1	Next to each driveway entrance or exit from off-street parking facilities
Building identification; <u>wall-mounted</u> (21,26)	2 sq. ft. for each front linear foot of building. 75 sq. ft. maximum		1 per business (19)	Exterior building wall fronting a public street (20)
<u>Creative signage</u> (46)			(19)	<u>On same lot with business it is intended to serve</u>
Other conditions			(1—11)	

F. Permitted Signs and Advertising Regulations	C-C, C-G and C-M Zones Regulations			
Type Sign	Size	Height	Number	Location
Nameplate	10 sq. ft. (27)	(28)	1 per business	Store front window and front and/or rear doors (29)
Real estate	36 sq. ft.	6 feet	2 per lot	(3)
Subdivision (17)	150 sq. ft.	12 feet	2 per tract	(3)
Construction	49 sq. ft.	6 feet	1 per lot	(3)
Directional	6 sq. ft.	42 inches	1	Next to each driveway entrance or exit from off-street parking facilities
<u>Pedestrian-Oriented (41)</u>	<u>4 sq. ft. (sign copy area 3 sq. ft. maximum)</u>		<u>1 per public entrance of business (19)</u>	<u>Within 5 feet horizontal of public entrance sign is intended to serve. Shall not be closer than 15 feet from any other pedestrian-oriented sign. (43, 44)</u>
<u>Building identification: wall-mounted or parallel-projecting (21, 26, 41)</u>	3 sq. ft. for each front linear foot of building. 175 sq. ft. maximum		1 per business (16, 19, 31, 39, 42)	Exterior building wall fronting a public street (20, 43, 45)
Freestanding identification (23, 25)	2 sq. ft. for each 25 feet front linear foot of building. May increase 3 sq. ft. for each 1 foot setback from nearest property line to a maximum of 175 sq. ft. (32)	25 feet	1 per lot (19)	On same lot with business it is intended to serve (22)
Freestanding complex (24, 25)	2 sq. ft. for each 25 feet front linear foot of building. May increase 3 sq. ft. for each 1 foot setback from nearest property line to a maximum of 200 sq. ft.	25 feet	1 per lot (19)	On same lot with business it is intended to serve (22)
<u>Creative signage (46)</u>			(19)	<u>On same lot with business it is intended to serve</u>
Window signage	Not to exceed 25% of any window area of each building side fronting a public street or off-street parking facility.		(30)	Within fifteen feet of window(s) fronting a public street or off-street parking facility (34)
Other conditions			(1—11, 33, 35)	
G. Permitted Signs and Advertising Regulations	I-L and I-G Zones Regulations			
Type Sign	Size	Height	Number	Location
Nameplate	2 sq. ft.		1 per business	Above entrance doorway
Real estate	54 sq. ft.	6 feet	2 per lot	(3)
Subdivision (17)	150 sq. ft.	12 feet	2 per tract	(3)
Construction	54 sq. ft.	6 feet	1 per lot	(3)

Directional	6 sq. ft.	42 inches	1	Next to each driveway entrance or exit from off-street parking facilities
<u>Pedestrian-Oriented (41)</u>	<u>4 sq. ft. (sign copy area 3 sq. ft. maximum)</u>		<u>1 per public entrance of business (19)</u>	<u>Within 5 feet horizontal of public entrance sign is intended to serve. Shall not be closer than 15 feet from any other pedestrian-oriented sign. (42, 43)</u>
<u>Building identification; wall-mounted or parallel-projecting (21,26, 41)</u>	3 sq. ft. for each front linear foot of building to a maximum of 300 sq. ft.		1 per business (19, 42)	Exterior building wall fronting a public street. (20, 43, 45)
<u>Freestanding identification (23,24)</u>	1 sq. ft. for each front linear foot of building. May increase 1 sq. ft. for each 1 foot setback from nearest property line to a maximum of 250 sq. ft.	25 feet	1 per lot (19)	On same lot with business it is intended to serve (22)
<u>Freestanding complex (24,25)</u>	1 sq. ft. for each front linear foot of building. May increase 1 sq. ft. for each 1 foot setback from nearest property line to a maximum of 250 sq. ft.	25 feet	1 per lot (19)	On same lot with business it is intended to serve (22)
<u>Creative Signage (46)</u>			(19)	<u>On same lot with business it is intended to serve</u>
Other conditions			(1—11)	

SECTION 7. Section 18.46.060 of Chapter 18.46, *Signs and Advertising*, of Title 18 of the Pico Rivera Municipal Code is hereby amended as follows:

Note 19. Such signs shall only indicate the name of the tenant for which the sign is intended to serve; any and all proposals to include signage relate relating to services rendered or to the use conducted in the building for which the sign is intended to serve shall be approved for façades with lengths over fifty feet at the discretion of the zoning administrator.

Note 35. New developments and existing developments conducting site renovations, with more than three non-residential tenants require submittal of a master sign program criteria establishing criteria of uniform letter style, color, dimensions, area and placement. Registered trademarks are exempt.

Note 41. Pedestrian-oriented and parallel-projecting signs are permitted within all commercial and industrial developments. Centers with more than three non-

residential tenants must first obtain approval of a master sign program.

Note 42. Stand-alone businesses or centers with two or more non-residential tenants may install one parallel-projecting sign and one wall-mounted sign on the same building façade(s) only when such stipulations are included within the approval of a master sign program. Signs shall be massed and spaced so as not to create an area encumbered by signage. The sum area of the two signs shall not exceed total allowed per zone.

Note 43. Pedestrian-oriented and parallel-projecting signs shall maintain minimum of eight feet vertical height clearance from the bottom of the sign to the level of pedestrian walkway and no portion of the sign shall project into any driveway, off-street parking area, public right-of-way, roadway, or alley.

Note 44. Pedestrian-oriented signs shall be double-faced and limited to ground floor tenants, all portions of the sign shall project out a maximum of five feet, sign support and brackets shall be compatible and architecturally integrated, and in cases where the minimum fifteen foot distance requirement between pedestrian-oriented signs cannot be accommodated approval may be granted at the discretion of the zoning administrator.

Note 45. Parallel-projecting signs shall be attached to, or an integral part of a projecting architectural feature, installed parallel to and confined within the limits of the façade of the business the subject sign is intended to serve with only one display surface. Cabinet signs are not permitted as parallel-projecting signs.

Note 46. Creative signage. The intent of a creative sign is to encourage signs of unique design that exhibit a high degree of imagination, inventiveness, and spirit and provide a process that will allow creatively designed signs that make a positive visual contribution to the overall image of the city, while mitigating the impacts of large or unusually designed signs.

- a. Design Criteria. When approving a creative sign, the approving authority shall ensure that a proposed sign meets the following:
 - i. Design Quality. The sign shall constitute a substantial aesthetic improvement to the site and shall have a positive visual impact on the surrounding area, be of unique design and exhibit a high degree of imagination, inventiveness, and spirit, and provide a strong graphic character through the imaginative use of color, graphics, proportion, quality materials, scale, and texture.
 - ii. Contextual Criteria. The sign shall contain at least one of the following elements classic historic design style, demonstrated trademark or logo is integral to the business, creative image reflecting current or historic character of the city, or inventive representation of the use, name, or logo

of the structure or business.

- iii. Architectural Criteria. The sign shall utilize the architectural elements of the building, be placed in a logical location in relation to the overall composition of the building's façade and not cover any key architectural features or details of the façade.
- iv. Impact to Surrounding Uses. The sign shall be located and designed not to cause light and glare impacts nor a public nuisance on surrounding uses, especially residential uses, nor threaten the health, safety, and welfare of the public. Any and all impacts shall be mitigated to eliminate any possible public nuisance to surrounding uses.
- b. Approval authority. Subject to zoning consistency review approved by zoning administrator when the maximum development limitations per zone are not exceeded. In all other cases approval of a conditional use permit shall be required per Chapter 18.56, with the findings per Section 18.56.090 as herein modified:
 - i. The proposed signage is consistent with the purpose of creative signage and meets all design criteria within subsection 18.46.060 (B) Note 46 (a) of this section;
 - ii. The proposed project can be adequately conditioned so as not to endanger, jeopardize, or otherwise constitute a menace to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
 - iii. The new structure is compatible with the scale, bulk and mass of existing structures in the vicinity of the subject property, and does not impair the integrity and character of the zoning district in which it is to be located;
 - iv. That the creative design is not close to other design features, signage that causes an over-bearing visual nuisance;
 - v. That adequate consideration for the protection of the environment has been satisfactorily demonstrated; and
 - vi. The granting of such creative sign approval will be consistent with the provisions and objectives of the general plan.

SECTION 8. Severability. The City Council hereby declares that it would have passed this ordinance sentence by sentence, paragraph by paragraph, and section by section and does hereby declare that the provisions of this Ordinance are severable, and if, for any reason, any sentence, paragraph, or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 9. The City Clerk shall certify to the adoption of this Ordinance. The City Council hereby finds that there are no newspapers of general circulation published and circulated within the City. The City Clerk shall therefore cause this Ordinance to be published in accordance Government Code Section 6040 and in a manner required by the Pico Rivera Municipal . This Ordinance shall take effect thirty days following its final passage.

APPROVED AND ADOPTED this ____ day of _____, 2012 by members of the City Council of the City of Pico Rivera, voting as follows:

Bob J. Archuleta, Mayor

ATTEST:

APPROVED AS TO FORM:

Anna M. Jerome, Assistant City Clerk

Arnold M. Alvarez-Glasman, City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:



Monday, November 5, 2012

A regular meeting of the Planning Commission was called to order by Chairperson Zermeno at 6:00 p.m., in the City Hall Council Chambers, 6615 Passons Boulevard, Pico Rivera, CA.

STAFF PRESENT:

Ben Martinez, Director
Julia Gonzalez, Deputy Director
John Lam, City Attorney
Guille Aguilar, Senior Planner
Christina Gallagher, Assistant Planner

ROLL CALL:

PRESENT: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno

ABSENT: None

FLAG SALUTE: Led by Commissioner Tommy Elisaldez

APPROVAL OF MINUTES:

October 15, 2012

It was moved by Commissioner Martinez to approve the minutes of October 15, 2012 seconded by Commissioner Elisaldez. Motion carried by the following roll call vote:

AYES: Celiz, Elisaldez, Garcia, Martinez, Zermeno

NOES: None

ABSTAIN: None

ABSENT: None

PUBLIC HEARING:

(a) **PUBLIC HEARING: CONDITIONAL USE PERMIT NO. 712 - AN APPLICATION BY SHERRIE OLSON, REPRESENTING 7-ELEVEN, INCORPORATED, TO ALLOW THE OFF-SALE OF BEER AND WINE IN CONJUNCTION WITH A PROPOSED 7-ELEVEN CONVENIENCE STORE TO BE LOCATED AT 8543 ROSEMEAD BOULEVARD IN THE GENERAL COMMERCIAL (C-G) ZONED DISTRICT**

Senior Planner Aguilar presented the staff report dated November 5, 2012.

Commissioner Elisaldez asked about a freestanding concrete wall along the side of the proposed 7-Eleven and if any of the parking spaces there are included as 7-Eleven parking.

Senior Planner Aguilar answered that the wall is part of the adjacent burger stand and you can walk over it and the parking on the other side of the wall is not included as 7-Eleven parking.

Commissioner Martinez asked if there was possibility of loitering behind the building. He asked if there were any lights along the back of the building.

Planner Aguilar stated there was no lighting in the back and staff does not feel it is needed since it is facing the adjacent car wash.

Commissioner Celiz has a concern with the nightclubs next door. She asked if the 7-Eleven staff would be trained on dealing with the intoxicated patrons that may come in.

Commissioner Garcia asked if there would be anything in the Conditional Use Permit stating if any issues should arise that they would be required to add lighting in the back.

The applicant Sherrie Olson spoke regarding the Commission concerns. She stated they are willing to add lighting to the back of the building. Ms. Olson also stated that she looked into the two nightclubs in the area. They both have a Type 47 license which is a bonafide restaurant license and both are operating as nightclubs. Ms. Olson brought that to our staff's attention in hopes this will be addressed. She also stated that staff is highly trained on how to handle any situations that may arise due to intoxicated patrons.

There being no further discussion, Commissioner Celiz moved to close the public hearing and was seconded by Commissioner Garcia. Motion carried by the following roll call:

AYES: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES: None
ABSTAIN: None
ABSENT: None

It was moved by Commissioner Celiz and seconded by Commissioner Garcia to adopt the Resolution recommending the City Council approve Conditional Use Permit No. 712. Motion carried by the following roll call:

AYES: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES: None
ABSTAIN: None
ABSENT: None

(b) REVIEW OF SIGNAGE AND ADVERTISING REGULATIONS AS THEY PERTAIN TO BUILDING IDENTIFICATION SIGNAGE AND CREATIVE SIGNAGE

Assistant Planner Gallagher presented the staff report dated November 5, 2012.

Commissioner Garcia asked in regards to a sign example in presentation. He asked if the secondary signage will look similar to the example.

Planner Gallagher responded in the affirmative.

Commissioner Martinez commended staff on their thorough review of fact checking.

Commissioner Zermeno opened the floor for public hearing.

There being no further discussion, Commissioner Martinez moved to close the public hearing and motion was seconded by Commissioner Garcia. Motion carried by the following roll call:

AYES: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES: None
ABSTAIN: None
ABSENT: None

It was moved by Commissioner Martinez and seconded by Commissioner Garcia to adopt the Resolution recommending the City Council approve Zone Code Amendment No. 168. Motion carried by the following roll call:

AYES: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES: None
ABSTAIN: None
ABSENT: None

PUBLIC COMMENTS: None.

NEW BUSINESS: None.

CONTINUED BUSINESS: None.

OLD BUSINESS: None.

PLANNING COMMISSION REPORTS:

- a) CITY COUNCIL MEETING OF October 9, 2012 – Commissioner Zermeno reported that the City’s water bill will increase within the next five years. The increases will be used to fix the infrastructure.
- b) PLANNING COMMISSION REPRESENTATIVE TO THE CITY COUNCIL MEETING OF Tuesday, November 13, 2012 - Commissioner Garcia confirmed his attendance.

Commissioner Celiz asked if staff would be looking into the issue brought up by Ms. Olson in regards to the nightclubs that were licensed as restaurants only.

Deputy Director Gonzalez answered that staff will be looking into this.

Commissioner Celiz asked about the Falcone’s Pizzeria shooting. She stated that Falcone’s has been holding several car washes there.

Deputy Director Gonzalez answered that we will be looking into this.

Director Martinez brought up that we have been having issues with car washes recently and that they are not permitted.

Commissioner Martinez asked if we would have information on the newspaper stands within the City.

Deputy Director Gonzalez stated we would have information to present at the next Planning Commission meeting.

Commissioner Garcia asked if we had any information on the Serapis Avenue closure.

Director Martinez answered that the Parsons Underpass would be opening before the closure of Serapis Avenue.

Commissioner Celiz stated the school sent a letter home to parents regarding the closure and that they would be putting a temporary bus stop and a shuttle due to the Serapis Avenue closure.

Commissioner Garcia commented that Rex Road would be inundated with traffic to Rosemead Boulevard.

Director Martinez stated we will forward these comments to Public Works.

Commissioner Martinez asked if City Council had secured funds for the grade separation at Durfee Avenue.

Director Martinez answered in the affirmative. He also mentioned that we are still working on the General Plan update and the Zoning Code Amendment.

There being no further business the Planning Commission meeting was adjourned at 6:45 p.m.

Fred Zermeno, Chairperson

ATTEST:

Benjamin A. Martinez, Secretary
Planning Commission
Director of Community and Economic Development

RESOLUTION NO. 1201

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PICO RIVERA RECOMMENDING CITY COUNCIL ADOPTION OF AN ORDINANCE AMENDING TITLE 18 (ZONING) PERTAINING TO BUILDING IDENTIFICATION SIGNAGE AND CREATIVE SIGNAGE FOR DEVELOPMENTS WITHIN COMMERCIAL AND INDUSTRIAL ZONES IN THE CITY OF PICO RIVERA DESIGNATED HEREIN AS ZONE CODE AMENDMENT NO. 168.

WHEREAS, existing Zoning Code, Ordinance No. 534, was adopted on April 1, 1975; and

WHEREAS, the Planning Commission of the City of Pico Rivera conducted a public hearing on the matter of amendments to Chapter 18.46 of the Pico Rivera Municipal Code at a legally noticed public hearing held on November 5, 2012; and

NOW, THEREFORE, be it resolved by the Planning Commission of the City of Pico Rivera that:

SECTION 1. Pursuant to the State of California Public Resources Code and State Guidelines for the California Environmental Quality Act (CEQA), the Planning Commission finds that there is no possibility that the project will have a significant effect on the environment and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15061 (b) (3) of the CEQA Guidelines that states, a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 2. The Planning Commission hereby finds that the approval of said amendment to the Municipal Code will not be detrimental to the health, safety and welfare of the general public and recommends that the City Council concur with the determination that the amendment will not have a significant effect on the environment pursuant to Section 15061 (b) (3).

SECTION 3. Pursuant to Chapter 18.62, Article II of the Pico Rivera Municipal Code, the Planning Commission of the City of Pico Rivera hereby recommends to the City Council of the City of Pico Rivera the approval of an Ordinance amending Title 18 of the Pico Rivera Municipal Code, modifying Chapter 18, regarding building identification signage and creative signage within commercial and industrial developments, as specifically described in Sections 5, 6, and 7 of the attached draft ordinance designated herein as Attachment "A," which is made a part hereof and further designated as Zone Code Amendment No. 168.

SECTION 4. Further, this Resolution with reports and findings and recommendations herein contained and the recommended Ordinance attached hereto in this matter shall constitute a report of the Planning Commission to the City Council.

SECTION 5. The Planning Commission finds that the amendment of Title 18 of the Pico Rivera Municipal Code shall be approved for the following reasons and findings:

- a) The proposed amendment is consistent with the spirit and integrity of the Municipal Code as the intent of Chapter 18.46, *Signs & Advertising*, which is to recognize the significant fact that "the city's resources for attracting commerce, trade, industry and

servicing the community constitutes one of its leading economic activities” and to “recognize and strongly subscribe to the right to advertise, and to keep such right within reasonable boundaries consistent with the goals and objectives of the community by restraining its image, character, community design, and the economic advantages which rest largely on the quality of the City’s appearance”.

- b) That due to the continuously evolving nature of the sign industry it is necessary to take into consideration the modification and establishment of sign types that offer the opportunity for businesses to incorporate innovative, unique, and thoughtful permanent signage creating interesting designs attracting consumers and improving the overall image of the City.
- c) That by amending the current building identification signage regulations and establishing standards for creative signage, to provide the necessary flexibility for businesses to incorporate more contemporary design options and improve the overall appearance of commercial and industrial developments, businesses will be encouraged to enhance their existing permanent signage or will be encouraged to operate within a city that permits creative signs that are a significant part of their identity while having a positive aesthetic impact on the surrounding area thus creating and maintaining a positive community image within the City’s commercial centers and major thoroughfare, which is consistent with Objective A.1 of the General Plan.

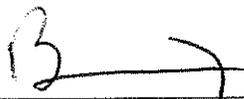
SECTION 6. The Commission Secretary shall certify to the passage and adoption of this resolution and enter it into the books of original resolutions. The Commission Secretary shall attest and certify to the passage and adoption of this resolution, and it shall become effective immediately upon its approval.

APPROVED AND ADOPTED this 5th day of November 2012.

Fred Zermeno, Chairperson

ATTEST:

APPROVED AS TO FORM:



Benjamin A. Martinez, Secretary
Planning Commission
Community and Economic Development Director

John W. Lam, Deputy City Attorney

AYES:
NOES:
ABSENT:
ABSTAIN:

**CITY OF PICO RIVERA
NOTICE OF PUBLIC HEARING FOR
ZONE CODE AMENDMENT NO. 108**

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Pico Rivera City Council to consider Zone Code Amendment No. 108, amending and establishing regulations within Chapter 10.90 (Signs and Advertising) of the Pico Rivera Municipal Code pertaining to buildings and structures, signs and creative signage for commercial and industrial properties throughout the city.

WHEN: November 13, 2012 - 6:00 p.m.
WHERE: City Hall Council Chambers
6615 Cassock Boulevard
Pico Rivera, CA 90660
PO Box 10116

TELEPHONE: (562) 801-4332

In accordance with the provisions of the California Environmental Quality Act (CEQA), the Community and Economic Development Department has determined that there is no possibility that the project will have significant effect on the environment, and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15301(3) of the CEQA Guidelines which states: "A project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment."

PERSONS INTERESTED IN THIS MATTER are invited to attend this hearing to express their opinion on the above matter. Copies of all relevant materials are available to the general public for review in the Community and Economic Development Department, Planning Division at City Hall, 6615 Cassock Boulevard, Pico Rivera, California. For further information please contact the Community & Economic Development Department at (562) 801-4332. If you challenge the Zone Code Amendment in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or written correspondence delivered to the City of Pico Rivera City Clerk on or prior to the public hearing.

Alma Jimenez
City Clerk
Held: November 13, 2012 at 6:00 p.m.
Zone Code Amendment No. 108

NOTICE OF PUBLIC HEARING FOR PERSONAL STORAGE
In accordance with Section 21700.9, Subsection (5) of public law 20 2012 Personal property Not limited for tools, and for a sold as complete

Located at:
Dollar Self Stg
6717 Pioneer B
Santa Fe Sprin
(562) 672-2254

Time: 11:30 AM
As stated by the Person/Person Name:

1. Shawn Roper
2. Adam Lopez
3. Luis Kames
4. Michael Vici
5. Alex Pico
6. Yvonne Pin
7. Kels Galarza
8. Joseph Torre
9. Robert Dorai
10. Bill William
11. Paul Vintar
12. Luciano Or
13. Jesus Gonz
14. Eduardo Go
15. Rogelio A. R
16. Hector Jim
17. Omar Noma
18. Robert Dent



Tuesday, October 23, 2012

A Regular Meeting of the City Council was held in the Council Chamber, Pico Rivera City Hall, 6615 Passons Boulevard, Pico Rivera, California.

Mayor Archuleta called the meeting to order at 6:00 p.m. on behalf of the City Council.

PRESENT: Salcido, Tercero, Archuleta

ABSENT: Armenta, Camacho

COMMISSIONERS PRESENT:

Fred Zermeno, Planning Commission

INVOCATION: Planning Commissioner Zermeno

PLEDGE OF ALLEGIANCE: Led by Councilmember Tercero

SPECIAL PRESENTATIONS:

- LAEDC presentation by Barbara Levine to City for 2012 Most Business Friendly City in L. A. County Award Finalist
- Certificates of Recognition to Local Businesses for being "Good Corporate Citizens" as Recognized by the Sanitation Districts of Los Angeles
- Employee Recognition:
 - Mike Cuellar, Public Works, 25 years service

Mayor Archuleta recognized and congratulated Parks & Recreation Director Aranda upon his retirement from the city.

PUBLIC HEARING(S):

1. Finding No Significant Impact for Pico Park Improvement Project. (700)

Mayor Archuleta opened the public hearing and noted that there were no written communications or public comment cards to provide public testimony.

Mayor Archuleta closed the public hearing.

Motion by Councilmember Tercero, seconded by Councilmember Salcido to adopt Resolution No. 6704 approving the project and the Finding of No Significant Impact (FONSI). Motion carries by the following roll call vote:

Resolution No. 6704 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, APPROVING FINDING OF NO SIGNIFICANT IMPACTS (FONSI) FOR PICO PARK IMPROVEMENT PROJECT

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

1st PERIOD OF PUBLIC COMMENTS – AGENDA ITEMS ONLY: None.

CONSENT CALENDAR:

2. Minutes:

- Approved City Council meeting of October 9, 2012
- Received and filed Parks & Recreation meeting of September 13, 2012
- Received and filed Planning Commission meeting of October 1, 2012

3. Approved 7th Warrant Register of the 2012-2013 Fiscal Year. (700)

Check Numbers: 253985-254060; 254063-254193

Special Checks Numbers: 254061-254062

4. Award Professional Services Agreement to Get Up and Go Tours, Inc. for Fleet Maintenance Services. (500)

This item was removed from the Consent Calendar for further discussion and clarification.

5. City Hall Parking Lot Light Emitting Diode (LED) Retrofit Project, Capital Improvement Program (CIP) No. 21239 - Notice of Completion. (500)

1. Accepted as complete, effective October 23, 2012, work performed by Pro Tech Engineering Corporation on subject project; and
2. Instructed the City Clerk to file the Notice of Completion with the Los Angeles County Recorder.

6. **Award Maintenance Services Agreement to ABM Building Solutions for Heating, Ventilation and Air Conditioning Maintenance.** (500)

This item was removed from the Consent Calendar for further discussion and clarification.

7. **Smith Park Renovation and Rio Vista Park Renovation Projects – Authorization of a Sole Source Purchase of Musco Sports Light Systems.** (500)

This item was removed from the Consent Calendar for further discussion and clarification.

8. **Passons Boulevard Underpass Project, Phase III, CIP No. 20053 – Authorization to Advertise for Construction.** (500)

This item was removed from the Consent Calendar for further discussion and clarification.

Motion by Councilmember Tercero, seconded by Councilmember Salcido to approve Consent Calendar Items 2, 3, and 5. Motion carries by the following roll call vote:

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

9. **Oversight Board of the Successor Agency to the Pico Rivera Redevelopment Agency Conflict-of-Interest Code.** (300)

Motion by Councilmember Salcido, seconded by Councilmember Tercero to receive and file.

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

CONSENT CALENDAR ITEMS PULLED:

4. Award Professional Services Agreement to Get Up and Go Tours, Inc. for Fleet Maintenance Services. (500)

Council members discussed their concerns with awarding the contract to the consultant who provided the audit and requested that staff further evaluate their options.

Motion by Councilmember Salcido, seconded by Councilmember Tercero to refer this item back to staff for further study and evaluation. Motion carries by the following roll call vote:

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

6. Award Maintenance Services Agreement to ABM Building Solutions for Heating, Ventilation and Air Conditioning Maintenance. (500)

Councilmember Salcido asked staff if the city has employees who are capable of performing the work in-house. Director of Public Works Cervantes stated that the HVAC system has been maintained by a contractor since 2008. Prior to that, he stated, the HVAC system was maintained by a combination of city staff providing minor maintenance and the contractor. He stated that because staff at that time did not have this kind of package service on board, the city was spending a lot of money in bringing in individual contractors which was not cost effective. The city, he stated, moved to this maintenance strategy which covers the entire system and includes preventative maintenance and is a lump sum monthly payment. For that reason, he stated, the city would not have to use in-house staff for minor maintenance. He further stated that at this point in time this provides a very cost effective way to maintain our system. He added that the employees do not have the certifications needed to maintain the HVAC system and for that reason staff was not looking at the employees to maintain the system.

Councilmember Tercero asked if there is any plan to get our employees certified. Director of Public Works Cervantes stated that staff has been encouraging employees to become certified in various areas.

Mayor Archuleta asked if the city would be saving money with the new system being proposed with Director Cervantes responding in the affirmative.

Motion by Councilmember Salcido, seconded by Councilmember Tercero to award a Maintenance Services Agreement to ABM Building Solutions to provide Heating, Ventilation and Air Conditioning (HVAC) maintenance services for various city-owned facilities for an annual amount not to exceed \$94,260 and authorize the Mayor to execute a two-year agreement in a form approved by the City Attorney.

Agreement No. 12-1350

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

7. Smith Park Renovation and Rio Vista Park Renovation Projects – Authorization of a Sole Source Purchase of Musco Sports Light Systems. (500)

Councilmember Tercero asked if Acon Development was okay with utilizing Musco Sports Light with City Manager Bates responding in the affirmative.

Motion by Councilmember Salcido, seconded by Councilmember Tercero to authorize a sole source purchase from Musco Sports Lighting, LLC in the amount of \$647,635 for two Sports Light Systems for Smith Park and Rio Vista Park Renovation Projects.

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

8. Passons Boulevard Underpass Project, Phase III, CIP No. 20053 – Authorization to Advertise for Construction. (500)

Councilmember Tercero asked why Phase III was not part of the original contract. City Manager Bates stated that when staff bid the original contract, they were unsure of what the final cost would be. He stated when the cost came in lower, and additional funding was available for this project, staff looked to see how the project met all the needs in that area rather than just the specific building for the underpass, and because of the way the contract was written using the third phase lowers the overall cost. Councilmember Tercero asked if the repairs are part of the ongoing construction with Director Cervantes responding in the affirmative.

Mayor Archuleta asked if the original contractor would be involved in Phase III with Director Cervantes stating that the original contractor would have the ability to bid the project but staff will be going out to bid and award it to the lowest bidder.

Councilmember Salcido asked what the total cost of the project is with Director Cervantes responding \$43.5 million dollars. He further inquired about the proposed signal at the intersection of Rivera Road and Passons. Director Cervantes stated that the recommendation for the implementation of the signal came through a traffic study with the primary purpose of the signal being to accommodate pedestrian and vehicle usage in that intersection because with the closure of Serapis it will increase the traffic volume on Passons Boulevard.

Mayor Archuleta asked if there is enough funds set aside to provide signage and miscellaneous improvements with Director Cervantes responding in the affirmative and stating that all improvements would be within budget. Councilmember Salcido added that shrubbery such as trees should be added to the northern side of the railroad tracks on Rivera Road to act as a sound barrier. Mayor Archuleta requested that there be plenty of lighting.

Motion by Councilmember Tercero, seconded by Councilmember Salcido to: 1) Approve Plans, Specifications and Estimate (PS&E) for the Passons Boulevard Underpass Project, Phase III, CIP No. 20053; 2) Authorize the City Clerk to publish the Notice Inviting Bids; and 3) Approve the Notice of Exemption for the Passons Boulevard Underpass Project, Phase III, CIP No. 20053, and authorize the City Clerk to file with the County Recorder.

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

LEGISLATION: None.

NEW BUSINESS: None.

OLD BUSINESS:

Mayor Archuleta asked for an update on the construction of the new library. Assistant to the City Manager Chavez stated that the project is on schedule and is under budget.

Councilmember Salcido asked for an update on the concession stands structure at Rivera Park. Director of Public Works Cervantes stated that the Department of Public Health had some new requirements that needed to be met that caused a slight delay. He further stated that the contractor has two weeks to complete the project; otherwise Public Works staff will complete the project which will take a maximum of three weeks. Mayor Archuleta asked for an update on the fields at Rivera Park. Director of Public Works Cervantes stated that staff is continuing with their regular maintenance schedule and fertilizing the grass.

2ND PERIOD OF PUBLIC COMMENTS – ALL OTHER CITY-RELATED BUSINESS:

None.

Recessed to Water Authority at 7:12 p.m.

ALL MEMBERS WERE PRESENT EXCEPT FOR COUNCIL MEMBERS ARMENTA AND CAMACHO.

Reconvened from Water Authority at 7:35 p.m.

ALL MEMBERS WERE PRESENT EXCEPT FOR COUNCIL MEMBERS AREMENTA AND CAMACHO.

ADJOURNMENT:

Mayor Archuleta adjourned the City Council meeting at 7:35 p.m. There being no objection it was so ordered.

AYES: Salcido, Tercero, Archuleta

NOES: None

ABSENT: Armenta, Camacho

Bob J. Archuleta, Mayor

ATTEST:

Anna M. Jerome, Deputy City Clerk

I hereby certify that the foregoing is a true and correct report of the proceedings of the City Council regular meeting dated October 23, 2012 and approved by the City Council on November 13, 2012.

Anna M. Jerome, Deputy City Clerk



To: Mayor and City Council

From: City Manager

Meeting Date: November 13, 2012

Subject: CONCRETE IMPROVEMENTS IN COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AREAS, CIP NO. 21244 – AUTHORIZATION TO BID

Recommendation:

- 1) Approve Plans, Specifications and Estimate (PS&E) for Concrete Improvements in CDBG Areas, CIP No. 21244; and
- 2) Authorize the City Clerk to publish the Notice Inviting Bids; and
- 3) Approve the Notice of Exemption for the subject project and authorize the City Clerk to file with the County Recorder.

Fiscal Impact: \$200,000 (Community Development Block Grant)
Account No. 210-7300-44500-21244

Discussion:

On July 10, 2012, City Council approved the Community Development Block Grant (CDBG) 2012-2013 Action Plan and allocated \$200,000 in CDBG grant funds to the Concrete Improvements in CDBG Areas Project (Concrete Project).

Through new construction or reconstruction, the Concrete Project will improve public streets with ADA (American with Disabilities Act) compliant curb ramps as follows:

- Curb ramps will be installed on street corners where none exist;
- Curb ramps that do not meet current ADA standards will be reconstructed; and
- Sidewalks and curb and gutter adjoining the curb ramps will be reconstructed to meet ADA standards.

The Concrete Project will take place in areas of the City designated as CDBG Funded Areas. Engineering staff estimates approximately 60 ramps will be constructed or reconstructed (see Exhibit "A" for locations). The engineering estimate is \$175,000.

COUNCIL AGENDA REPORT – MTG. OF 11/13/12
CONCRETE IMPROVEMENTS IN COMMUNITY DEVELOPMENT BLOCK GRANT
(CDBG) AREAS, CIP NO. 21244 – AUTHORIZATION TO BID

Page 2 of 2

The \$200,000 budget is fully funded with CDBG grant funds. Funding will be used for construction and contingency (\$175,000), labor compliance (\$5,000), staff time (\$15,000) and other services if determined to be necessary (\$5,000).

To meet CDBG requirements, grant funds must be fully spent by the end of May 2013. The project must be fully implemented before that date. At this time, approval from the City Council to advertise construction is necessary to meet this schedule.

Pursuant to the guidelines of the California Environmental Quality Act, the Concrete Project is categorically exempt under Class 1(c) for existing facilities. Under CEQA, a project is exempt if the scope of work is limited to the repair, maintenance, reconstruction or minor alterations of an existing street and sidewalk.

The anticipated schedule is as follows:

Authorization to Advertise	November 13, 2012
Bid Opening Date	December 2012
Award Construction	January 2013
Start Construction	February 2013
Complete Construction	April 2013

The project has been designed by, and construction will be managed by the Department of Public Works, Engineering Division.

The plans and specifications are available in the Public Works Department for review.



Ronald Bates

RRB:AC:RG:MN:lg

Enc.

- 1) Exhibit "A" - Location Map
- 2) Notice of Exemption

COMMUNITY DEVELOPMENT BLOCK GRANT AREAS
(CDBG)

CIP 21244 - CDBG PROJECT
LOCATION MAP

LEGEND

● - ADA CURB RAMP



Scale: 1"=500'



Notice of Exemption

Appendix E

To: Office of Planning and Research
 P.O. Box 3044, Room 113
 Sacramento, CA 95812-3044
 County Clerk
 County of: Los Angeles
 12400 Imperial Highway
 Norwalk, CA 90650

From: (Public Agency): City of Pico Rivera
 6615 Passons Blvd.
 Pico Rivera, CA 90660
 (Address)

Project Title: Project No.21244 -Concrete Improvements in Community Development Block Grant Areas

Project Applicant: City of Pico Rivera

Project Location - Specific:
Citywide

Project Location - City: Pico Rivera Project Location - County: Los Angeles

Description of Nature, Purpose and Beneficiaries of Project:
New construction or reconstruction, the Concrete Project will improve curb ramps, sidewalk, as well as curb & gutter on public streets. ADA curb ramps will installed where none exist. ADA curb ramps that do not meet current ADA standards will be reconstructed; and As necessary, sidewalks and curb and gutter will be reconstructed to meet ADA standards related to new ADA curb ramps. The beneficiaries of the project are the residents of City of Pico Rivera.

Name of Public Agency Approving Project: City of Pico Rivera

Name of Person or Agency Carrying Out Project: Rene Guerrero, Assistant City Engineer

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 1 - Section 15301(C)
- Statutory Exemptions. State code number: _____

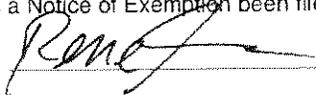
Reasons why project is exempt:

This project exempt due to it being a repair, maintenance, reconstruction or minor alterations of an existing street and sidewalk.

Lead Agency Contact Person: Rene Guerrero Area Code/Telephone/Extension: 562-801-4417

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature:  Date: 10/31/12 Title: Assistant City Engineer

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____



To: Mayor and City Council
From: City Manager
Meeting Date: November 13, 2012
Subject: TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS,
 CIP NO. 21232 — AWARD CONSTRUCTION

Recommendation:

Award a construction contract in the amount of \$2,098,000 to All American Asphalt, for the Telegraph Road Landscape Median Improvements Project, CIP No. 21232, and authorize the Mayor to execute the contract in a form approved by the City Attorney.

Fiscal Impact: \$900,000 (Highway Safety Improvement Program, Federal Grant Funds)
 \$389,500 (Proposition C, State Local Return Funds)
\$884,000 (City of Downey Funds)
 \$2,173,500 Total

CIP Account No. 210-7300-44500-00021232

Discussion:

The Telegraph Road Landscape Median Improvements Project (CIP No. 21232, Federal No. HSIPL-5351(022), EA 07-933969L) consists of safety improvements on Telegraph Road from Passons Boulevard to Rosemead/Lakewood Boulevard within the cities of Pico Rivera and Downey. Improvements include raised landscape medians, pavement restoration, sidewalk and curb ramp repairs, and traffic signal modifications.

This multiagency project also consists of street improvements on Lakewood Boulevard from Telegraph Road to Vista Del Road Ave, which is completely within and fully funded by the City of Downey.

On September 25, 2012, the City Council authorized the City Clerk to re-advertise construction of the project. The Notice Inviting Bids was advertised on October 2 and October 16, 2012. On October 30, 2012, five (5) bids were received and opened by the City Clerk in a public forum. The following is the bid summary:

	<u>Contractor</u>	<u>Total Bid (Base bid plus Alternates A, B & C)</u>
1.	All American Asphalt	\$2,098,000
2.	GASS Construction Company Inc.	\$2,189,955
3.	Excel Paving Co.	\$2,415,504
4.	EC Construction	\$2,476,020
5.	Diversified Landscape Management	\$2,682,867

The engineering estimate was \$2,173,000 and the lowest bid was 3.5% lower.

The bids included three alternate tasks (known as Additive Alternate Bid Items). Due to the favorable bid, staff is recommending awarding the three alternate tasks, and the City of Downey concurs.

Therefore, the recommended contract amount is \$2,098,000 and includes the following:

- Base Bid (\$810,000) – Roadway medians, concrete rehabilitation and traffic signal modifications on Telegraph Road,
- Additive Alternate Bid "A" (\$1,177,000) – Pavement rehabilitation and median landscaping on Telegraph Road,
- Additive Alternate Bid "B" (\$28,000) - Rosemead Boulevard and Telegraph Road Intersection pavement improvements, and
- Additive Alternate Bid "C" (\$83,000) - Lakewood Boulevard pavement improvements.

After completion of the bid analysis, All American Asphalt (AAA) was confirmed to be the lowest, responsible bidder and is recommended for the contract.

AAA exhibits the capability, capacity, and experience to perform the work required under the bid solicitation. In Pico Rivera, AAA successfully completed the Beverly Boulevard, Paramount Boulevard and Rosemead Boulevard pavement rehabilitation projects.

The anticipated schedule for the project is:

- Award Construction..... November 2012
- Start Construction..... January 2013
- Complete Construction..... April 2013

The \$2,173,500 budget for the construction contract is funded by HSIP Federal grant, Proposition C, and City of Downey funds.

Construction Management services will be provided by Onward Engineering, they were awarded contract management by the City Council on September 25, 2012.



Ronald Bates

RRB:AC:JL:lg

Enc.

- 1) Attachment "A" - Construction Contract
- 2) Exhibit "A" to Construction Contract
- 3) Attachment "B" - Telegraph Road Landscape Median Improvements – Project Limits

AGREEMENT NO. _____
PUBLIC WORKS CONTRACT SERVICES AGREEMENT

CAPITAL IMPROVEMENT PROJECT NO. 21232
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this 13th day of November 2012 by and between the CITY OF PICO RIVERA, a municipal corporation, (herein "City") and All American Asphalt (herein "Contractor"). The parties hereto agree as follows:

R E C I T A L S

A. City requires services for the construction of Capital Improvement Project No. 21232, Telegraph Road Landscape Median Improvements. Contractor has represented to City that Contractor is qualified to perform said services and has submitted a proposal to City for same.

B. City desires to have Contractor perform said services on the terms and conditions set forth herein.

NOW, THEREFORE, based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Contractor hereby agree as follows:

1. SERVICES OF CONTRACTOR

1.1 **Scope of Services** - In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended.

1.2 **Documents Included in Contract** - This contract consists of the following Contract Documents: Notice of Inviting Bids, Special Provisions, Special Provisions – Part 2, Special Provisions – Part 3, General Provisions, Proposal, Instruction to Bidders, Bidder's Proposal, Bidder's Bond (Bidder's Guarantee), Bond for Faithful Performance, Bond for Labor and Material, Notice of Award, Notice to Proceed, Change Order, Escrow Agreement, Schedule of Non-Working Fridays, Waste Management Plan, Designation/Certification of Asphalt Rubber Binder Applicator, Representative ARAM Projects, Location Map and Striping Plan, Supplemental Information Form, Tax Identification Number Form, Guarantee, this Contract, and any and all schedules and attachments to it which are incorporated as if fully set forth herein

1.3 **Order of Preference of Documents** - In the event of an inconsistency among the Contract Documents, the Contract Documents shall have the following order of preference:

1. 2012 Greenbook
2. This Agreement
3. Special Provisions
4. Caltrans Standard Specifications
5. Caltrans Standard Plans

1.4 **Additional Services** - City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said extra work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of twenty-five percent (25%) or less of the Contract Sum, or in the time to perform of one hundred eighty (180) days or less may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

2. GENERAL CONDITIONS

2.1 **Compliance with Law** - The Contractor shall keep itself informed of City, State, and Federal laws, ordinances and regulations, which may in any manner affect the performance of its services pursuant to this Agreement. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Neither the City, nor their officers, agents, nor employees shall be liable at law or in equity as a result of the Contractor's failure to comply with this section.

2.2 **Licenses, Permits, Fees, and Assessments** - Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder. Contractor shall be responsible for all subcontractors' compliance with this Section 2.2.

2.3 **Familiarity with Work** - By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall

immediately inform the City of such fact in writing and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

2.4 Care of Work - The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's sole negligence.

2.5 Further Responsibilities of Parties - Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other. Contractor shall require all subcontractors to comply with the provisions of this Agreement.

2.6 Prevailing Wage Laws - In accordance with Labor Code Section 1770 et seq., the director of the Department of Industrial Relations of the State of California has ascertained a general prevailing rate of wages which is the minimum amount which shall be paid to all workers employed to perform the work pursuant to this Agreement. A copy of the general prevailing wage rate determination is on file in the Office of the Director of Public Works and is hereby incorporated in this Agreement. In accordance with the provisions of Labor Code Section 1810 et seq., eight (8) hours is the legal working day. Contractor must forfeit to the City Twenty Five Dollars (\$25.00) a day for each worker who works in excess of the minimum working hours when Contractor does not pay overtime. Contractor is required to post a copy of such wage rates at all times at the contract site. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hour laws will be enforced. Contractor also shall comply with State law requirements to maintain payroll records and shall provide for certified records and inspection of records as required by California Labor Code Section 1770 et seq., including Section 1776. Contractor shall comply with all statutory requirements relating to the employment of apprentices.

2.7 Type of Contractor's License. The Contractor shall possess the following types of contractor's license(s) to perform the work pursuant to this Agreement:

Class A – General Engineering Contractor

2.8 Ineligible Contractor Prohibited. Any contractor or subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code is prohibited from performing work under this Agreement.

3. COMPENSATION

3.1 Contract Sum - For the services rendered pursuant to this Agreement, the Contractor shall be compensated as specified herein, but not exceeding the maximum contract amount of Two Million Ninety Eight Thousand Dollars with no cents (\$2,098,000.00) (herein "Contract Sum"), except as provided in Section 1.4. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings.

3.2 Progress Payments - Prior to the first day of the month, during the progress of the work, commencing on the day and month specified in the Agreement, Contractor shall submit to the Contract Officer a complete itemized payment request for all labor and materials incorporated into the work during the preceding month and the portion of the contract sum applicable

thereto. Upon receipt of a properly presented payment request, the Contract Officer shall process the payment request in accordance with Public Contracts Code Section 20104.5. The Contract Officer shall review the payment request as soon as possible. If the Contract Officer rejects the payment request, it shall be returned to the Contractor within seven days of its receipt by the City with an explanation for the reasons of its rejection. If the payment request is approved in writing by the Contract Officer, payment shall be made in thirty (30) days of receipt of an undisputed and properly presented payment request. Late payments shall bear interest at the legal rate of interest in accordance with Code of Civil Procedure 685.010. City shall pay Contractor a sum based upon ninety percent (90%) of the contract price apportionment of the labor and materials incorporated into the work under the contract during the month covered by said statement. The remaining ten percent (10%) thereof shall be retained as performance security. Refer to Section 3.3 of this Agreement for retention of funds.

3.3 Retention of Funds - Progress payments shall be made in accordance with the provisions of Section 2.2 of this Agreement. In accordance with said section, City shall pay Contractor a sum based upon ninety-five percent (95%) of the contract price apportionment of the labor and materials incorporated into the work under this Agreement during the month covered by said statement. The remaining five percent (5%) thereof shall be retained as performance security to be paid to the Contractor within sixty (60) days after final acceptance of the work by the City Council, after Contractor shall have furnished City with a release of all undisputed contract amounts, if required by City. In the event there are any claims specifically excluded by Contractor from the operation of the release, the City may retain proceeds (per Public Contract Code 7107) of up to 150% of the amount in dispute. City's failure to deduct or withhold shall not affect Contractor's obligations hereunder.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence - Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance - Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within sixty-five (65) working days.

4.3 Force Majeure - The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes for the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term - Unless earlier terminated in accordance with Section 8.9 of this Agreement, this Agreement shall continue in full force and effect until final approval and acceptance of the work by the Contract Officer.

5. COORDINATION OF WORK

5.1 **Representative of Contractor** - The following principal of Contractor are hereby designated as being the principal and representative of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

Cody Gawryluk, Project Manager

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal was a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principal may not be replaced nor may his responsibilities be substantially reduced by Contractor without the express written approval of City.

5.2 **Contract Officer** - The Contract Officer shall be such person as may be designated by the City Manager or City Engineer of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

5.3 **Prohibition Against Assignment** - The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

5.4 **Independent Contractor** - Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, performs the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City, nor shall City officers, employees or agents be deemed the officers, employees, or agents of Contractor as a result of this Agreement. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

5.5 **PERS Eligibility Indemnity** - In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors,

as well as for payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation benefit, or any incident of employment by the City and entitlement to any contribution to be paid by the City for employee contribution and or employee contribution for PERS benefits.

5.6 Identity of Persons Performing Work - Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Contractor represents that the tasks and services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

5.7 Utility Relocation - City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contractor for any costs incurred in locating, repairing damage not caused by Contractor and removing or relocating such unidentified utility facilities, including equipment idled during such work. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

5.8 Trenches, Excavations and Unknown Conditions - Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.4 of this Agreement.

c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

5.9 Trench and Pipeline Safety – If this Agreement is for more than \$25,000 and involves excavation of any trench five feet or more in depth, the Contractor shall submit a detailed plan of shoring, bracing, sloping or other provisions to be made for worker protection in

accordance with Labor Code Section 6705. Such plan shall be approved by a qualified representative of the City.

6. INSURANCE, INDEMNIFICATION AND BONDS

6.1 **Insurance** - The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

Coverage (Check if applicable)		Minimum Limits
(X)	Comprehensive General Liability Insurance (including premises and operations)	\$1,000,000 per occurrence combined single limit
()	Contractual Liability Insurance Products Liability Insurance	\$1,000,000 limit
(X)	Comprehensive Automobile Liability Insurance (includes owned, non-owned, and hired automobile hazard)	\$1,000,000 per occurrence combined single limit
()	Professional Liability Insurance (providing for a one year discovery period)	\$1,000,000 limit
(X)	Workers' Compensation/Employers' Liability Insurance	Statutory \$1,000,000 per occurrence
	Risk of Loss Insurance	
	Acts of God Insurance	

CONDITIONS:

The insurance of surety companies who provide or issue the policy shall have been admitted to do business in the State of California with a credit rating of "A"-minus or better.

This insurance shall not be canceled, limited in scope or coverage or non-renewed until after thirty (30) days prior written notice has been given to the City Engineer, City of Pico Rivera, California.

Any insurance maintained by the City of Pico Rivera shall apply in excess of, and not combined with, insurance provided by this policy.

The City of Pico Rivera, its officers, employees, representatives, attorneys, and volunteers shall be named as additional named insureds.

Prior to commencement of any work under this Agreement, Contractor shall deliver to the City insurance endorsements confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above.

Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by the City, it shall be Contractor's responsibility to see that the City receives documentation, acceptable to the City, which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company.

If the Contractor fails to maintain the aforementioned insurance, or secure and maintain the aforementioned endorsement, the City may obtain such insurance, and deduct and retain the

amount of the premiums for such insurance from any sums due under the Agreement. However, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure said endorsement. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which became due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this Agreement.

Each contract between the Contractor and any subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section 6.1.

6.2 Indemnification - Contractor shall indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the City, its officers, agents or employees, and in connection therewith:

a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors', or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to City.

d) Contractor's duty to defend and indemnify as set out in this Section 6.2 shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980

("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

e) City shall provide written notice to Contractor of any third party claims in accordance with Public Contracts Code 9201.

The Contractor's indemnification obligations pursuant to this Section 6.2 shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

6.3 Labor and Materials Bond, Performance Security and Warranty Security - Concurrently with execution of this Agreement, Contractor shall deliver to City a labor and materials bond and a performance security each in the sum of the amount of this Agreement, in the forms provided by the City Clerk, which secures the payment of subcontractors, laborers and materialmen, and the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond or security shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement. Prior to the acceptance of the work by the City, Contractor shall deposit with the City a Warranty Bond or Security in the amount of 50% of the amount of this Contract and in a form provided by the City warranting the work and materials for a period of one year from the date of acceptance by the City.

6.4 Sufficiency of Insurer or Surety - Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. In the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 6 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within ten (10) days of receipt of notice from the Risk Manager.

6.5 Substitution of Securities - Pursuant to California Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under this Agreement for the work to be performed will be permitted at the request and expense of the successful bidder.

7. RECORDS AND REPORTS

7.1 Reports - Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance,

technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.2 **Records** - Contractor shall keep, and require subcontractors to keep, such books and records (including but not limited to payroll records as required herein) as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

7.3 **Ownership of Documents** - All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

8. ENFORCEMENT OF AGREEMENT

8.1 **California Law** - This Agreement shall be construed and interpreted both as to validity and as to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 **Disputes** - In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Agreement. Compliance with the provisions of this Section 8.2 shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

8.3 **Dispute Resolution** - If the amount of this Agreement is \$375,000 or less, disputes regarding time extensions or payment amounts must be submitted to a resolution process in accordance with Public Contracts Code 20104-20104.4 as follows:

- (1) Informal negotiation between the City and general contractor.
- (2) Mediation with the general contractor.
- (3) Arbitration.
- (4) Court trial. If the party requesting the court trial does not prevail, then that party must pay all court costs and attorney's fees.

8.4 **Waiver** - No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.5 **Rights and Remedies are Cumulative** - Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.6 **Legal Action** - In addition to any other rights or remedies, either party may take legal action, law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.7 **Liquidated Damages** - Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of two hundred dollars (\$200.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit B). In addition, liquidated damages may be assessed for failure to comply with the emergency call out requirements described in the Scope of Services (Exhibit A). The City may withhold from any moneys payable on account of services performed by the Contractor any accrued liquidated damages.

8.8 **Termination for Default of Contractor** - If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 8.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed the City as previously stated.

8.9 **Termination for Convenience** - The City may terminate this Agreement without cause for the convenience of the City upon giving Contractor 30 days' prior written notice of termination of the Agreement. Upon receipt of the notice of termination, the Contractor shall cease all further work pursuant to the Agreement. Upon such termination by the City, the Contractor shall not be entitled to any other remedies, claims, actions, profits, or damages

except as provided in this paragraph. Upon the receipt of such notice of termination, Contractor shall be entitled to the following compensation:

1. The contract value of the work completed to and including the date of receipt of the notice of termination, less the amount of progress payments received by Contractor.

2. Actual move-off costs including labor, rental fees, equipment transportation costs, the costs of maintaining on-site construction office for supervising the move-off.

3. The cost of materials custom made for this Agreement which cannot be used by the Contractor in the normal course of his business, and which have not been paid for by City in progress payments.

4. All costs shall not include any markups as might otherwise be allowed by any plans or specifications which were a part of the Agreement.

The provisions of this paragraph shall supersede any other provision of the Agreement or any provision of any plans, specification, addendums or other documents which are or may become a part of this Agreement. City and Contractor agree that the provisions of this paragraph are a substantive part of the consideration for this Agreement.

8.10 Attorney's Fees - If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

9. CITY OFFICERS AND EMPLOYEES, NONDISCRIMINATION

9.1 Non-liability of City Officers and Employees - No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest - The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

9.3 Covenant Against Discrimination - Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. To the extent required by law, Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 **Notice** - Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the U.S. Mail, prepaid, first-class mail, return receipt requested, addressed as follows:

To City: City of Pico Rivera
6615 Parsons Boulevard
Pico Rivera, California 90660
Attention: Arturo Cervantes, Director of Public Works/City Engineer

To Contractor: All American Asphalt
400 East Sixth Street
Corona, California 92878
Attention: Cody Gawryluk, Project Manager

10.2 **Interpretation** - The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

10.3 **Integration; Amendment** - It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 **Severability** - In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

10.5 **Hiring of Undocumented Workers Prohibited** - Contractor shall not hire or employ any person to perform work within the City of Pico Rivera or allow any person to perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

10.6 **Unfair Business Practices Claims** - In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body renders final payment to the Contractor without further acknowledgment by the parties. (Section 7103.5, California Public Contract Code.)

10.7 **Corporate Authority** - The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[Intentionally left blank. Signatures follow.]

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

CITY OF PICO RIVERA,
a municipal corporation

By: _____
Assistant City Clerk

By: _____
Mayor Bob Archuleta

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

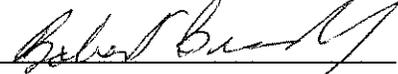
CONTRACTOR:

By: Robert Bradley
(Print Name)

By: Michael Farkas
(Print Name)

Date: 11/2/12

Date: 11/2/12

Signature: 

Signature: 

Title: vice president

Title: secretary

Address: PO Box 2229

Address: PO Box 2229

Corona CA 92878-2229

Corona CA 92878-2229

CITY OF PICO RIVERA

Telegraph Road Landscape Median Improvements

FEDERAL PROJECT NO. HSIPL-5351 (022)

EA 07-933969L

City Project No. 21232

BIDDER'S PROPOSAL

TO THE PICO RIVERA CITY COUNCIL:

The undersigned, as a bidder, declares that this proposal is made without collusion with any other person, firm or corporation, and that the only person or parties interested as principals are those named herein; that he has not accepted any bid from any subcontractor or materialman through any bid depository, or prevent the contractor from considering any bid from any subcontractor or materialman which is not processed through said bid depository, or which prevents any subcontractor or materialman from bidding to any contractor who does not use the facilities of; or accept bids from or through such bid depository, and having carefully examined the site of the proposed work, plans and specifications, therefore, as well as the Notice of Inviting Bids, all motions by the City Council pertaining thereto, and the proposed contract, and having informed himself fully in regard to the contemplated work, proposes and agrees in the event of the acceptance of hereof to enter into a contract with the City Council of the City of Pico Rivera to perform said proposed work in accordance with the terms of said contract, and to furnish or provide all materials, labor, tools, equipment, apparatus, and other means necessary to do so in accordance with the terms and provisions of said agreement, to wit:

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L
 City Project No. 21232

BASE BID - REVISED

The Project Base bid includes only the bid items listed below for "Base Bid". The methodology for the base bid is to include only those safety improvements. This includes the installation of the raised median, PCC improvements, traffic signal improvements, mobilization, clearing and grubbing, unclassified excavation and all that goes along with the items included in the base bid on Telegraph Rd. from Lakewood/Rosemead Blvd. to Passons Blvd.

PROPOSAL SCHEDULE TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS Federal Project No. HSIPL-5351 (022) EA 07-933969L City Project No. 21232 BASE BID SAFETY IMPROVEMENTS					
Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
1	Mobilization and Demobilization <u>Thirty nine thousand</u> Seven hundred eighty eight ⁵⁰ / ₁₀₀ unit price in words	1	LS	\$ 39,788.50	\$ 39,788.50
2	Clearing and Grubbing <u>twenty thousand -</u> unit price in words	1	LS	\$ 20,000 -	\$ 20,000 -
3	Traffic Control <u>Three thousand -</u> unit price in words	1	LS	\$ 3,000 -	\$ 3,000 -
4	Unclassified Excavation <u>Thirty six -</u> unit price in words	400	CY	\$ 36. ⁰⁰ / ₁₀₀	\$ 14,400. ⁰⁰

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L
 City Project No. 21232
BASE BID
SAFETY IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
5	Construct PCC Dowel-on 10.5" Median Curb <u>Thirteen</u> _____ unit price in words	4,799	LF	\$ 13. ⁰⁰ / ₁₀₀	\$ 62,387. ⁰⁰ / ₁₀₀
6	Remove Pavement (incl. PCC) under medians <u>one dollar & fifty cents</u> _____ unit price in words	21,349	SF	\$ 1. ⁵⁰ / ₁₀₀	\$ 32,023. ⁵⁰ / ₁₀₀
7	Place and Compact Class A Topsoil <u>Thirty one</u> _____ unit price in words	1,260	CY	\$ 31-	\$ 39,060-
8	Construct 4" Thick PCC Sidewalk on 90% Compacted Native <u>five dollars & fifty cents</u> _____ unit price in words	830	SF	\$ 5. ⁵⁰ / ₁₀₀	\$ 4,565. ⁰⁰ / ₁₀₀
9	Construct PCC Curb and Cutter Per SPPWC Standard Plan 120-1 <u>fifty</u> _____ unit price in words	190	LF	\$ 50. ⁰⁰ / ₁₀₀	\$ 9,500. ⁰⁰ / ₁₀₀
10	Construct PCC Spandrel per SPPWC Standard Plan No. 122-2. <u>Seventeen</u> _____ unit price in words	840	SF	\$ 17. ⁰⁰ / ₁₀₀	\$ 14,280. ⁰⁰ / ₁₀₀

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L
 City Project No. 21232
BASE BID
SAFETY IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
11	Construct Curb Ramp Per SPPWC Std Plan 111-4. Type and Case Per Plan. <u>Three thousand two hundred</u> _____ unit price in words	17	EA	\$ <u>3,200.⁰⁰/₁₀₀</u>	\$ <u>54,400.⁰⁰/₁₀₀</u>
12	Install 4'x3' Truncated Dome <u>one thousand one hundred</u> _____ unit price in words	21	EA	\$ <u>1,100.⁰⁰/₁₀₀</u>	\$ <u>23,100.⁰⁰/₁₀₀</u>
13	Furnish and Install Pedestrian Countdown Heads and Battery Backup System Cabinet at Telegraph Rd. and Lakewood/Rosemead Blvd. <u>fourteen thousand</u> <u>four hundred ninety six</u> _____ unit price in words	1	LS	\$ <u>14,496-</u>	\$ <u>14,496-</u>
14	Traffic Signal Modification at Telegraph Rd. and Serapis Ave. <u>Two hundred thousand</u> _____ unit price in words	1	LS	\$ <u>200,000-</u>	<u>200,000-</u> \$ 200,000- <u>RS</u>
15	Traffic Signal Modification at Telegraph Rd. and Parsons Blvd. <u>one hundred ninety thousand</u> _____ unit price in words	1	LS	\$ <u>190,000-</u>	\$ <u>190,000-</u>
16	Signing, Striping, Pavement Markings, and RPM's on Telegraph Rd. <u>thirty five thousand</u> _____ unit price in words	1	LS	\$ <u>35,000-</u>	\$ <u>35,000-</u>

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L
 City Project No. 21232
BASE BID
SAFETY IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
17	Furnish and Install Monument Sign Per Monument Sheet <u>Thirty thousand —</u> unit price in words	1	LS	\$ 30000.—	\$ 30000.—
18	Furnish and Install 4 Message Board Signs. <u>fifteen thousand —</u> unit price in words	1	LS	\$ 15,000. ⁰⁰ / ₁₀₀	\$ 15,000. ⁰⁰ / ₁₀₀
19	Rosemead Boulevard at Beverly Road Improvements. <u>Three thousand five hundred —</u> unit price in words	1	LS	\$ 3500. ⁰⁰ / ₁₀₀	\$ 3500. ⁰⁰ / ₁₀₀
20	Rosemead Boulevard south of Burke Street Road Improvements. <u>two thousand —</u> unit price in words	1	LS	\$ 2000. ⁰⁰ / ₁₀₀	\$ 2000. ⁰⁰ / ₁₀₀
21	Rosemead Boulevard south of Mines Avenue Road Improvements. <u>three thousand five hundred —</u> unit price in words	1	LS	\$ 3500. ⁰⁰ / ₁₀₀	\$ 3500. ⁰⁰ / ₁₀₀

TOTAL BASE BID \$ 810,000.00
 (figures)

TOTAL BASE BID eight hundred ten thousand dollars & zero cents
 (words)

ADDITIVE ALTERNATE BID A

The Project additive alternate bid A includes only the bid items listed below for "Additive Alternate Bid A." The methodology for the additive alternate bid A includes only those enhancement items from the eastbound ECR at Lakewood Blvd. and Telegraph Rd. to Parsons Blvd. This includes the installation of all landscaping and irrigation items, all pavement reconstruction within the limits, all cold milling, and ARHM overlay within the limits, all utility adjustments within the limits, all survey monument replacement or adjustment within the limits, and all traffic control, traffic signing, striping, and rpms, mobilization, clearing and grubbing and all that goes along with the items included in the additive alternate bid A.

<p align="center">PROPOSAL SCHEDULE TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS Federal Project No. HSIPL-5351 (022) EA 07-933969L City Project No. 21232 ADDITIVE ALTERNATE BID A TELEGRAPH RD. LANDSCAPE & AND PAVEMENT IMPROVEMENTS</p>					
Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
22	Mobilization and Demobilization <u>Thirteen thousand</u> Seventy six dollars & fifty five cents unit price in words	1	LS	\$ 13076.55	\$ 13076.55
23	Clearing and Grubbing <u>Ten thousand -</u> unit price in words	1	LS	\$ 10000 -	\$ 10000 -
24	Traffic Control <u>five hundred -</u> unit price in words	1	LS	\$ 500 -	\$ 500 -
25	Construct Pervious Concrete Pavers. <u>thirty -</u> unit price in words	5.874	SF	\$ 30 -	\$ 176220 -

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L

City Project No. 21232

ADDITIVE ALTERNATE BID A
TELEGRAPH RD. LANDSCAPE & AND PAVEMENT IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
26	Install Automatic Irrigation <u>Two hundred nineteen thousand</u> <u>Three hundred twenty three $\frac{20}{100}$</u> unit price in words	1	LS	\$ 219323.20	\$ 219323.20
27	Fine Grading <u>fifteen cents</u> unit price in words	16,976	SF	\$.15	\$ 2546.40
28	Landscape Mulch <u>Thirty five cents</u> unit price in words	16,976	SF	\$.35	\$ 5941.60
29	Construct Tree Root Barrier <u>Seven dollars & twenty cents</u> unit price in words	1280	LF	\$ 7.20	\$ 9216-
30	Install Moisture Barrier <u>Four dollar & fifty cents</u> unit price in words	5,322	LF	\$ 4.50	\$ 23949-
31	Plant 1 Gallon Shrubs Seven dollar P.B. <u>Seven</u> unit price in words	978	EA	\$ 7-	\$ 6846-
32	Plant 2 Gallon Shrubs <u>twenty</u> unit price in words	382	EA	\$ 20-	\$ 7640-

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L

City Project No. 21232

ADDITIVE ALTERNATE BID A
TELEGRAPH RD. LANDSCAPE & AND PAVEMENT IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
33	Plant 5 Gallon Shrubs <u>fifteen -</u> unit price in words	624	EA	\$ 15 -	\$ 9360 -
34	Plant 24" Box Trees <u>two hundred seventy five -</u> unit price in words	84	EA	\$ 275 -	\$ 23100 -
35	Plant 6' Brown Trunk Palms <u>nine hundred -</u> unit price in words	21	EA	\$ 900 -	\$ 18900 -
36	Plant 10' Brown Trunk Palms <u>three hundred fifteen -</u> unit price in words	17	EA	\$ 315 -	\$ 5355 -
37	Plant 16' Brown Trunk Palms <u>four thousand three hundred -</u> unit price in words	9	EA	\$ 4300 -	\$ 38700 -
38	90 Day Maintenance (Allowance) <u>one thousand five hundred -</u> unit price in words	1	LS	\$ 1500 -	\$ 1500 -
39	Re-Set Survey Monuments, S&W, or L&T, and Monument Frame and Cover to Grade per Plans. <u>two thousand five hundred -</u> unit price in words	1	LS	\$ 2500 -	\$ 2500 -

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No_HSIPL-5351 (022)

EA 07-933969L

City Project No. 21232

ADDITIVE ALTERNATE BID A
TELEGRAPH RD. LANDSCAPE & AND PAVEMENT IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
40	Cold Mill 2.5" Existing AC Pavement on Telegraph Rd. <u>nine cents</u> unit price in words	140,000	SF	\$ 0.09	\$ 12,600. ⁰⁰ / ₁₀₀
41	Construct 2.5" ARHM Overlay on Telegraph Rd. <u>eighty two</u> unit price in words	3,261	TN	\$ 82. ⁰⁰ / ₁₀₀	\$ 267,402. ⁰⁰ / ₁₀₀
42	Remove and Construct 9" AC (Type B PG 64-10) over 95% Compacted Subgrade on Telegraph Rd. <u>four dollars & eighty five cents</u> unit price in words	58,724	SF	\$ A. 85 ⁰⁰ / ₁₀₀	\$ 284,811. ⁴⁰ / ₁₀₀
43	Remove and Construct 4" AC (Type B PG 64-10) over 8" Aggregate Base on Telegraph Rd. at Lindell Ave. <u>fifteen</u> unit price in words	436	SF	\$ 15. ⁰⁰ / ₁₀₀	\$ 6,540. ⁰⁰ / ₁₀₀
44	Adjust Water Valve Box and Cover to Grade <u>one hundred sixty</u> unit price in words	26	EA	\$ 160. ⁰⁰ / ₁₀₀	\$ 4,160. ⁰⁰ / ₁₀₀
45	Adjust Manhole Frame and Cover to Grade <u>four hundred twenty five</u> unit price in words	13	EA	\$ A 25. ⁰⁰ / ₁₀₀	\$ 5,525. ⁰⁰ / ₁₀₀

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L

City Project No. 21232

ADDITIVE ALTERNATE BID A
TELEGRAPH RD. LANDSCAPE & AND PAVEMENT IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
46	Traffic Signing, Striping, Pavement Markings, and RPM's on Telegraph Rd. <u>eighteen thousand -</u> unit price in words	1	LS	\$ 18000 -	\$ 18000 -
47	Furnish and Install Turf <u>one dollar & fifteen cents</u> unit price in words	2859	SF	\$ 1.15	\$ 3287.85

TOTAL ADDITIVE ALTERNATE BID A

\$ 1,177,000.00

(figures)

TOTAL ADDITIVE ALTERNATE BID A

one million one hundred seventy seven ^{thousand} ~~dollars~~ RB dollars & zero cents
 (words)

ADDITIVE ALTERNATE BID B

The Project additive alternate bid B includes only the bid items listed below for "Additive Alternate Bid B." The methodology for the additive alternate bid B includes only those intersection pavement improvements at Lakewood Blvd. and Telegraph Rd. This includes all cold milling, and ARHM overlay within the limits, all utility adjustments within the limits, all survey monument replacement or adjustment within the limits, and all traffic control, traffic signing, striping, and rpms, mobilization, clearing and grubbing and all that goes along with the items included in the additive alternate bid B.

PROPOSAL SCHEDULE TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS Federal Project No_HSIPL-5351 (022) EA 07-933969L City Project No. 21232 ADDITIVE ALTERNATE BID B LAKEWOOD BLVD. & TELEGRAPH RD. INTERSECTION					
Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
48	Mobilization and Demobilization <i>eight thousand five hundred</i> <hr/> <i>sixty nine dollars & $\frac{80}{100}$</i> unit price in words	1	LS	\$ 8569.80 <i>8569.80</i> RB	\$ 8569.80
49	Traffic Control <i>five hundred</i> <hr/> unit price in words	1	LS	\$ 500-	\$ 500-
50	Cold Mill 2.5" Existing AC Pavement at Telegraph Rd. and Lakewood/Rosemead Blvd. <hr/> <i>nine cents</i> <hr/> unit price in words	11,180	SF	\$ 0.09	\$ 1006.20
51	Construct 2.5" ARHM Overlay at Telegraph Rd. and Lakewood/Rosemead Blvd. <hr/> <i>eighty two</i> <hr/> unit price in words	182	TN	\$ 82. ⁰⁰ / ₁₀₀	\$ 14924. ⁰⁰ / ₁₀₀

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L
 City Project No. 21232
ADDITIVE ALTERNATE BID B
LAKEWOOD BLVD. & TELEGRAPH RD. INTERSECTION

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
52	Traffic Signing, Striping, Pavement Markings, and RPM's at Telgraph Rd. and Lakewood/Rosemead Blvd. <u>two thousand five hundred</u> unit price in words	1	LS	\$ 2500-	\$ 2500-
53	Re-Set Survey Monuments, S&W, or L&T, and Monument Frame and Cover to Grade per Plans. <u>five hundred</u> unit price in words	1	LS	\$ 500-	\$ 500-

TOTAL ADDITIVE ALTERNATE BID B

\$ \$ 28,000.00

(figures)

TOTAL ADDITIVE ALTERNATE BID B

twenty eight thousand dollars ~~and~~ ^{8 zero cents} ~~and~~ RD
 (words)

ADDITIVE ALTERNATE BID C

The Project additive alternate bid C includes only the bid items listed below for "Additive Alternate Bid C." The methodology for the additive alternate bid C includes only those pavement improvements on Lakewood Blvd. from Telegraph Rd. to Vista Del Rosa St. This includes all cold milling, and ARHM overlay within the limits, all pavement reconstruction within the limits, all utility adjustments within the limits, and all traffic control, traffic signing, striping, and rpms, mobilization, clearing and grubbing and all that goes along with the items included in the additive alternate bid C.

PROPOSAL SCHEDULE TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS Federal Project No. HSIPL-5351 (022) EA 07-933969L City Project No. 21232 ADDITIVE ALTERNATE BID C LAKWOOD BLVD. IMPROVEMENTS					
Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
54	Mobilization and Demobilization <u>fourteen thousand</u> _____ unit price in words <u>three hundred forty dollars</u>	1	LS	\$ 14340	\$ 14340
55	Traffic Control <u>two thousand five hundred</u> _____ unit price in words	1	LS	\$ 2500-	\$ 2500-
56	Cold Mill 2" Existing AC Pavement on Lakewood Blvd. <u>nine cents</u> _____ unit price in words	50,000	SF	\$ 0.09	\$ 4,500. ⁰⁰
57	Construct 2" ARHM Overlay on Lakewood Blvd. <u>eighty two</u> _____ unit price in words	650	TN	\$ 82. ⁰⁰	\$ 53,300. ⁰⁰

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No. HSIPL-5351 (022)
 EA 07-933969L
 City Project No. 21232
ADDITIVE ALTERNATE BID C
LAKEWOOD BLVD. IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
58	Traffic Signing, Striping, Pavement Markings, and RPM's on Lakewood <u>Three thousand five hundred</u> _____ unit price in words	1	LS	\$ 3500-	\$ 3500-
59	Adjust Water Valve Box and Cover to Grade <u>one hundred sixty</u> _____ unit price in words	1	EA	\$ 160. ^{00/}	\$ 160. ^{00/}
60	Adjust Manhole Frame and Cover to Grade <u>four hundred twenty five</u> _____ unit price in words	2	EA	\$ 175. ^{00/}	\$ 350. ^{00/}
61	Traffic Loop Detectors, Type E on Lakewood <u>two hundred seventy five</u> _____ unit price in words	14	EA	\$ 275-	\$ 3850-

PROPOSAL SCHEDULE
TELEGRAPH ROAD LANDSCAPE MEDIAN IMPROVEMENTS
 Federal Project No HSIPL-5351 (022)
 EA 07-933969L
 City Project No. 21232
ADDITIVE ALTERNATE BID C
LAKWOOD BLVD. IMPROVEMENTS

Item No.	Description with Unit Price Written In Words	Approx. Qty.	Unit	Unit Price	Total Amount
TOTAL ADDITIVE ALTERNATE BID C					
	\$ <u>83,000.00</u>				(figures)
TOTAL ADDITIVE ALTERNATE BID C					
	<u>eighty three thousand dollars & zero cents</u>				(words)

Total Base Bid \$ 810,000.00
 figures

eight hundred ten thousand dollars & zero cents
 in words

Total Additive Alternate Bid A \$ 1,177,000.00
 figures

one million one hundred seventy seven thousand dollars & zero cents
 in words

Total Additive Alternate Bid B \$ 28,000.00
 figures

twenty eight thousand dollars
 in words

Total Additive Alternate Bid C \$ 83,000.00
 figures

eighty three thousand dollars & zero cents
 in words

TOTAL BID (TOTAL BASE BID PLUS TOTAL ADDITIVE ALTERNATE BID A PLUS TOTAL ADDITIVE ALTERNATE BID B PLUS TOTAL ADDITIVE ALTERNATE BID C)

\$ 2,098,000.00
figures

Two million ninety eight thousand dollars & zero cents
in words

THE PROJECT WILL BE AWARDED BASED ON THE LOWEST TOTAL BID. CITY HAS THE RIGHT TO DELETE ADDITIVE ALTERNATE BID A, AND/OR ADDITIVE ALTERNATE BID B, AND/OR ADDITIVE ALTERNATE BID C OR NONE, IF TO DO SO IS IN THE BEST INTEREST OF THE CITY.

BIDDERS ARE REMINDED THAT IT IS THE CITY'S INTENTION TO ADD OR DELETE WORK AT THE UNIT COST SUBMITTED BY THE CONTRACTOR, IF TO DO SO, IS IN THE BEST INTEREST OF THE CITY.

Quantities shown are approximate only. Final contract amount will be based on actual amounts furnished at the unit costs set forth in the proposal.

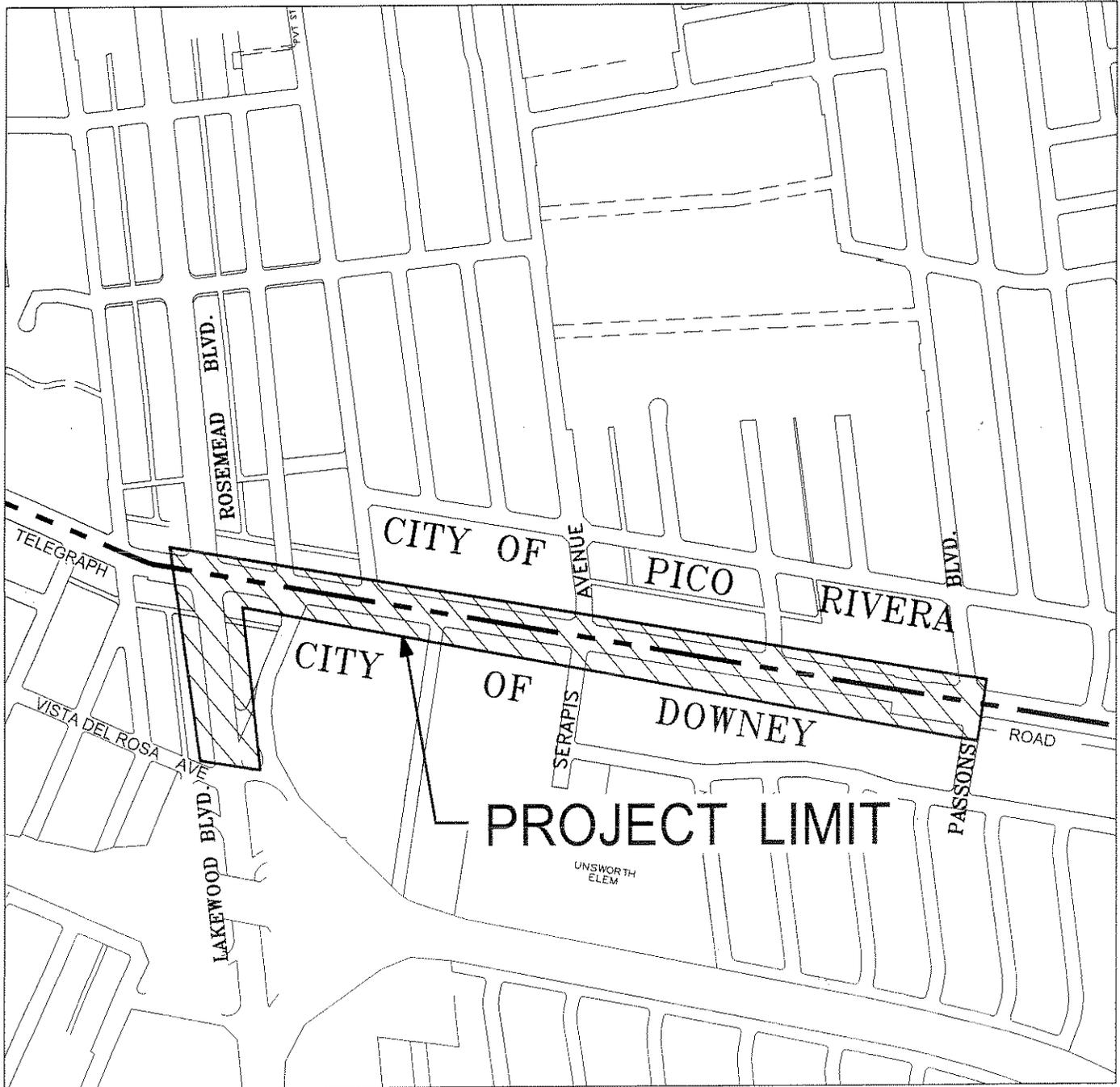
The above unit prices include all incidental and appurtenant work and materials necessary for the satisfactory completion of the items. In case of discrepancies between words and figures, the words shall govern, and in case of discrepancies between unit price and total, the unit price shall govern.

The Contractor agrees that the City will not be held responsible if any of the approximate quantities shown in the foregoing proposal shall be found incorrect, and he shall not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission or misstatements shall be discovered in the estimated quantities, it shall not invalidate this contract or release the Contractor from the execution and completion of the whole or part of the work herein specified, in accordance with the specifications and the plans herein mentioned and the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation otherwise than as provided for in this contract.

The Contractor agrees that the City shall have the right to increase or decrease the quantity of any bid item or portion of the work or to omit portions of the work as may be deemed necessary or expedient, and that the payment for incidental items or work, not separately provided in the proposal shall be considered included in the price bid for other various items or work.

Bidder acknowledges that he has thoroughly reviewed the attached Notice Inviting Bids, Instructions to Bidders, Bid Specifications and Agreement and is aware of all the requirements thereof; both stated and implied.

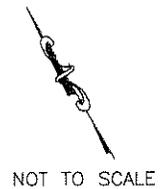
Bidder is aware of the provision of Section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance



LOCATION MAP
NTS

LEGEND:

--- CITY BOUNDARY



CITY OF PICO RIVERA

DEPARTMENT OF PUBLIC WORKS - ENGINEERING DIVISION

TELEGRAPH RD. - RAISED MEDIAN IMPROVEMENT

PREPARED BY: M. NGUYEN

SCALE: NOT TO SCALE

DATE: 8-29-12



To: Mayor and City Council

From: City Manager

Meeting Date: November 13, 2012

Subject: DURFEE AVENUE GRADE SEPARATION PROJECT, CIP NO. 21241 – AMENDMENT NO. 1 TO AGREEMENT NO. 00-772

Recommendation:

Approve Amendment No. 1 to Agreement No. 00-772 with Alameda Corridor-East (ACE) Construction Authority for the engineering, construction, financing, operation and maintenance of the Durfee Avenue Grade Separation Project and authorize the Mayor to execute Amendment No. 1 in a form approved by the City Attorney.

Fiscal Impact: None. Full implementation of the project will be funded by ACE in the budgeted amount of \$73,567,000

Discussion:

The ACE Construction Authority (ACE) is a single purpose construction authority created by the San Gabriel Valley Council of Governments (SGVCOG) in 1998 to mitigate the impacts of significant increases in rail traffic over 70 miles of mainline railroad in the San Gabriel Valley. The ACE Project consists of multiple construction projects to improve safety at 39 rail crossings and 22 grade separations in the San Gabriel Valley.

On November 6, 2000, the City of Pico Rivera and ACE Construction Authority entered into Agreement No. 00-772 to implement a safety project at the Union Pacific Railroad crossing with Durfee Avenue (Durfee Railroad Crossing). Work included traffic signage, striping and modification of railroad crossing arms. This project has since been completed.

Recently, the SGVCOG and ACE approved construction of a grade separation project at the Durfee Railroad Crossing. Up to \$73,567,000 in funding was allocated to implement the project, known as the Durfee Avenue Grade Separation Project (Durfee Underpass Project).

The project will be managed by ACE in cooperation with the City of Pico Rivera. The next step is amending the City's agreement with ACE to incorporate the Durfee Underpass Project.

Amendment No. 1 specifies the terms and conditions under which the Durfee Underpass Project will be engineered, constructed, financed, operated and maintained. Approval of the amendment will allow the ACE Construction Authority to move forward with full implementation. To expedite the process it was jointly determined by ACE and the City to amend the current agreement rather than to initiate a new agreement.

COUNCIL AGENDA REPORT - MTG. OF 11/13/12
DURFEE AVENUE GRADE SEPARATION PROJECT, CIP NO. 21241 – AMENDMENT NO. 1
TO AGREEMENT NO. 00-772

Page 2 of 2

Highlights of Amendment No. 1 are the following:

- The Durfee Underpass Project will be fully implemented and funded through the ACE Project, at no cost to the City;
- Implementation includes, but is not limited to, management, engineering, construction, financing, right-of-way acquisition, coordination with stakeholders, public outreach, and environmental clearance;
- ACE could fund expenditures incurred by the City in the delivery of the project if the expenditures qualify for reimbursement from project funds;
- ACE will prepare and will coordinate the execution of, at no cost to the City, the operation and maintenance agreement with Union Pacific Railroad Company; and
- The City is the lead agency for utility relocations with ACE as the City's representative.

The estimated time to complete major phases of the project is as follows:

- Preliminary and Final Engineering 24 months
- Environmental Clearance 6 months
- Right-of-Way Acquisition 12 to 18 months
- Construction 24 months

Design and construction is anticipated to be completed in February 2015 and January 2017, respectively.


Ronald Bates

RRB:AC:MPC:lg

Enc.

- 1) Amendment No. 1 with ACE Construction Authority
- 2) Agreement No. 00-772
- 3) Vicinity Map

**AMENDMENT No. 1 TO AGREEMENT No. 00-772
BETWEEN THE CITY OF PICO RIVERA AND THE
ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY**

**REGARDING THE CONSTRUCTION OF GRADE CROSSING SAFETY
IMPROVEMENTS AND GRADE SEPARATION PROJECTS
BY THE ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY**

This Amendment No. 1 to Agreement No. 00-772 Regarding the Construction of Grade Crossing Safety Improvements and Grade Separation Projects by the Alameda Corridor-East Construction Authority (the "Amendment") is dated as of ____ day of _____, 2012, by and between the City of Pico Rivera ("CITY"), a municipal corporation, and the Alameda Corridor-East Construction Authority of the San Gabriel Valley Council of Governments ("ACE").

RECITALS:

- A. The CITY and ACE entered into Agreement No. 00-772 Regarding the Construction of Grade Crossing Safety Improvements and Grade Separation Projects by the Alameda Corridor-East Construction Authority ("Agreement") on November 6, 2000 for improvements at the crossing of the Union Pacific Railroad (UPRR) and Durfee Avenue. The Agreement provided for grade crossing safety improvements only.
- B. On March 15, 2012, the San Gabriel Valley Council of Governments approved the ACE Phase 2 grade separation projects, including a grade separation of the UPRR and Durfee Avenue crossing.
- C. The CITY and ACE desire to amend the existing AGREEMENT to include the grade separation of the UPRR and Durfee Avenue crossing as well as other modifications and updates.

AGREEMENT:

NOW, THEREFORE, the CITY and ACE mutually agree as follows:

- 1. The "RECITALS" paragraph of the existing Agreement is hereby deleted in its entirety and replaced with the following:

CITY and ACE contemplate installing railroad grade crossing improvements and grade separations as set forth in Exhibits "A" and "B", referred to collectively herein as "Project", and desire to specify the terms and conditions under which Project is to be engineered, constructed, financed, operated and maintained.

2. Item 11 of Section I of the Agreement is hereby added as follows:
 11. To review written estimates provided by the CITY for CITY WORK and provide written authorization to proceed with CITY WORK on a mutual agreement of estimated costs.
3. Item 12 of Section I of the Agreement is hereby added as follows:
 12. That any insurance policies and endorsements that ACE requires from contractors, consultants, or any person or entity whose services are engaged by ACE to perform work to complete the Project, shall include CITY as an additional insured.
4. Item 13 of Section I of the Agreement is hereby added as follows:
 13. To lead coordination efforts in the execution of easements necessary to complete the Project and shall provide, at no cost to the City, all legal and technical documents necessary for the execution of easements.
5. Item 14 of Section I of the Agreement is hereby added as follows:
 14. To design Project in accordance with all local, state and federal regulations pertinent to the grade separation work and as required by funding.
6. Item 5 under Section II of the Agreement is hereby deleted in its entirety and replaced with the following:
 5. To take title to all real property or other property acquired for the Project that are not specifically dedicated to the Union Pacific Railroad.
7. Item 7 under Section II of the Agreement is hereby added as follows:
 7. To provide ACE with written cost estimates for estimated CITY WORK.
8. Item 8 under Section II of the Agreement is hereby added as follows:
 8. To notify ACE in writing when the costs for the ACE authorized CITY WORK will exceed seventy-five percent (75%) of the authorized estimate.
9. Item 9 under Section II of the Agreement is hereby added as follows:
 9. To submit to ACE itemized invoices for the actual costs of CITY WORK for the Project not more often than every thirty (30) days.

10. Item 10 under Section II of the Agreement is hereby added as follows:

10. To furnish an accounting of final actual cost for CITY WORK for the Project and provide ACE an invoice of the same within one hundred and twenty (120) days after acceptance of the Project by CITY, including acceptance of all real property.

11. Item 2 under Section III of the Agreement is hereby deleted in its entirety and replaced with the following:

2. That construction by ACE of those portions of the Project which lie within CITY rights-of-way or effect CITY facilities shall not be commenced until ACE's original contract plans involving such work have been reviewed by CITY. Contract plans shall be approved by signature of the City Engineer for CITY or his delegated agent. Receipt by ACE of ACE's contract plans signed by CITY shall constitute CITY's acceptance of and official approval of said plans.

12. Item 3 under Section III of the Agreement is hereby deleted in its entirety and replaced with the following:

3. That during the course of plan preparation, CITY may request ACE to include additional work in Project. Said work shall be considered a "betterment" if it is not directly required by the proposed work shown in Exhibit "A" or Exhibit "B", is not eligible for, or within the scope of, the funding appropriated to ACE for Project as determined by Caltrans in accordance with Title 23 of the Federal Code of Regulations, or is not designated as a required mitigation measure for Project. In addition, the term betterment shall include any CITY funded work that CITY desires to have constructed concurrently with Project and for which ACE is able to reasonably accommodate in Project. A separate agreement shall be executed defining the terms and conditions under which betterment is to be engineered, constructed, financed, operated, and maintained.

13. Item 4 under Section III of the Agreement is hereby deleted in its entirety and replaced with the following:

4. If existing public and/or private utilities conflict with the construction of Project, CITY will make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. If mutually agreeable to CITY and ACE, CITY may assign said responsibility to ACE for purposes of the Project. CITY shall enforce available rights under existing franchise agreements if existing public and/or private utilities conflict with the construction of the Project. ACE will coordinate and inspect the protection, relocation or removal. If there are costs of such protection, relocation or removal that CITY must legally pay, ACE will

pay One Hundred Percent (100%) of the cost of said protection, relocation or removal plus cost of engineering overhead and inspection. Nothing in this agreement shall restrict or affect ACE's right to enter into separate agreements with utilities for reimbursements of utility costs for protection, relocation or removal of their facilities.

14. Item 5 under Section III of the Agreement is hereby deleted in its entirety and replaced with the following:

5. ACE shall, at no cost to CITY, prepare the operation and maintenance agreement, or construction and maintenance agreement, with Union Pacific Railroad Company. ACE shall coordinate the execution of said agreement(s) with CITY and Union Pacific Railroad Company. CITY and ACE, jointly, shall be responsible for entering into operation and maintenance agreement, or construction and maintenance agreement, with the Union Pacific Railroad Company for the Project as it relates to the tracks and right of way owned by the Union Pacific Railroad Company.

15. Item 8 under Section III of the Agreement is hereby deleted in its entirety and replaced with the following:

8. ACE, the San Gabriel Valley Council of Governments, and their respective elected and appointed boards, officials, officers, agents, employees, and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CITY or any other person, and CITY, pursuant to Government Code Section 895.4, shall indemnify, defend (using legal counsel of CITY's own choosing), protect and hold harmless INDEMNITEES, from and against, any liabilities, as defined in Section III, Paragraph 10, or legal challenges to the Project by anything done or omitted to be done by CITY under or in connection with any other work, authority or jurisdiction associated with the Project and delegated to CITY under this Agreement. Any rights of CITY to inspect, review and/or approve of Project design or construction shall not signify that ACE relinquishes management or control over such design or construction.

16. The last sentence of Item 12 under Section III of the Agreement is hereby deleted in its entirety and replaced with the following:

ACE will not be liable for any costs, damages, or liabilities associated with the subsequent reuse, storage, reclamation, or reinstallation of salvaged materials by CITY, and such activities will be considered delegated to CITY under this Agreement.

17. Item 14 under Section III of the Agreement is hereby added as follows:

- 14. CITY WORK shall include all Project related work by CITY employees or consultants serving as CITY staff to attend meetings, submit and receive correspondence, assist with community outreach, review studies, reports, plans, specifications, estimates, issue permits, conduct construction inspections, and design support during construction for those portions of the Project to be owned and/or maintained by the CITY.

18. Item 15 under Section III of the Agreement is hereby added as follows:

- 15. ACE shall pay all invoices submitted for actual costs incurred by the CITY in relation to ACE authorized CITY WORK within thirty (30) days following receipt, except for those costs that may be disputed by ACE. CITY shall review all disputed charges and submit a written justification detailing the basis for those charges within thirty (30) days of receipt of ACE's written notice of disputed charges. ACE shall make payment of the previously disputed charges or submit written justification for nonpayment within thirty (30) days after the date of CITY's written justification.

19. Item 16 under Section III of the Agreement is hereby added as follows:

- 16. ACE shall lead a community outreach program for impacted residents and business owners, as required for the environmental documentation, as appropriate for the project, and as agreed upon by ACE and CITY. CITY shall participate to the extent requested by ACE.

20. In Section IV of the Agreement, the address for the ACE Construction Authority and the City are hereby deleted in their entirety and replaced with the following:

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

To CITY: City of Pico Rivera
City Hall
6615 Passons Boulevard
P.O. Box 1016
Pico Rivera, CA 90660
Attn: City Manager
Telephone: (562)801-4379
Fax: (562)801-4765

- 21. Exhibit "B", attached hereto, indicating the additional grade separation scope, is hereby inserted at the end of the existing Agreement, and incorporated into the Agreement.
- 22. The existing Agreement shall remain in full force and effect as originally executed. All rights and obligations of the parties under the existing Agreement that are not expressly amended by this Amendment shall remain unchanged by this Amendment.

In WITNESS WHEREOF, ACE and CITY hereto have caused this Amendment to be executed by their respective officers as of the date first written above.

CITY OF PICO RIVERA

ACE

Mayor

Chief Executive Officer

ATTEST:

ATTEST:

City Clerk

Secretary

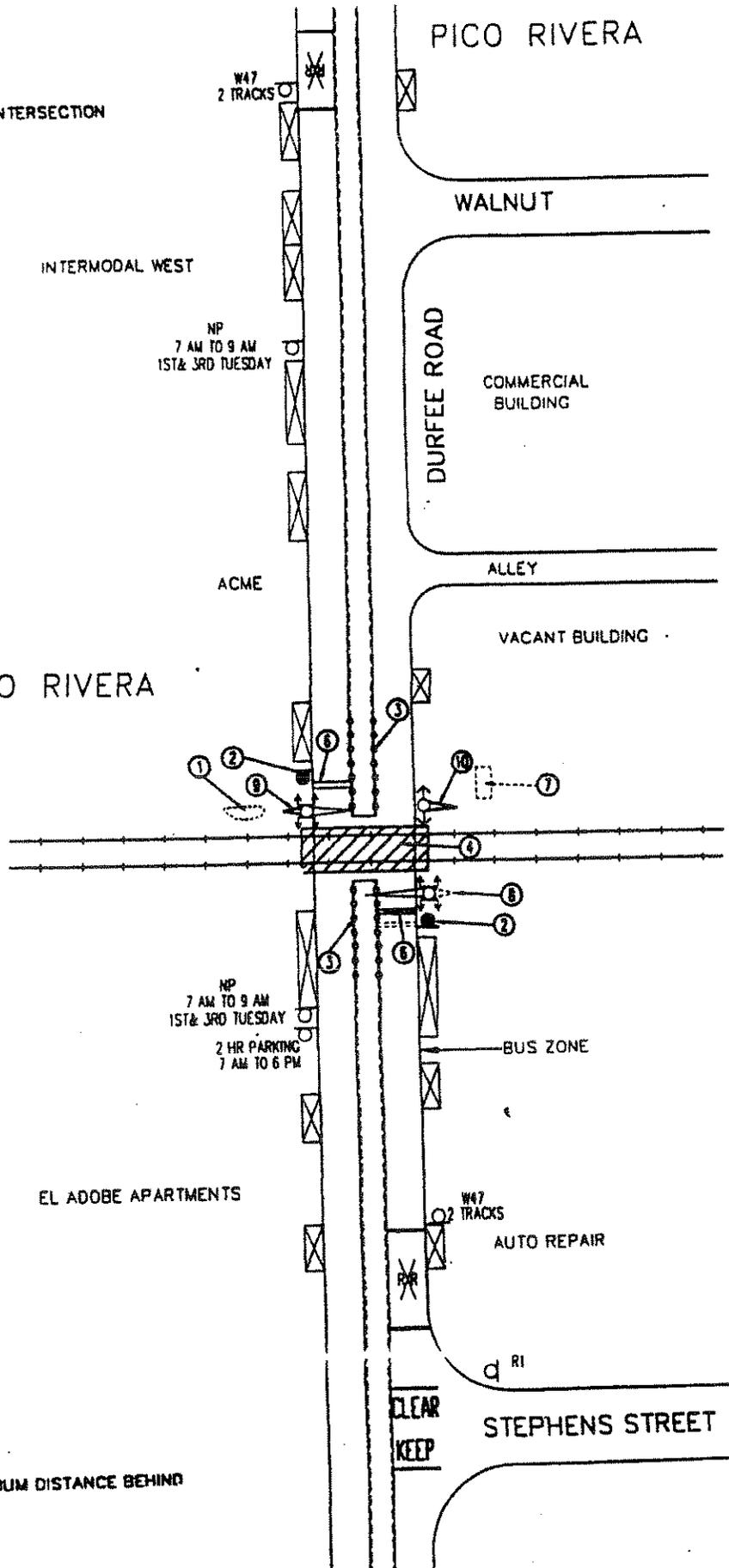
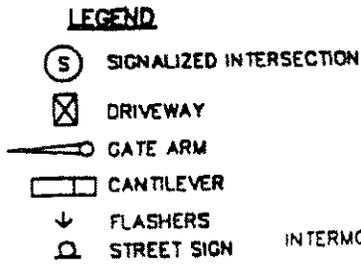
APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

ACE General Counsel

Exhibit "A"



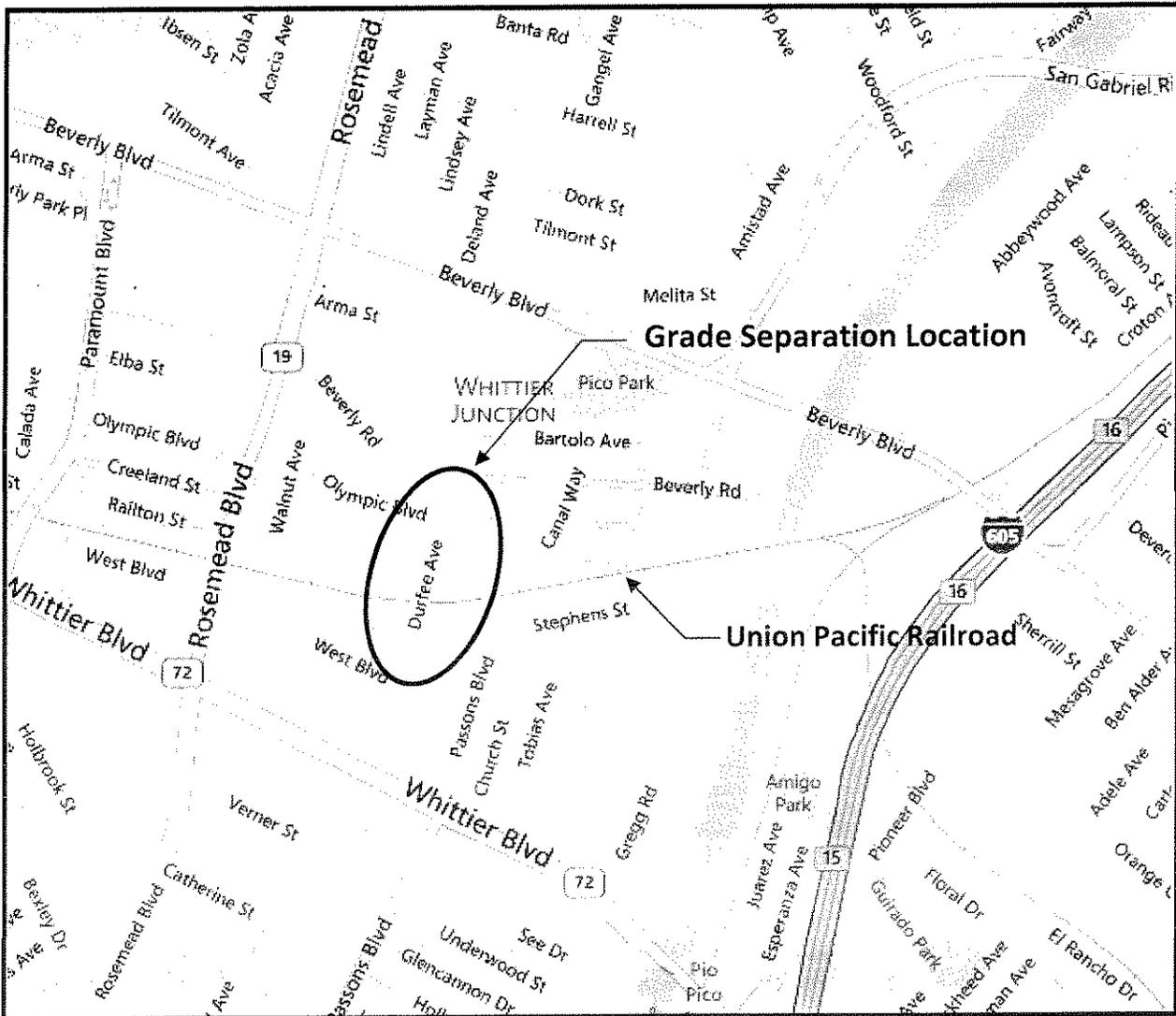
NOTES

- ① REMOVE LANDSCAPING
- ② INSTALL "DO NOT STOP ON TRACKS" SIGN
- ③ INSTALL TRAFFIC DOTS
- ④ INSTALL "KEEP CLEAR" ZONE
- ⑤ NOT USED
- ⑥ REPLACE/PAINT STOP LINES
- ⑦ RELOCATE SIGNAL BOX
- ⑧ REMOVE PEDESTRIAN GATE
- ⑨ INSTALL PEDESTRIAN GATE
- ⑩ INSTALL LONGER GATE ARM

* U.P.R.R. TO RELOCATE VEHICLE GATES MINIMUM DISTANCE BEHIND CURB TO CONFORM TO PUC REGULATIONS

Exhibit "B"

Proposed Durfee Avenue and Union Pacific Railroad Grade Separation in the City of Pico Rivera



The Project will consist of the design and construction of a grade separation at the crossing of Durfee Avenue and the Union Pacific Railroad in the City of Pico Rivera. It is anticipated that the recommended design will result in the lowering of Durfee Avenue beneath the railroad property. The Project will include the design and construction of the grade separation, environmental documentation and approvals, right-of-way acquisition, utility protection, relocation or removal, and, to accommodate the construction, temporary railroad shoofly tracks and work area traffic control and detours. It is anticipated that Durfee Avenue will be closed for the duration of the construction.

AGREEMENT NO. 00-772
REGARDING THE CONSTRUCTION OF GRADE CROSSING SAFETY IMPROVEMENTS
AND GRADE SEPARATION PROJECTS BY THE ALAMEDA CORRIDOR-EAST
CONSTRUCTION AUTHORITY

THIS AGREEMENT dated this 6th day of November 2000, by and between the CITY OF PICO RIVERA, a municipal corporation, hereinafter referred to as "CITY", 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".

RECITALS

CITY and ACE contemplate installing railroad grade crossing improvements and grade separations as set forth in Exhibit "A", referred to herein as "Project", and desire to specify the terms and conditions under which Project is to be engineered, constructed, financed, operated and maintained.

SECTION I

ACE AGREES:

1. To provide at no cost to CITY all necessary preliminary engineering, including plans and specifications and utility identification and location, and all necessary construction engineering/management services including all required Project accounting for Project.
2. To act as lead agency and obtain all environmental approvals as required from Federal or State agencies for Project.
3. To obtain all required authorizations and permits from governmental agencies and the Union Pacific Railroad Company necessary to construct Project.
4. To acquire at no cost to CITY the necessary rights-of-way, if any, required outside of existing rights-of-way.
5. To mitigate identified property owner and business impacts directly associated with the Project in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act to the extent that said mitigations are eligible and within the amount of funding appropriated to ACE for said purpose.
6. To prepare at no cost to CITY all necessary plans, specifications, and cost estimates and to obtain CITY's approval thereof prior to Project being advertised for construction bids.

7. To pay One Hundred Percent (100%) of Project construction costs that are eligible and within the amount of funding appropriated to ACE for said purpose.
8. To pay One Hundred Percent (100%) of all contract administration costs that are eligible and within the amount of funding appropriated to ACE for said purpose.
9. To not proceed with the construction of Project, or any phase of Project, until all necessary funding for Project has been identified and appropriated, including any required agreements for funding contributions by CITY to Project.
10. Upon completion of Project, to furnish CITY a complete set of full-sized film positive reproducible as-built plans.

SECTION II

CITY AGREES:

1. To provide all available plans and survey data of existing CITY infrastructure necessary to design Project.
2. To provide written support for any funding applications made by ACE for Project by either a resolution adopted by the City Council or a letter signed by the Mayor, and to provide supporting oral testimony when required
3. To enforce available rights under existing franchise agreements if existing public and/or private utilities conflict with the construction of Project.
4. To review and approve plans, and issue no fee encroachment permits, within 30 days of receipt of final plans from ACE.
5. To take title to all rights of way acquired for the Project that are not specifically dedicated to the Union Pacific Railroad.
6. To enter into a separate agreement and pay One Hundred Percent (100%) of Project engineering, construction, and administrations costs for CITY requested betterments as defined in Section III.

SECTION III

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Should any portion of Project 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. That construction by ACE of those portions of the Project which lie within CITY rights-of-way or effect CITY facilities shall not be commenced until ACE's original contract plans involving such work have been reviewed and approved by signature of the CITY engineer for CITY or his delegated agent. Receipt by ACE of ACE's contract plans signed by CITY shall constitute CITY's acceptance of and official approval of said plans.
3. That during the course of plan preparation, CITY may request ACE to include additional work in Project. Said work shall be considered a "betterment" if it is not directly required for, or within the scope of, the funding appropriated to ACE for Project as determined by Caltrans in accordance with Title 23 of the Federal Code of Regulations, or is not designated as a required mitigation measure for Project. In addition, the term betterment shall include any CITY funded work that CITY desires to have constructed concurrently with Project and for which ACE is able to reasonably accommodate in Project. A separate agreement shall be executed defining the terms and conditions under which betterment is to be engineered, constructed, financed, operated and maintained.
4. If existing public and/or private utilities conflict with the construction of Project, CITY will make all necessary arrangements with the owners of such utilities for their protection, relocation or removal. ACE will coordinate and inspect the protection, relocation or removal. If there are costs of such protection, relocation or removal that CITY must legally pay, ACE will pay One Hundred Percent (100%) of the cost of said protection, relocation or removal plus cost of engineering overhead and inspection. Nothing in this agreement shall restrict or affect ACE's right to enter into separate agreements with utilities for reimbursements of utility costs for protection, relocation, or removal of their facilities.

5. CITY and ACE, jointly, or as may be determined between them, shall be responsible for entering into operation and maintenance agreement(s) with the Union Pacific Railroad Company for the Project as it relates to the tracks and right of way owned by the Union Pacific Railroad Company.
6. Upon completion of all work under this Agreement, ACE will relinquish all ownership and maintenance responsibilities, and all applicable product and construction warranties including the costs and benefits thereof, of all improvements and roadwork included in Project based on the respective rights-of-way of CITY and Union Pacific Railroad Company, and in accordance with the agreement referenced in Section III, Paragraph 5.
7. ACE will reimburse CITY for reasonable contracted plan check expenses related to Project. In order to be eligible for reimbursement, said expenses must have prior approval from ACE, and be required due to unavailability, or lack of specific required expertise, of CITY staff to perform the required plan checking. ACE acknowledges that this activity is an important protection for CITY and will not unreasonably withhold its approval of such expenses.
8. ACE, the San Gabriel Valley Council of Governments, and their respective elected and appointed boards, officials, officers, agents, employees, and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CITY or any other person, and CITY, pursuant to Government Code Section 895.4, shall indemnify, defend (using legal counsel of CITY's own choosing), protect and hold harmless INDEMNITEES from and against, any liabilities, as defined in Section III, Paragraph 10, or legal challenges to the project by anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction associated with the Project and delegated to CITY under this agreement. Any rights of CITY to inspect, review and/or approve of Project design or construction shall not signify that ACE relinquishes management or control over such design or construction.
9. CITY, and its respective elected and appointed boards, officials, officers, agents, employees, and volunteers (individually and collectively, "CITY INDEMNITEES") shall have no liability to ACE or any other person, and ACE, pursuant to Government Code Section 895.4, shall indemnify, defend (using legal counsel of ACE's own choosing), protect and hold harmless CITY INDEMNITEES from and against, any liabilities, as defined in Section III, Paragraph 10, or legal challenges to the Project by reason of anything done or omitted to be done by ACE under or in connection with any work, authority or jurisdiction associated with the Project and delegated to ACE under this agreement. Any rights of CITY

to inspect, review and/or approve of Project design or construction shall not signify that ACE relinquishes management or control over such design or construction.

10. The term "liabilities" used in Section III, Paragraphs 8 and 9 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 costs 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).
11. That in the construction of said work, ACE will furnish a resident engineer at no cost to CITY, and CITY shall, at no cost to ACE, furnish a 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 directive for all Project work. If material changes to the approved plans and specifications are required to complete the Project, and said changes will impact the proposed Project improvements within CITY right-of-way, the ACE resident engineer will obtain the CITY's representative approval before authorizing said changes.
12. CITY may require that certain CITY owned materials be salvaged during the course of Project construction. At the time of Project plan approval CITY shall notify ACE of materials to be salvaged including the desired procedure for removal and delivery to a CITY designated storage facility. ACE will include the request in the Project specifications. ACE will not be liable for any costs associated with the subsequent reuse, storage, reclamation, or reinstallation of salvaged materials by CITY, and such activities will be considered delegated to CITY under this Agreement.
13. Prior to acceptance of the Project, as completed, under the terms of the Project's construction contract, ACE will confer with CITY, in good faith, to obtain CITY's concurrence that those components of the Project that are located within CITY's right-of-way have been completed in substantial conformance with the approved plans and specifications. It is understood that CITY will not unreasonably withhold said concurrence. Should ACE and CITY be unable to agree on Project completion as discussed herein, then ACE and CITY

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. City and ACE shall equally share in the costs of mediation and the mediator shall be acceptable to both parties. If ACE and CITY are unable to agree on the selection of a mediator, then assistance will be obtained from the American Arbitration Association. The parties agree to participate in mediation and any associated negotiations for a period of at least sixty (60) days. If the disagreement cannot be resolved through mediation, the disagreement may be submitted to binding arbitration if City and ACE so agree at the time.

SECTION IV

MISCELLANEOUS:

1. Every notice, demand, request, or other document or instrument delivered pursuant to this Agreement shall be in writing, and shall be either personally delivered, sent 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: City of Pico Rivera
 City Hall
 P.O. Box 1016
 Pico Rivera, CA 91770
 Attention: City Manager
 Telephone: (562) 801-4368
 Fax: (562) 949-7506

To ACE: ACE Construction Authority
 3871 East Colorado Blvd, Suite 100
 Pasadena, CA 91107
 Attn: Chief Executive Officer
 Telephone: (626) 405-1700
 Fax: (626) 405-1701

2. 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.

3. 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.
4. 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 and to the extent that the rights and obligations of one or both Parties would be materially altered or abridged by such interpretation.
5. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
6. Except as set forth herein, no party shall assign or otherwise transfer this Agreement or its right or interest or any part thereof to any third party, without the prior written consent of the other party. 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 PICO RIVERA

Garth P. Gardner
Mayor

ACE

George Whaley
Chief Executive Officer

ATTEST:

Christine J. Shaefer
City Clerk

ATTEST:

Mal Chaffin
Secretary

APPROVED AS TO FORM:

[Signature]
City Attorney

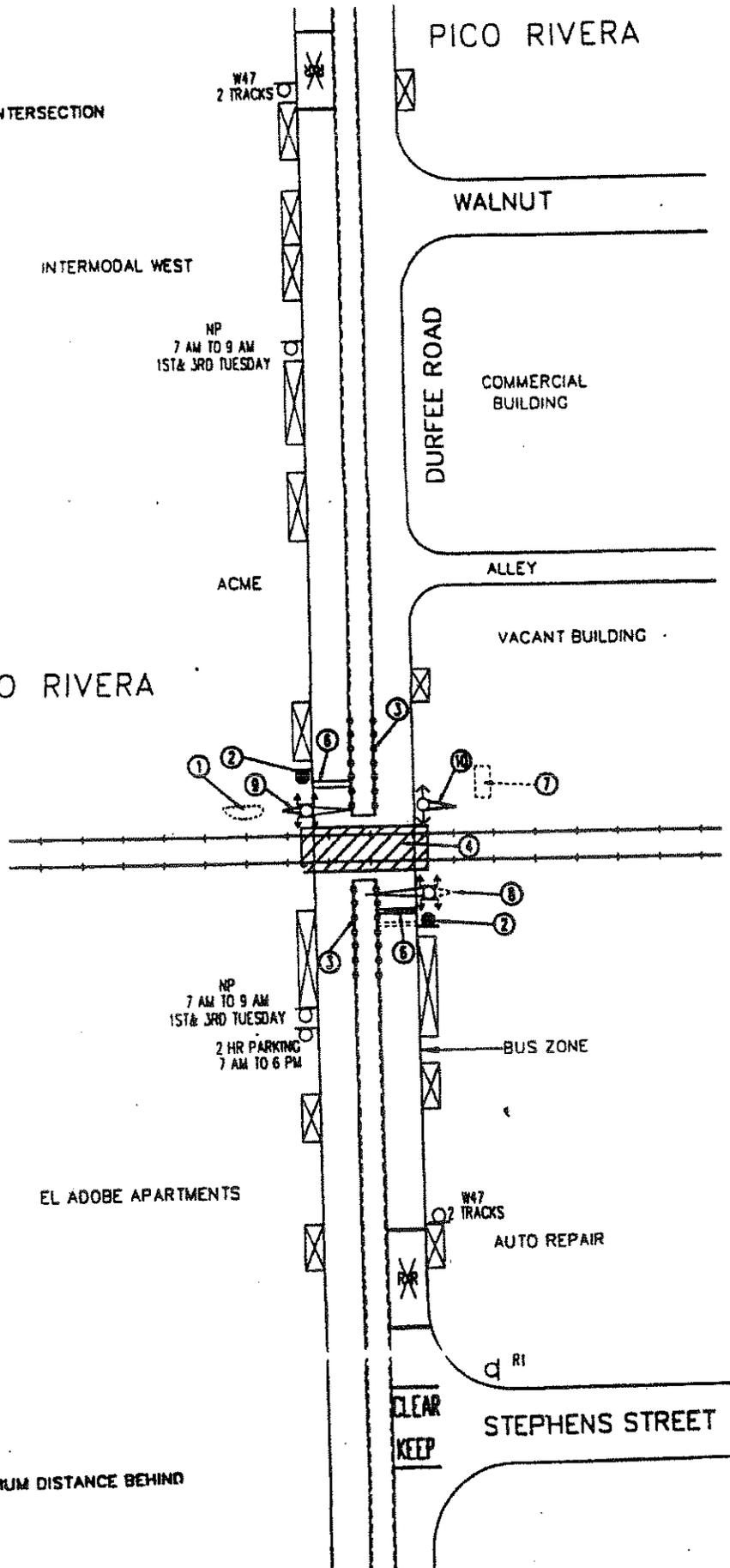
APPROVED AS TO FORM:

[Signature]
ACE General Counsel



LEGEND

- Ⓢ SIGNALIZED INTERSECTION
- ⊗ DRIVEWAY
- GATE ARM
- ▭ CANTILEVER
- ↓ FLASHERS
- ⓪ STREET SIGN



INTERMODAL WEST

NP
7 AM TO 9 AM
1ST & 3RD TUESDAY

ACME

PICO RIVERA

NP
7 AM TO 9 AM
1ST & 3RD TUESDAY
2 HR PARKING
7 AM TO 6 PM

EL ADOBE APARTMENTS

BUS ZONE

W47
TRACKS
AUTO REPAIR

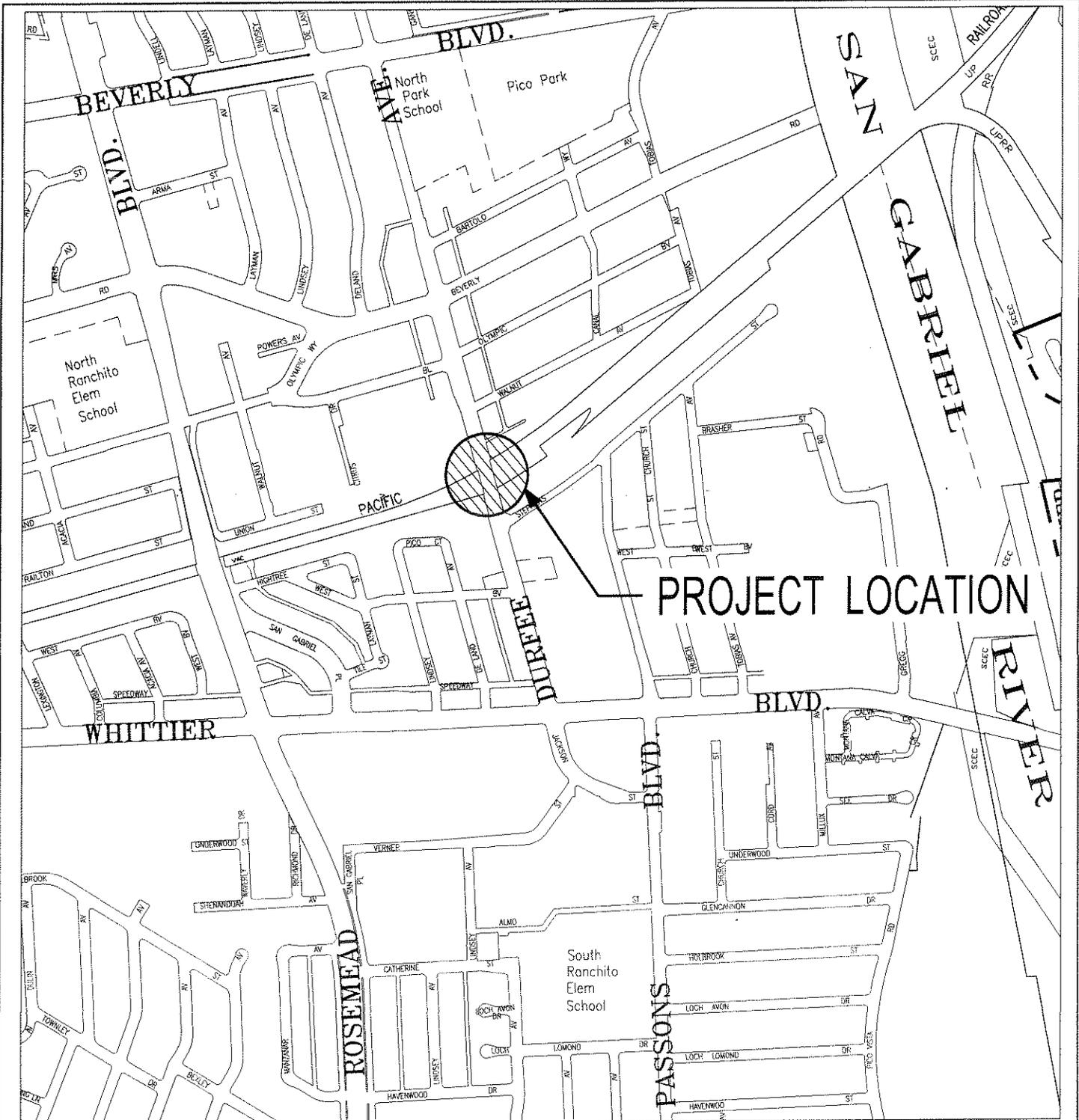
STEPHENS STREET

ALAMEDA CORRIDOR -
CROSSING PICO RIVERA

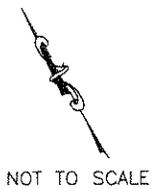
NOTES

- ① REMOVE LANDSCAPING
- ② INSTALL "DO NOT STOP ON TRACKS" SIGN
- ③ INSTALL TRAFFIC DOTS
- ④ INSTALL "KEEP CLEAR" ZONE
- ⑤ NOT USED
- ⑥ REPLACE/PAINT STOP LINES
- ⑦ RELOCATE SIGNAL BOX
- ⑧ REMOVE PEDESTRIAN GATE
- ⑨ INSTALL PEDESTRIAN GATE
- ⑩ INSTALL LONGER GATE ARM

* U.P.R.R. TO RELOCATE VEHICLE GATES MINIMUM DISTANCE BEHIND CURB TO CONFORM TO PUC REGULATIONS



LOCATION MAP
NTS



CITY OF PICO RIVERA

DEPARTMENT OF PUBLIC WORKS - ENGINEERING DIVISION

DURFEE AVENUE - GRADE SEPARATION UNDERPASS



PREPARED BY: M. NGUYEN

SCALE: NOT TO SCALE

DATE: 10-31-12



To: Mayor and City Council

From: City Manager

Meeting Date: November 13, 2012

Subject: ALAMEDA CORRIDOR EAST JOINT POWERS AUTHORITY – APPROVAL OF JOINT EXERCISE OF POWERS AGREEMENT

Recommendation:

Approve the Alameda Corridor East Joint Powers Authority (ACE JPA), Joint Exercise of Powers Agreement (JPA Agreement) to ensure that Pico Rivera's interest continue to be considered in the ACE Project and authorize the Mayor to execute the agreement in a form approved by the City Attorney.

Fiscal Impact: Having built 10 grade separation projects to date, under the authority of the San Gabriel Valley Council of Governments (SGVCOG), no assessments have been made to member agencies by the Alameda Corridor East Construction Authority. While no assessments are intended under the Joint Exercise of Powers Agreement, with the vote of two-thirds of the ACE JPA Board, the maximum assessment allotted is \$100,000 per year.

Discussion:

The ACE Construction Authority is a single purpose construction authority created by the SGVCOG in 1998 to mitigate the impacts of significant increases in rail traffic over 70 miles of mainline railroad in the San Gabriel Valley. The ACE Project consists of multiple construction projects to improve safety at 39 rail crossings as well as at 22 grade separations in the San Gabriel Valley. The Durfee Underpass Project is one such grade separation project.

The SGVCOG is giving full consideration to restructuring ACE to operate independently of the SGVCOG. The restructuring is proposed to facilitate accomplishment of project goals and objectives. If approved by the SGVCOG, the ACE JPA would be formed.

The SGVCOG, in review of this proposed organizational realignment, is considering the following:

Pros

- Would separate any ACE financial liabilities from the SGVCOG's.
- Would allow SGVCOG's and ACE's respective staffs to focus their resources on accomplishing their specific missions, acknowledging that SGVCOG's missions are significantly different than ACE's.
- ACE is a fully mature organization and has operated without burdening the SGVCOG for support.
- Would facilitate the potential to have ACE work cooperatively with agencies outside of the SGVCOG's jurisdictional boundaries on grade separations, without exposure to SGVCOG.

Pros (Continued)

- Would remove the perception that ACE is consuming state and federal resources the SGVCOG might otherwise use to benefit the cities.

Cons

- Project working capital financing (grant anticipation notes), currently under SGVCOG auspices, would have to be retired earlier than originally planned and new notes issued under new credit terms; financing costs could increase.
- Existing contracts, agreements, and associated legal documents would have to be assigned to the new ACE entity. While no objections are anticipated from parties to these contracts and agreements, it would still require staff effort to complete.
- Full separation from the SGVCOG could result in SGVCOG's political support for the ACE program being diminished in lieu of other SGVCOG priorities.

ACE JPA:

The new organization is designed for the Board to plan, oversee, fund, design, engineer, build and undertake all related requirements to complete the remaining ACE projects, assuming responsibility for their completion from the SGVCOG.

The ACE JPA would be started with five or more partners committed to developing the remaining grade separation projects. Those cities that have projects remaining in Phase 1 and Phase 2 of the ACE Project, along with the County of Los Angeles, have been invited to join the new ACE JPA, and include the Cities of Pico Rivera, El Monte, Industry, Montebello, Pomona, San Gabriel and Walnut.

The first step in creating the ACE JPA is approval of the JPA Agreement by candidate agencies.

JPA Agreement:

The JPA Agreement has been developed with considerable input from city managers, city attorneys, and public works directors from the cities involved, and also with legal and technical expertise of ACE staff. Highlights of the JPA Agreement are as follows:

- ACE JPA may apply for, receive, administer, and serve as a mechanism for obtaining state, federal, regional and local grants to assist in financing the ACE Project.
- ACE JPA may make and enter into contracts, including contracts for the services of engineers, consultants, planners, attorneys, an independent auditor, and single purpose public/private groups.
- ACE JPA may acquire, construct, reconstruct, rehabilitate, maintain, in whole or in part, dispose of, in whole or in part, land, facilities, excess property and appurtenances as necessary or convenient for the completion of the ACE Project.

- No Member City of the ACE JPA shall be responsible, directly or indirectly, for any obligation, debt or liability of ACE.
- There are no annual or periodic dues.

Operations:

All of the assets and funding sources from the current ACE projects will be transferred from the responsibility of the SGVCOG to the new ACE JPA, and the Board will have all of the implied powers necessary to use the projects under the current charter structure imposed on the City of Pomona. Each member will have one vote on the Board, and most significant Board actions such as, adding members, amending by-laws, adjusting projects, imposing fees and specific betterments, will require a two-thirds vote of the Board.

Exposure:

Upon formation, the ACE JPA would then enter into an agreement with the SGVCOG under which the new Authority would assume ACE project-related liabilities and obligations, grants, contracts, as well as employment and benefits obligations relating to those SGVCOG employees who perform exclusively ACE-related work. There are a number of agreements and other transactions which would have to be completed to effectuate the proposed separation. Some may be simple; others, such as resolution of SGVCOG's PERS liability regarding ACE employees are more complicated and require legal actions by a number of entities.

The SGVCOG is currently a member of CalPERS for the benefit of the employees of ACE. Exposure of the SGVCOG to potential liabilities associated with the CalPERS retirement programs could be eliminated if ACE separates from the SGVCOG, and if the SGVCOG itself and the ACE JPA decide to implement retirement programs for their own employees that do not involve CalPERS.

Conclusion:

To assist the City of Pico Rivera in completing the Durfee grade separation project, this proposed JPA is a vehicle that accomplishes the objective while limiting financial exposure to the City. The City of Industry approved the ACE JPA back on October 25, 2012. It is anticipated that on November 14, 2012, the Cities of Walnut and Montebello, and on November 19, 2012, the City of Pomona will approve the ACE JPA as well.


Ronald Bates

RRB:AC:RG:lg

Enc.

- 1) Alameda Corridor East Joint Powers Authority, Joint Exercise of Powers Agreement

**THE ALAMEDA CORRIDOR EAST
JOINT POWERS AUTHORITY**

JOINT EXERCISE OF POWERS AGREEMENT

**JOINT EXERCISE OF POWERS AGREEMENT OF THE ALAMEDA CORRIDOR
EAST JOINT POWERS AUTHORITY**

This Joint Exercise of Powers Agreement (“Agreement”) is made pursuant to the Joint Exercise of Powers Act, commencing with Section 6500 of the Government Code and other applicable law and is entered into by and among the public agencies whose names are set forth on Exhibit A, attached hereto and incorporated herein by this reference, and who have executed this Agreement in accordance with a majority vote of their legislative bodies (each a “Member” and collectively, “Members”):

WITNESSETH:

The parties hereto do agree as follows:

Section 1. Recitals. This Agreement is made and entered into with respect to the following facts.

a. Under the direction and oversight of the Alameda Corridor – East Construction Authority of the San Gabriel Valley Council of Governments, also known and identified as the Alameda Corridor – East, Gateway to America Construction Authority and as the ACE Construction Authority (identified herein as the “ACE Construction Authority”), a series of railroad crossing safety improvements and grade separation projects, collectively identified as the Alameda Corridor - East Gateway to America Project or the ACE Project (the “ACE Project”), have been designed, built and implemented throughout the San Gabriel Valley.

b. The ACE Construction Authority is an administrative entity of the San Gabriel Valley Council of Governments (“SGVCOG”) formed in accordance with the Third Amended and Restated Joint Exercise of Powers Agreement, dated April 10, 2007, and operating in accordance with Section 6508 of the Government Code.

c. For purposes of this Agreement, the ACE Project shall be as approved by the Governing Board of the SGVCOG at its regular meeting on March 15, 2012, subject to amendments, changes or adjustments by ACE in accordance with the terms of this Agreement.

d. Work on the ACE Project is ongoing. Several grade separation projects are in the design and construction stage and additional projects are planned subject to the availability of funding.

e. The organization and the mission of the SGVCOG are being reviewed by its member agencies. Certain member agencies of the SGVCOG have indicated that it would be in the best interests of the ACE Project and of the SGVCOG to transfer the responsibilities and obligations of the ACE Project, or a part thereof, to a separate public entity to enable the ACE Project to be continued with focused guidance, leadership and oversight.

f. Certain cities and public agencies have determined that a new joint powers agency, separate from the SGVCOG, should be formed to accept the transfer of responsibility for the ACE Project, or a part thereof, from the SGVCOG and the ACE Construction Authority.

g. The public interest requires a joint powers agency to continue the implementation of the ACE Project in a coordinated, well-managed and cost-effective manner that uses federal, state and local funding sources and fully complies with all applicable laws and regulations.

h. The public interest requires that an agency with the aforementioned goals not possess the authority to compel any of its members to conduct any activities or implement any plans or strategies that they do not wish to undertake (except for Member contributions).

i. Each Member is a governmental entity established by law with full powers of government in legislative, administrative, financial, and other related fields.

j. Each Member, by and through its legislative body, has determined that a joint powers agency is required in furtherance of the public interest, necessity and convenience.

k. Each Member, by and through its legislative body, has independently determined that the public interest, convenience and necessity requires the execution of this Agreement by and on behalf of each such Member.

Section 2. Creation of Separate Legal Entity. It is the intention of the Members to create, by means of this Agreement, a separate legal entity within the meaning of Section 6503.5 of the Government Code. Accordingly, there is hereby created a separate legal entity which shall exercise its powers in accordance with the provisions of this Agreement and applicable law.

Section 3. Name. The name of the said separate legal entity shall be the Alameda Corridor East Joint Powers Authority ("ACE").

Section 4. Purpose and Powers of ACE.

a. Purpose of ACE. ACE is being created to provide a vehicle for the Members to plan, oversee, obtain funding for, design, engineer, build and undertake all related and necessary activities in connection with the completion of those parts of the ACE Project for which ACE assumes responsibility upon their transfer from the SGVCOG. Completed projects will be transferred to individual Members or the Union Pacific Railroad or other entities, as appropriate. It is the clear intent of the Members that ACE shall not possess the authority to compel any of the Members to conduct any activities or implement any plans or strategies that they do not wish to undertake except for Member contributions, as identified in Section 26, which may be required to enable ACE to pay for expenditures not covered by other ACE funding. The goal and intent of ACE is one of voluntary cooperation among Members for the collective benefit of all of the Members and other public agencies that will result from the successful completion of the ACE Project.

b. Common Powers. ACE may:

- (1) Exercise and shall have the common powers of its Members;
- (2) Apply for, receive, administer and serve as a mechanism for obtaining state, federal, regional and local grants to assist in financing the ACE Project;
- (3) Assemble and evaluate information helpful in the consideration of ACE Project-related planning problems peculiar to individual Members;
- (4) If appropriate, utilize voluntary assistance from Members and other public or private entities to assist in carrying out projects and activities;
- (5) Make and enter into contracts, including contracts for the services of engineers, consultants, planners, attorneys, an independent auditor, and single purpose public/private groups;
- (6) Acquire, construct, reconstruct, rehabilitate, maintain, in whole or in part, dispose of, in whole or in part, land, facilities, excess property and appurtenances as necessary or convenient for the completion of the ACE Project;
- (7) Employ agents, officers and employees;
- (8) Acquire property rights and exercise the power of eminent domain, if necessary;
- (9) Receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;
- (10) Lease, manage, maintain, and operate any buildings, works, or improvements;
- (11) Obtain insurance and contract for risk management services;
- (12) Invest money in the same manner and under the same conditions as its Members and in accordance with Government Code Section 53601;
- (13) Support or oppose legislation related to the purpose of this Agreement and the goals and purpose of ACE;

- (14) As identified in the Bylaws, delegate some of its powers to the Chief Executive Officer; and
- (15) Borrow money, incur indebtedness and/or issue bonds pursuant to the Constitution of the State of California and any of the laws of the State of California and to exercise any implied power necessary to exercise the express powers provided for in this Section 4. b. (15), provided, however, that any borrowing hereunder shall be for the purpose of financing the ACE Project, and shall be repaid solely from funds pledged or otherwise designated for the ACE Project. Borrowings authorized hereunder shall be subject to Section 19 of this Agreement and shall be subject to Governing Board approval as described in Section 7 e.

c. Exercise of Powers. ACE shall, in addition, have all implied powers necessary to perform its functions. It shall exercise its powers only in a manner consistent with the provisions of applicable law, this Agreement and the Bylaws. For the purposes of determining the restrictions to be imposed on ACE in its manner of exercising its powers pursuant to Government Code Section 6509, reference shall be made to, and ACE shall observe, the restrictions imposed upon the City of Pomona.

Section 5. Creation of Governing Board. There is hereby created a Governing Board for ACE (“Governing Board”) to conduct the affairs of ACE. The Governing Board shall be constituted as follows:

a. Designation of Governing Board Representatives. One person shall be designated as a representative of the Governing Board by the legislative body of each of the Members (“Governing Board Representative”). No Member shall be entitled to “ex officio” non-voting representation on the Governing Board; however, the Governing Board, at its sole discretion, may allow “ex officio” non-voting representation from public entities that are not Members.

b. Designation of Alternate Governing Board Representatives. One person shall be designated as an alternate representative of the Governing Board by the legislative body of each of the Members (“Alternate Governing Board Representative”).

c. Eligibility. No person shall be eligible to serve as a Governing Board Representative or an Alternate Governing Board Representative unless that person is, at all times during the tenure of that person as a Governing Board Representative or Alternate Governing Board Representative, a member of the legislative body of one of the appointing Members.

Section 6. Use of Public Funds and Property. ACE shall be empowered to utilize for its purposes public and/or private funds, property and other resources received from the Members and/or from other sources. Except as otherwise prohibited, any Member may make contributions of money or assets to ACE; make or advance payments of public funds or provide loans to defray the cost of ACE operations or provide operating capital; and contribute personnel, equipment or property instead of or in addition to other contributions or advances.

Any such contributions, advances, or loans shall be subject to a separate agreement between ACE and the Member and shall be approved by the Governing Board and the legislative body of the Member.

Section 7. Functioning of Governing Board.

a. Voting and Participation. Each Member may cast only one vote through its representative for each issue before the Governing Board. An Alternate Governing Board Representative may participate or vote in the proceedings of the Governing Board only in the absence of the respective Governing Board Representative. A Governing Board Representative or Alternate Governing Board Representative seated on the Governing Board shall be entitled to participate in and vote on matters pending before the Governing Board only if such person is physically present at the meeting of the Governing Board and if the Member which that Governing Board Representative or Alternate Governing Board Representative represents has timely and fully paid any Member contributions as required by Section 26 of this Agreement and the Bylaws.

b. Proxy Voting. No absentee or proxy voting shall be permitted.

c. Quorum. A quorum of the Governing Board shall consist of not less than four representatives of the Members.

d. Committees. As needed, the Governing Board may create permanent or ad hoc advisory committees to give advice to the Governing Board on such matters as may be referred to such committees by the Governing Board. All committees shall have a stated purpose before they are formed. Any such committee shall remain in existence until it is dissolved by the Governing Board or until it reaches the end of its term as established by the Governing Board, whichever first occurs. Qualified persons shall be appointed to such committees by the pleasure of the Governing Board. Committees, unless otherwise provided by law, this Agreement, the Bylaws or by direction of the Governing Board, may be composed of representatives to the Governing Board and non-representatives to the Governing Board.

e. Actions. Unless required otherwise by a provision of applicable law or as designated elsewhere in this Agreement, actions taken by the Governing Board shall be by a majority of the voting Governing Board Representatives (or Alternate Governing Board Representatives) who are present with a quorum in attendance, except that five affirmative votes when the total membership of the Governing Board is five, six or seven, or the affirmative votes of two-thirds of the membership of the Governing Board when the total membership of the Governing Board is eight or more, or the affirmative vote of all of the then total voting membership of the Governing Board if the total voting membership is less than five, will be required: to approve the annual budget or any modifications to same; to add one or more additional grade separation projects to the ACE Project; to assess a contribution from individual Members or all Members to pay for unallowable costs in accordance with Section 26; to add as a new Member a public entity that is not an Eligible Public Entity as defined in Section 24; for any matter involving the incurrence of debt or the issuance of bonds by ACE; to accept the transfer of all or part of the ACE Project from the SGVCOG; to amend the priority list of the grade separation projects included within the ACE Project should an individual grade separation

project be delayed or become unfeasible because of funding, cost or design issues; and to terminate this Agreement.

Section 8. Duties of the Governing Board. The Governing Board shall be deemed, for all purposes, the policy making body of ACE. All of the powers of ACE, except as may be expressly delegated to others pursuant to the provisions of applicable law, this Agreement, the Bylaws or by direction of the Governing Board, shall be exercised by and through the Governing Board.

Section 9. Robert's Rules of Order. The substance of Robert's Rules of Order shall apply to proceedings of the Governing Board, except as may otherwise be provided by provisions of applicable law, this Agreement, the Bylaws or by direction of the Governing Board.

Section 10. Meetings of Governing Board. The Governing Board shall, by means of the adoption of Bylaws, establish the dates and times of regular meetings of the Governing Board. The location of each such meeting shall be as directed by the Governing Board.

Section 11. Election of Chairman and Vice Chairman. The Chairman shall be the chairperson of the Governing Board, shall conduct all meetings of the Governing Board and perform such other duties and functions as required of such person by provisions of applicable law, this Agreement, the Bylaws or by the direction of the Governing Board. The Vice Chairman shall serve as Chairman in the absence of the Chairman and shall perform such duties as may be required by provisions of applicable law, this Agreement, the Bylaws, or by the direction of the Governing Board or the Chairman.

At the first regular meeting of the Governing Board, a Governing Board Representative shall be elected to the position of Chairman by the Governing Board, and a different Governing Board Representative shall be elected Vice Chairman of the Governing Board. The terms of office of the Chairman and Vice Chairman elected at the first regular meeting of the Governing Board shall continue through the first January 1 of their terms and expire on the second January 1, and elections to determine their successors shall not be held until the first regular meeting of the December preceding the second January 1. Thereafter, a Governing Board Representative shall be elected to the position of Chairman of the Governing Board, and a different Governing Board Representative shall be elected to the position of Vice Chairman of the Governing Board at the first regular meeting of the Governing Board held in December of each calendar year. The terms of office of the Chairman and Vice Chairman shall commence and expire on January 1.

If there is a vacancy, for any reason, in the position of Chairman or Vice Chairman, the Governing Board shall forthwith conduct an election and fill such vacancy for the unexpired term of such prior incumbent.

Section 12. Chief Executive Officer. The Governing Board may appoint a qualified person to be Chief Executive Officer ("CEO") who will be an employee of ACE or of a Member. Any action to appoint, terminate or discipline the Chief Executive Officer shall require an affirmative vote of no less than a majority of the then total membership of the Governing Board. The CEO shall be neither a Governing Board Representative, nor an Alternate Governing Board

Representative, nor an elected official of any Member. The CEO shall be the chief executive, operations and administrative officer of ACE. The CEO shall perform such duties as may be imposed upon that person by provisions of applicable law, this Agreement, the Bylaws, or by the direction of the Governing Board.

Section 13. Designation of Treasurer and Auditor. The Governing Board shall, in accordance with applicable law, designate a qualified person to act as the Treasurer for ACE and a qualified person to act as the Auditor of ACE. If the Governing Board so designates, and in accordance with the provisions of Section 6505.6 of the Government Code, a qualified person may hold both the office of Treasurer and the office of Auditor of ACE. The compensation, if any, of a person or persons holding the offices of Treasurer and/or Auditor shall be set by the Governing Board.

Section 14. Functions of Treasurer and Auditor. The person holding the position of Treasurer shall have charge of the depositing and custody of all funds held by the ACE. The Treasurer shall perform such other duties as may be imposed by provisions of applicable law, including those duties described in Section 6505.5 of the Government Code, and such duties as may be required by the Governing Board. The Auditor shall perform such functions as may be required by provisions of applicable law, this Agreement, the Bylaws and by the direction of the Governing Board. If ACE designates its officers or employees to fill the positions of Treasurer or Auditor or both, ACE shall annually cause an independent audit to be made by a certified public accountant in accordance with Section 6505 of the Government Code.

Section 15. Other Officers and Employees. Subject to the approval of the Governing Board, all of the employees of the ACE Construction Authority will be transferred to the employment of ACE effective upon the date of the transfer of the ACE Project to ACE. The former ACE Construction Authority employees will be transferred at their existing salary rates and will be provided with a benefit program that is approved by the Governing Board. The Governing Board may approve the employment of such other officers or employees as it deems appropriate and necessary to conduct the affairs of ACE.

Section 16. Existing ACE Construction Authority Contracts. Subject to the approval of the Governing Board, ACE shall accept the assignment of all existing ACE Construction Authority contracts that are in place at the time of the transfer of the ACE Project to ACE. ACE shall accept all liabilities and responsibilities for all such existing contracts upon such assignment.

Section 17. Property of ACE. Pursuant to California Government Code Section 6505.1, the Governing Board may designate an employee or employees of ACE, in addition to the Treasurer, to have charge of, receive, deposit, invest and disburse the money and property of ACE, all in accordance with applicable sections of the Government Code. The Governing Board shall fix the amount of the official bonds to be filed for each individual designated to have charge of any of the assets of ACE (including the CEO and Treasurer) and the cost of such bonds shall be the responsibility of ACE.

Section 18. ACE Project Transfer Agreement. The SGVCOG and ACE shall jointly prepare and, subject to the approval of the Governing Board, shall execute an ACE Project

Transfer Agreement to become effective after the Effective Date of this Agreement, as defined in Section 29. The ACE Project Transfer Agreement shall address all of the responsibilities, liabilities, assets, contracts and staff that are to be transferred from the SGVCOG to ACE and shall also include appropriate releases of and indemnifications of the respective parties.

Section 19. Obligations of ACE. The debts, liabilities and obligations of ACE shall be the debts, liabilities and obligations of ACE alone. To the extent permitted by applicable law, no Member of ACE shall be responsible, directly or indirectly, for any obligation, debt or liability of ACE.

Section 20. Control and Investment of Funds. The Governing Board shall adopt a policy for the control and investment of its funds and shall require strict compliance with such policy. The policy shall comply, in all respects, with all provisions of applicable law.

Section 21. Betterment Agreements. During the design and construction of transportation projects within the ACE Project, a Member may request that the involved transportation project be modified to include a betterment, which shall be defined as an addition or supplemental structure, facility or undertaking that is not necessary for the project but that can be cost effectively performed by ACE while construction forces are available or project activities are underway ("Betterment"). A Betterment cannot be funded with the resources available to the ACE Project. A Betterment may only be funded pursuant to an agreement (a "Betterment Agreement") approved by the Governing Board. Any such Betterment Agreement shall authorize ACE to implement, manage and administer all activities associated with the engineering and construction of the Betterment and shall require that any and all costs incurred by ACE in connection with such Betterment, including indirect costs, be borne only by the Member or Members who requested the Betterment and who are parties to the Betterment Agreement.

Section 22. Termination of Agreement. ACE shall continue in existence until such time as this Agreement is terminated by action of the Governing Board in accordance with Section 7(e) or until fewer than five Members remain in ACE, whichever first occurs, except that all of the liabilities of ACE must be satisfied and all of the remaining assets of ACE must be distributed before such termination will be effective.

Section 23. Application of Laws. ACE shall comply with all applicable laws in the conduct of its affairs, including, but not limited to, the Ralph M. Brown Act. (Section 54950 et seq. of the Government Code.)

Section 24. Members.

a. Withdrawal. If all projects being undertaken by ACE within the jurisdiction of a Member, or within the jurisdiction of another Member that is immediately adjacent, have been completed, including the closing of all contracts, the acceptance of all work and the concurrence regarding completion by all funding agencies, a Member may withdraw from ACE by filing its written notice of withdrawal with the Chairman of the Governing Board 60 days before the actual withdrawal. Such a withdrawal shall be effective at 12:00 o'clock a.m. on the last day of that 60-day period. The withdrawal of a Member shall not in any way

discharge, impair or modify any obligations or liabilities of the withdrawn Member due to matters or actions, whether known or unknown by the withdrawn Member, and that occurred or were in existence as of the effective date of its withdrawal. Withdrawal of a Member shall not affect the remaining Members except that the Governing Board, in its sole discretion, may adjust the amount of any Member contributions of a withdrawn Member to reflect, on a pro rata basis, the effective date of the withdrawal.

b. Non-Payment of Member Contributions. If a Member fails to pay Member contributions as identified in Section 26, if any, within three months of the payment date established and after a 30-day written notice is provided to that Member, the Member shall be deemed to be suspended. When a Member is suspended, no representative of that Member shall participate in or vote on the Governing Board or any committee. Such a Member shall have its suspension removed and its voting rights restored only upon the payment of all Member contributions then owed by the Member, including Member contributions incurred prior to the suspension and during the suspension; however, the Governing Board, in its sole discretion, may adjust the amount of the Member contributions that must be paid by such a Member.

c. Admitting and Readmitting Eligible Members. Eligible public entities whose names are set forth on Exhibit A to this Agreement (“Eligible Public Entities”) shall be admitted to ACE by: adopting this Agreement by majority vote of the legislative body of the Eligible Public Entity; properly signing this Agreement; and paying in full all Member contributions, as required by Section 26, then owed, if any; however, the Governing Board, in its sole discretion, may adjust the amount of any Member contributions that must be paid by a Member being so admitted. An Eligible Public Entity may be admitted regardless of whether it adopted and signed this Agreement before or after the Effective Date (as defined in Section 29 of this Agreement). An Eligible Public Entity that has withdrawn from ACE in accordance with Section 24. a. may be readmitted to the ACE by adopting this Agreement or any subsequent version of this Agreement by a majority vote of the legislative body of the Eligible Public Entity; properly signing this Agreement or any subsequent version of this Agreement and paying all Member contributions for the current July to June fiscal year and past July to June fiscal years for which the Eligible Public Entity had been withdrawn from ACE; however, the Governing Board, in its sole discretion, may adjust the amount of the Member contributions that must be paid by a Member being so readmitted. No vote of the Governing Board shall be required to admit or readmit an Eligible Public Entity.

d. Admitting New Members. New Members who are not Eligible Public Entities may be admitted to ACE upon an affirmative vote of the Governing Board that is in accord with Section 7. e. provided that the new member is a city or other public agency as defined by Section 6500 of the Government Code. Admission shall be subject to any additional terms and conditions as the Governing Board, in its sole discretion, may deem appropriate including payment of all or part of past or current Member contributions.

Section 25. Interference with Function of Members. The Governing Board shall not take any action which constitutes an interference with the exercise of lawful powers by a Member of ACE.

Section 26. Member Contributions. There are no annual or periodic dues. The Governing Board may, from time to time, require contributions from the Members to pay for expenditures to carry out the purpose of this Agreement when such expenditures cannot be applied to the federal, state and local government funding sources for the ACE Project. Such expenditures may include the costs of a Betterment or project and administrative costs that are determined to be unallowable by ACE's federal, state and local funding agencies. The costs of a Betterment, as defined in Section 21, will be assessed against the Member that requested the Betterment. Unallowable costs that cannot be paid from ACE's reserve accounts and that are associated with a specific project will, subject to Governing Board approval, be applied equally to those Members in whose jurisdiction the project is located or who are immediately adjacent to the jurisdiction in which the project is located. Any other unallowable costs that cannot be paid from ACE's reserve accounts will, subject to Governing Board approval, be assessed in equal amounts to all of the agencies that were Members of ACE when said costs were incurred. Members shall not be assessed contributions that total more than One Hundred Thousand Dollars for any single July to June fiscal year for the payment of ACE unallowable costs.

Section 27. Disposition of Assets. Upon termination of this Agreement, after the payment of all obligations of ACE, any assets remaining shall be distributed equally to the public entities that are Members at the time of termination of the Agreement and whose voting rights at the time of termination have not been suspended in accordance with Section 24 b.

Section 28. Amendment. This Agreement may be amended at anytime with the consent of a majority of the Members.

Section 29. Effective Date. The effective date ("Effective Date") of this Agreement shall be December 1, 2012, if by that date five of the Eligible Public Entities, whose names are set forth in Exhibit A, adopt this Agreement by a majority vote of their legislative bodies and execute a copy of this Agreement. If five of the Eligible Public Entities have not adopted and signed this Agreement by December 1, 2012, then the Effective Date of the Agreement shall be the first date by which five of the Eligible Public Entities have adopted and signed this Agreement.

Section 30. Liability of Governing Board Representatives and Alternate Governing Board Representatives. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules and all workers' compensation benefits and other benefits which apply to the activities of Governing Board Representatives and Alternate Governing Board Representatives when performing their duties as members of the legislative bodies of their respective public agencies shall apply to them to the same degree and extent while they are engaged in the performance of any of their duties on behalf of ACE.

Section 31. Indemnification of Members. ACE shall indemnify, defend and hold harmless, jointly and severally, each of its Members and the Members' officers, officials, employees, agents and representatives from and against any loss, damage, injury, claim, litigation or liability, including attorney fees and costs, arising out of or in any way related to the creation, operation, decisions or actions of ACE or ACE's officers, officials, employees, agents or representatives.

Section 32. Insurance Requirements. ACE shall obtain adequate insurance coverage as may be required by law or as necessary and appropriate for all of ACE's activities and shall require, whenever possible, that parties who enter into contracts or agreements with ACE agree in said contracts or agreements to defend, indemnify and hold harmless and name as additional insureds ACE and the Members of ACE.

Section 33. Severability. In the event of any litigation over the meaning of this Agreement, this Agreement shall be liberally construed to effectuate its purposes. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California or federal law, or otherwise rendered unenforceable or invalid, the validity of the remaining portions and provisions of this Agreement shall not be affected thereby.

Section 34. Assignment. This Agreement shall inure to the benefit of any successor to any of the Members; provided, however, that no Member may assign any right or obligation under this Agreement without the written consent of ACE as approved by the Governing Board.

Section 35. Counterparts. This Agreement may be executed in counterparts, which together shall constitute the same and entire Agreement.

The Members of this Joint Powers Agreement have caused this Agreement to be executed on their behalf, respectively, as follows:

PUBLIC AGENCY

Supervisor/Mayor/Chairperson

ATTEST

Clerk

DATE

EXHIBIT A

Eligible Public Entities

County of Los Angeles

El Monte

Industry

Montebello

Pico Rivera

Pomona

San Gabriel

Walnut



To: Mayor and City Council
From: City Manager
Meeting Date: November 13, 2012
Subject: DONATION OF SURPLUS PLAYGROUND EQUIPMENT
TO NON-PROFIT ORGANIZATIONS

Recommendations:

Council selects the non-profit organizations to receive the surplus equipment:

- Option 1 a) Bridges Church - Miracle Playground Structures;
 b) Montebello Rotary – Traditional Frame - three bay swings set;
 c) St. Philip Neri - Spiral Slide.
- Option 2 a) Bridges Church - Miracle Playground Structures;
 b) St. Philip Neri - Spiral Slide and Traditional Frame - three bay swing
 set.
- Option 3 Other distribution at the discretion of the City Council.

Fiscal Impact: There could be some surplus value if the items are sold as scrap. The projected fiscal impact is less than \$1,000.

Discussion:

With the reconstruction of Smith Park and Rio Vista Park, the City anticipated there would be some surplus playground equipment that would no longer be needed by the City. The City has the following three pieces of surplus equipment:

1. Miracle Playground Structures
2. Spiral Slide
3. Traditional Frame - three bay swing set

At the request of City Council members, staff looked into whether non-profit organizations would have a need for the equipment. Non-profit organizations were invited to make requests for the equipment.

Notices were placed in a local newspaper, on the website, and in the October 2012 profile. We did not receive any local non-profit organization interest. Three non-local, non-profit organizations have expressed a desire for the equipment as follows:

1. Bridges Church (Long Beach) would like:
 - Miracle Playground Structures
 - Spiral Slide
2. Montebello Rotary (ship to Baja California) would like:
 - Traditional Frame - three bay swing set.
3. St. Philip Neri (Lynwood) would like:
 - All of the items or whatever is available to them.

The property will be donated as-is, and the non-profit organizations will have to complete liability waivers prior to the donation of the equipment.

Option 1 - Provides something to each of the three non-profit organizations that applied for a donation.

Option 2 - Provides donations within the local Gateway cities. Because the Bridges Church was not interested in the Traditional Frame - three bay swings and because the Miracle Playground Structure may be the most valuable item, the Miracle Playground Structure could go to Bridges Church and the slide and swings could go to St. Philip Neri.

Option 3 - Pursuant to Government Code Section 37350, the City Council has discretion to develop an allocation of the equipment among the organizations as they deem appropriate.


Ronald Bates

RB:MM

Attachment: Pictures and description of the surplus playground equipment.

SURPLUS PLAYGROUND EQUIPMENT



- Miracle Playground Structures for 5-12 age group
 - Platforms
 - Steps
 - Transfer Points
 - Suspension Bridge
 - Multiple Decks & Canopies
 - Spiral 360 Slide
 - Side-by-side Grove Slide
 - Single Slide
 - Railing
 - Arch
 - Curved Loop Climber
 - Trap Door Climber
 - Climbing/Sliding Pole
 - Tic-Tac-Toe Panel



- Slide- Maker Unknown
 - 360 Spiral Slide
 - Steps
 - Ladder



- Traditional Frame Swing - Make unknown
 - 3 Bays
 - Bucket Seats