



# Alameda Corridor-East Construction Authority

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4900 Rivergrade Rd. Ste. A120 Irwindale, CA 91706 (626) 962-9292 fax (626) 962-3552 [www.theaceproject.org](http://www.theaceproject.org)

## ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY BOARD OF DIRECTORS

### REGULAR MEETING AGENDA Monday, March 25, 2013– 2:00 P.M. San Gabriel City Hall 425 W Mission Road San Gabriel, CA 91776

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Members of the public may comment on any item on the agenda at the time it is taken up by the Board. We ask that members of the public come forward to be recognized by the Chair and keep their remarks brief. If several persons wish to address the Board on a single item, the Chair may impose a three-minute time limit on individual remarks at the beginning of the discussion.

San Gabriel City Hall is accessible to persons using wheelchairs and with other disabilities. Informational material will be available in large print. Assistive listening devices, materials in other alternate formats, American Sign Language interpreters and other accommodations will be made available upon request. Requests should be made to Deanna Stanley at 626-962-9292 ext. 142 or [deannas@theaceproject.org](mailto:deannas@theaceproject.org). Providing at least 72 hours notice will help ensure availability.

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- I. Pledge of Allegiance
- II. Roll Call and Introductions
- III. Public Comment
- IV. Approval of Regular Meeting Minutes of February 25, 2013 (Pages 1-4)      Action
- V. Chairman's Remarks
- VI. Board Member Comments
- VII. Chief Executive Officer's Report (Pages 5-6)      Information
- VIII. Approval of a Contract with Parsons Transportation Group for Construction Management Services for the Puente Avenue Grade Separation (Pages 7-8)      Action
- IX. Approval of Selection and Contract Award to HDR Engineering Inc. for Property Acquisition and Relocation Assistance (Pages 9-10)      Action

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The ACE Construction Authority is constituted of seven (7) member jurisdiction; the Cities of El Monte, Industry, Montebello, San Gabriel and Pomona, the County of Los Angeles and the San Gabriel Valley Council of Governments. A San Bernardino County Council of Governments representative is an ex-officio Board member. Each member or alternate has one vote. A quorum of the ACE Construction Authority is no less than four (4) of its total voting membership. Actions taken by the ACE Construction Authority shall be by simple majority of the members present with a quorum in attendance except for personnel actions, the annual budget, matters dealing with the Administrative Code or matters requiring subsequent approval by the SGVCOG, all of which shall require five (5) votes. All disclosable public records related to this meeting are available for viewing at the ACE office above during normal working hours.

ACE Construction Authority Board of Directors  
March 25, 2013 Regular Meeting Agenda

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|------|--|--------|
| X.   | Approval of Selection and Contract Award to Paragon Partners for Property Acquisition and Relocation Assistance Services (Pages 11-12)   | Action |
| XI.  | Approval of Master Funding Agreement and Promissory Note with the Los Angeles County Metropolitan Transportation Authority (Pages 13-21) | Action |
| XII. | Adjournment  | Action |



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### ACE Construction Authority Board of Directors Regular Meeting February 25, 2013 Minutes

Chairman Gutierrez called the meeting of the Board of Directors of the Alameda Corridor-East Construction Authority to order at 2:07PM at San Gabriel Council Chambers.

1. **Pledge of Allegiance** – Member Norma Macias led the pledge of allegiance.
2. **Roll Call** – In attendance was:
  - David Gutierrez, Chairman
  - Jack Hadjinian, Montebello
  - Andre Quintero, El Monte
  - Barbara Messina, SGVCOG
  - Tim Spohn, Industry
  - Freddie Rodriguez, Pomona
  - Michael Antonovich, LA County

#### Staff

Rick Richmond, Chief Executive Officer  
Joe Silvey, Legal Counsel  
Mark Christoffels  
Deanna Stanley  
Paul Hubler  
Victoria Butler  
Cecilia Cardenas

#### Guests

Natasha DeBenon, Arcadis  
Lisa Reece, HDR  
Joe Jenkins, Jacobs  
Roy Fisher, Parsons  
Douglas Benash, Infrastructure Engineers  
Glenn Sutor, Parsons Brinckerhoff  
Ken Bui, Parsons  
Hank Fung, LA County  
Al Contreas, Edison

3. **Public Comments** – There were no public comments.

4. **Approval of January 28, 2013 Special Meeting Minutes** – A motion was made to approve the January 28, 2013 Special Meeting minutes.  
M/S/C/Hadjinian/Messina/Passed Abstain/Quintero
5. **Chairman's Remarks** – Chairman Gutierrez thanked the Board and staff for success of the February 1<sup>st</sup> Groundbreaking Ceremony for the Baldwin Avenue Grade Separation Project. He indicated a groundbreaking ceremony would be held for the Nogales Street Grade Separation project on April 5<sup>th</sup>. Lastly he referenced a letter to Congresswoman Grace Napolitano requesting assistance in resolving the issues between the Union Pacific and Kinder Morgan delaying closure of the Temple Avenue Train Diversion project.
6. **Board Comments** – Member Spohn requested an update on separation activities. Mr. Richmond reported the COG discussed the transfer agreement at the last meeting and the two agency attorneys are working together to prepare a final agreement for approval of the SGVCOG Governing Board.
7. **Chief Executive Officer's Report** – Mr. Richmond reported the recent hospitalization of member Paul Eaton. The Board requested staff to send a get well card to Member Eaton. Mr. Richmond reported coordination of the relocation of the Chapman mill is under way and the Board would be advised when the event will be held.  
Phil Balmeo, Senior Project Manager of the San Gabriel Trench project reviewed utility relocation progress photos.
8. **Approval of Selection of Parsons Brinckerhoff for Construction Management Services for the Fairway Drive Grade Separation** – Mark Christoffels, Deputy CEO reviewed the role of the construction managers. He indicated the Authority will typically bring on board their services in finalizing drawings and actively participate in constructability review. He indicated the solicitation gave the option to award to two separate firms or award both projects to one. He reminded the Board that construction management services would be provided throughout the construction of the project. He indicated nine proposals were received and four teams were interviewed. Based on the rankings two firms were chosen and given the project most relevant to past experience. Staff recommended Parsons Brinckerhoff for construction management of the Fairway Drive project. He indicated the next item was also a result of this procurement.  
A motion was made to authorize the Chief Executive Officer to negotiate a construction management services contract with Parsons Brinckerhoff, Inc. for the Fairway Drive grade separation project.  
M/S/C/Hadjinian/Spohn/Unanimous

9. **Approval of Selection of Parsons Transportation Group for the Puente Ave Grade Separation Project** – Mr. Christoffels stated, as mentioned earlier, the procurement was narrowed to two firms and it was staff's recommendation that Parsons Transportation Group be selected for construction management services of the Puente Avenue grade separation project.  
A motion was made to authorize the Chief Executive Officer to negotiate a construction management contract with Parsons Transportations Group for the Puente Avenue Grade Separation Project.  
M/S/C/Spohn/Hadjinian/Unanimous
  
10. **Approval of Contract Amendment to the Construction & Maintenance Agreement with the Union Pacific Railroad for the San Gabriel Trench Project** – Mr. Richmond reviewed the right of way elements of the San Gabriel trench project. He indicated the Union Pacific has requested an amendment to the Construction & Maintenance Agreement to address right of way issues such as compensation and future use of portions of the right of way. The amendment provides the right to a third property appraisal to be done to more accurately value the interests being acquired. He indicated the amendment has been reviewed and agreed to by the Union Pacific, the City of San Gabriel and staff.  
  
A motion was made to authorize the Chief Executive Officer to amend the Construction and Maintenance Agreement with the Union Pacific Railroad and the City of San Gabriel for the San Gabriel Trench project in order to clarify language affecting the acquisition of UPRR property rights necessary for the project.  
M/S/C/Hadjinian/Messina/Unanimous
  
11. **Approval of Support Position on AB 14**– Mr. Paul Hubler reviewed the intent of AB 14 (Lowenthal) which would ensure that state plan conforms with federal requirements requiring states develop a rail plan pertaining to passenger and freight movements. He indicated SCAG is supporting the bill.  
A motion was made to approve a support position for AB 14 (Lowenthal) requiring California Business, Transportation and Housing Agency to prepare a state freight plan and establish a freight advisory committee consistent with guidelines under the MAP-21 federal transportation law.  
M/S/C/Hadjinian/Rodriguez/Unanimous
  
12. **Closed Session:** Counsel announced the Board would adjourn to closed session in accordance with Government Code Section 54956.9(a) to discuss with Counsel existing litigation under Los Angeles Superior Court Case BC429699. The Board returned to open session and Counsel announced that by a motion

made by member Quintero and seconded by member Antonovich the Board approved a settlement of \$237,500 for an extra work claim and waiver of appeal and \$23,000 in court costs with MIPCO LLC associated with the acquisition for property rights for the Baldwin Avenue grade separation project. Ayes: Quintero, Rodriguez, Messina, Hadjinian, Gutierrez, Spohn, Antonovich Naves: None

13. **Adjournment** – The Board adjourned at 2:40PM in memory of Frank E. Christoffels, father of Deputy CEO Mark Christoffels and Leonardo Molina, father of Supervisor Gloria Molina. The next meeting would be held on March 25, 2013.



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MEMO TO: ACE Construction Authority Board Members & Alternates

FROM: Rick Richmond  
Chief Executive Officer

DATE: March 25, 2013

SUBJECT: CEO Report

The following are items of note since the last meeting:

**Legislative Meetings** – ACE Board Members and staff returned earlier this month from our annual visit to Washington, D.C. We met individually with seven members of Congress and with legislative staff and Administration officials to discuss ACE's progress and funding needs and legislative developments. We also participated in the successful San Gabriel Valley Congressional Appreciation Reception which was co-sponsored by ACE, Foothill Transit, the Gold Line Authority, the COG and the San Gabriel Valley Economic Partnership.

**Nogales Groundbreaking Ceremony** – Board Members and Alternates are cordially invited to attend a groundbreaking ceremony for the Nogales Street project, scheduled for 10:30 a.m. on Friday, April 5 at an ACE-owned vacant parcel at 904 S. Nogales Street in the City of Industry. Following the ceremony, you are cordially invited to join ACE for a celebratory luncheon at a restaurant nearby.

**State Freight Plan** – Staff has submitted comments regarding the draft State Rail Plan which will become part of California's State Freight Plan to be submitted to USDOT. We have requested that the plan comport with federal Freight Program provisions, include the ACE grade separations as trade corridor projects, and that the most up-to-date information be used in identifying the ACE projects. Staff will continue to monitor development of the State Freight Plan and report to the Board.

**National Freight Network** – Staff has signed onto a regional comment letter urging USDOT when designating the national freight network to use performance metrics which accurately measure truck volumes on Southern California highways. The Federal Highway Administration's proposed freight analysis framework would fail to capture drayage trucks which haul containers from the San Pedro Bay ports to the rail yards east of Los Angeles for transcontinental transport.

**Fairway Drive Project Award** – The Federal Highway Administration and Caltrans have awarded the "Value Engineering Study of the Year 2012" to the Fairway Drive Grade Separation project. The award recognizes substantial cost savings and significant performance enhancement which resulted in an outstanding overall value

improvement to the project. Participants in the study included ACE Utility Coordinator Edward Villanueva and Senior Project Manager Charles Tsang, along with staff from LA County Department of Public Works, Cities of Industry and Ontario and project designer CH2MHill.

**Tenant Improvements** – As part of our office lease renewal with Metlife agreed to an allowance for much needed office modifications. Among the improvements were construction of two conference rooms, reconfiguration of cubicles, construction of enclosed offices and relocation of our office kitchen. The cost of the improvements were within the agreed upon allowance provided by the landlord. The improvements were a good opportunity for the office staff to work together to purge documents and rearrange the office for increased efficiency. I am proud of the teamwork exhibited along with the outcome of the office in general. Special recognition should be to Phil Balmeo, Senior Project Manager and Office Manager Deanna Stanley for their management of this effort.

**Contracting** – Our Administrative Code delegates to the CEO the authority to approve new contracts or change orders for Board-approved contracts within certain limits, with a requirement that I report to the Board any such contract action. The following changes have occurred:

Consultant/Vendor	Reason for Change	Change Amount	Total Contract Value
CH2MHILL	Additional engineering and design services for Fairway Ave. grade separation project	284,283	\$6,013,374

**Community Outreach Update** – Staff conducted the following project outreach activities:

- Distributed construction alert notice in English, Spanish and Chinese regarding brush clearance and fiber optic utility relocation for the San Gabriel Trench project;
- Conducted pre-construction surveys of properties located within the Baldwin Avenue project area; and,
- Conducted ongoing community outreach and support activities for the San Gabriel Trench, Baldwin Avenue, and Nogales Street grade separation projects.





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**MEMO TO:** ACE Construction Authority Board Members and Alternates

**FROM:** Rick Richmond  
Chief Executive Officer

**DATE:** March 25, 2013

**SUBJECT:** Approval of a Contract with Parsons Transportation Group for Construction Management Services for the Puente Avenue Grade Separation Project

**RECOMMENDATION:** Staff recommends that the Board authorize the Chief Executive Officer to execute a contract with Parsons Transportation Group (Parsons) for construction management services for the Puente Avenue grade separation project for \$202,318.

**BACKGROUND:** At the February meeting, the Board authorized the Chief Executive Officer to negotiate a construction management (CM) services contract with Parsons. In conformance with the Request-for-Proposal, Parsons will provide CM services for the Puente Avenue project. Accordingly, staff has negotiated an initial task order with Parsons to provide pre-construction CM services (Task 1).

**Summary of Contract Provisions:** The key provisions of the contract are as follows:

- The contract is between the ACE Construction Authority and Parsons, who is accountable for all obligations of the contract.
- The contract obligates Parsons to the Authority's current Small Business Enterprise participation for this contract goal of 11%.

**Scope of Services:** Parsons will provide the following pre-construction CM services:

- Constructability Analysis
- Bid Support
- Advanced Utility Coordination
- Pre-Condition Survey
- Pre-Construction Meeting
- Construction Schedule Review
- Special Work Assignments

This scope of work does not include the consultant's participation during the construction phase of the project (Task 2), which will be the subject of a future amendment.

Proposed costs for the above pre-construction CM tasks were compared with estimates prepared by staff and any discrepancies were resolved. Staff recently concluded contract negotiations and is recommending approval of a not to exceed contract amount of \$202,318.

This authorization would also allow a 10% contingency allowance in accordance with normal agency procedures. Any contract amount changes from the above figure due to contract change orders during pre-construction CM services that exceed the CEO's authorization will be brought back to the Board for further consideration and approval.

**BUDGET IMPACT:** Funds for this contract are available from Metro funds.



## Alameda Corridor-East Construction Authority

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**MEMO TO:** ACE Construction Authority Board Members and Alternates

**FROM:** Rick Richmond  
Chief Executive Officer

**DATE:** March 25, 2013

**SUBJECT:** Approval of Selection and Contract Award for Property Acquisition and Relocation Assistance Services to HDR Engineering, Inc.

**RECOMMENDATION:** Staff recommends that the Board authorize the Chief Executive Officer to negotiate and execute a contract with HDR Engineering, Inc. (HDR) and issue a first task order for an amount not-to-exceed \$25,000 for right of way acquisition and relocation assistance services for the Phase II grade separation projects.

**BACKGROUND:** As the design services move along for Durfee Avenue, Hamilton Boulevard and Fullerton Road grade separation projects, the need for property acquisition and relocation assistance services is necessary.

Consistent with our procurement process, a Request-for-Proposal (RFP) was issued on January 11, 2013. It was ACE's intent to award up to two contracts under this RFP. The availability of the RFP was advertised in various publications (newspapers of local circulation, minority and business publications) and posted on our website and online bidding system. In addition direct mail and email notifications were made to over 65 firms who had previously expressed an interest in our project. A pre-proposal conference was held on January 22<sup>nd</sup>, attended by 25 people. The Authority received seven proposals on February 12<sup>th</sup>.

Proposals were received from the following firms:

1. Bender Rosenthal, Inc.
2. HDR Engineering, Inc.
3. Overland, Pacific & Cutler, Inc.
4. Paragon Partners Ltd.
5. The Bernard Johnson Group, Inc.
6. Tierra West Advisors, Inc.
7. Turner & Associates

A Technical Evaluation Committee (TEC) consisting of three ACE staff and one outside agency staff with property acquisition experience was formed. The TEC reviewed the written proposals and decided to interview three firms. Following the interviews held on March 5<sup>th</sup>, the TEC members had the opportunity to adjust their rankings and determine a final ranking.

Notice of staff's recommendation was sent to the other finalist on March 6<sup>th</sup>. The protest period concluded on March 13<sup>th</sup>, no protests were received.

HDR and Paragon Partners are being recommended for selection by the TEC members. The RFP was issued under a Disadvantaged and Small Business Enterprise (DBE and SBE) Programs currently in place. Staff has established a 6% goal for the Durfee project and 8% SBE goal on the Hamilton and Fullerton projects. HDR committed to meeting or exceeding all goals. HDR will be required to report all DBE or SBE participation achieved through the life of the contract.

Upon approval by the Board of the recommended firm for award and authorization to negotiate a contract, staff will initiate negotiations with HDR. This authorization would also allow a 10% contingency allowance in accordance with normal agency procedures. In addition, in-house staff will be requested to perform all required post-award audits.

Staff anticipates that this contract, which was advertised to potentially remain active through the completion of the ACE Project, will be converted in an annual task order format starting next fiscal year.

**BUDGET IMPACT:** Funds for this contract are available from Federal or Metro grants.



## **Alameda Corridor-East Construction Authority**

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**MEMO TO:** ACE Construction Authority Board Members and Alternates

**FROM:** Rick Richmond  
Chief Executive Officer

**DATE:** March 25, 2013

**SUBJECT:** Approval of Selection and Contract Award for Property Acquisition and Relocation Assistance Services to Paragon Partners Ltd.

**RECOMMENDATION:** Staff recommends that the Board authorize the Chief Executive Officer to negotiate and execute a contract with Paragon Partners Ltd. (Paragon) and issue a first task order for an amount not-to-exceed \$50,000 for right of way acquisition and relocation assistance services for Phase II grade separation projects.

**BACKGROUND:** As the design services move along for Durfee Avenue Hamilton Boulevard and Fullerton Road grade separation projects, the need for property acquisition and relocation assistance services is necessary.

Consistent with our procurement process, a Request-for-Proposal (RFP) was issued on January 11, 2013. It was ACE's intent to award up to two contracts under this RFP. The availability of the RFP was advertised in various publications (newspapers of local circulation, minority and business publications) and posted on our website and online bidding system. In addition direct mail and email notifications were made to over 65 firms who had previously expressed an interest in our project. A pre-proposal conference was held on January 22<sup>nd</sup>, attended by 25 people. The Authority received seven proposals on February 12<sup>th</sup>.

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Paragon and HDR are being recommended for selection by the TEC members. The RFP was issued under a Disadvantaged and Small Business Enterprise (DBE and SBE) Programs currently in place. Staff has established a 6% DBE goal on the Durfee project and 8% SBE goal on the Fullerton and Hamilton projects. Paragon committed to meeting or exceeding all goals. Paragon will be required to report all DBE or SBE participation achieved through the life of the contract.

Upon approval by the Board of the recommended firm for award and authorization to negotiate a contract, staff will initiate negotiations with Paragon. This authorization would also allow a 10% contingency allowance in accordance with normal agency procedures. In addition, in-house staff will be requested to perform all required post-award audits.

Staff anticipates that this contract, which was advertised to potentially remain active through the completion of the ACE Project, will be converted in an annual task order format starting next fiscal year.

**BUDGET IMPACT:** Funds for this contract are available from Federal and Metro grants.



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MEMO TO: ACE Construction Authority Board Members & Alternates

FROM: Rick Richmond  
Chief Executive Officer

DATE: March 25, 2013

SUBJECT: Approval of Master Funding Agreement and Promissory Note with the Los Angeles County Metropolitan Transportation Authority

**RECOMMENDATION:** Staff recommends that you approve the attached Master Funding Agreement and Promissory Note with the Los Angeles County Transportation Authority (Metro) and authorize me to execute both along with the future Project Addenda covered under the Agreement.

**BACKGROUND:** Metro is a major source of our ACE Project funding under two primary grant programs. Since the start of the Project in 1999 Metro has supported it through a 17% share of project cost. In addition, Phase II of the ACE Project was included as one of the improvements in Measure R (2008) up to \$400 million. Of the Measure R allocation, \$42 million has been provided for the San Gabriel Trench. The Metro Board of Directors has approved both the updated ACE Project scope adopted last Spring and a working capital loan to be secured by Measure R funds of up to \$45 million. The Metro loan will be used to retire the exiting \$20 million in Grant Anticipation Notes (GANs). The ACE and SGVCOG Boards have approved the revised ACE Project scope and the loan.

The attached documents would govern both the Metro funding from Measure R (the 17% share is funded under an existing Memorandum of Understanding) and the loan.

Master Funding Agreement. The Agreement sets forth the procedures for obtaining the remaining \$358 million included in Measure R. It envisions a series of Project Addenda for drawing down funds for ready projects. We have negotiated the first addendum to fund different elements (design and ROW) of the Puente, Fairway, Hamilton and Fullerton projects totaling \$93 million in Metro funds. Future funding for these and other ACE projects would be added through subsequent addenda until all Measure R funds are allocated. The Agreement also authorizes and sets procedures for a working capital loan of \$45 million to address projected cash flow needs as the project moves forward.

The requirements on ACE included in the Agreement are similar to those we have operated under in the past.

Promissory Note. The attached Promissory Note (and the aforementioned Agreement) specify the terms of the loan and its repayment. Metro will pass all its cost for the financing (letter of credit or liquidity charge, interest costs, broker/dealer fees and other related costs) amortized over a five year period in monthly costs to ACE. The loan can be requested in up to three increments up to a total of \$45 million. The loan duration is 10 years or when Measure R funds are depleted or the Project is completed, whichever comes first. The costs to ACE are reimbursable under Measure R. Any revenue earned by ACE on investment of available funds remains with ACE. Under the current interest rate environment, we believe the working capital financing will incur a net deficit.

As described in our December recommendation to seek this source of working capital, staff believes this method of financing is preferable to our current GANs financing and therefore recommends authorization to execute the Promissory Note.

Both the Master Funding Agreement and the Promissory Note would have to be transferred to the new ACE JPA should it become active.



FORM OF PROMISSORY NOTE

\$45,000,000

[\_\_\_\_\_], 2013

**FOR VALUE RECEIVED**, the **ALAMEDA CORRIDOR EAST CONSTRUCTION AUTHORITY OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS** (“**Maker**”), hereby unconditionally promises to pay to the order of **LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY** (“**LACMTA**”), the principal amount of the Working Capital Loan (as defined in the hereinafter defined Master Agreement) made by LACMTA, from time to time, to or for the benefit of Maker pursuant to the terms of the Alameda Corridor East Phase II Grade Separations Master Funding Agreement, dated [\_\_\_\_\_], 2013, by and between LACMTA and Maker, as the same may be amended or supplemented from time to time (the “**Master Agreement**”), together with all Recurring Costs (as defined in the Master Agreement), all Issuance Costs (as defined in the Master Agreement), all Monthly CP Costs (as defined in the Master Agreement), all Fees (as defined in the Master Agreement) and any Additional Loan Balance (as defined in the Master Agreement) as provided in the Master Agreement. All sums owing hereunder are payable in lawful money of the United States of America, in immediately available funds, without offset, deduction or counterclaim of any kind. The aggregate amount of the Working Capital Loan is not to exceed \$45,000,000. All capitalized terms used herein and not otherwise defined shall have the meaning assigned in the Master Agreement. All amounts due hereunder shall be computed and payable at such times and in such amounts as provided in the Master Agreement and this Note.

This Promissory Note is the “Note” referred to in, and is entitled to the benefits of and is subject to the terms and conditions of, the Master Agreement, including those regarding acceleration of the maturity thereof upon the occurrence of certain stated events and prepayment prior to and payment at maturity.

1. **Draw on Working Capital Loan.** All drawings under the Working Capital Loan and the Master Agreement shall be evidenced by this Note and all payments, repayments and prepayments hereon shall be endorsed by LACMTA on Schedule I attached hereto; provided, however, that any failure by LACMTA to endorse such information on Schedule I shall not in any manner affect the obligation of Maker to make payments in accordance with the terms of the Master Agreement and this Note. Maker hereby irrevocably authorizes the holder of this Note to enter on Schedule I hereto the date and amount of each drawing under the Working Capital Loan and in accordance with the Master Agreement.

2. **Monthly CP Costs.** The Monthly CP Costs shall be paid by Maker by the twenty-fifth (25<sup>th</sup>) day of each month by check or electronic transfer. If Maker has not paid the Monthly CP Costs by the last day of each month, Maker hereby authorizes LACMTA to deduct the Monthly CP Costs, as calculated by LACMTA, for the past month from the then monthly Measure R and/or Proposition C Funds reimbursement due to Maker from LACMTA under one or more Project Addendums until the monthly amount is paid in full.

3. **Maturity Date.** The Entire Unpaid Balance, including, without limitation, the outstanding balance of the Working Capital Loan, any outstanding balance of the Additional

Loan Balance, all accrued and outstanding CP Costs and any Fees shall be paid in full on the Maturity Date. At least 60 days prior to the Maturity Date, Maker shall notify LACMTA and provide to LACMTA a plan for repayment of the Entire Unpaid Balance. If Maker fails to provide a viable plan for repayment or provides a plan but then fails to pay the Entire Unpaid Balance in full on the Maturity Date, then Maker hereby authorizes LACMTA to deduct the Entire Unpaid Balance, as calculated by LACMTA, from the then outstanding balance of Measure R and/or Proposition C Funds due to Maker from LACMTA under one or more Project Addendums until the Entire Unpaid Balance is paid in full.

4. **Prepayment.** Notwithstanding anything to the contrary herein or in the Master Agreement, Maker may pay off the Entire Unpaid Balance at any time with thirty (30) days prior written notice to LACMTA, with no prepayment penalty.

5. **Security.** Except as otherwise provided in the Master Agreement and this Note, including, but not limited to, LACMTA's right to setoff against the Measure R and/or Proposition C Funds reimbursement due Maker, this Note, the Entire Unpaid Balance, including, without limitation, the outstanding balance of the Working Capital Loan, any outstanding balance of the Additional Loan Balance, all accrued and outstanding CP Costs and any Fees are unsecured.

6. **Obligations of Maker Absolute and Unconditional.** Subject to Section 4, the obligations of Maker to make all payments required under this Note and the Master Agreement on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the Master Agreement shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the Master Agreement under any and all circumstances. With respect to any payment obligations of Maker's under this Note and the Master Agreement, such payment obligations shall be without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of any change in the tax or other laws of the United States of America, California or any political subdivision thereof, any change in LACMTA's legal organization or status, or any default of LACMTA hereunder or under the Master Agreement, and regardless of the invalidity of any action of LACMTA or the invalidity of any portion of this Note or the Master Agreement. Provided further, the obligations of Maker under this Note and the Master Agreement shall not be affected by:

(a) any lack of validity or enforceability of the Master Agreement;

(b) with respect to any payment obligations under this Note and the Master Agreement, the existence of any claim, set-off, defense or other rights which Maker may have at any time against LACMTA (other than the defense of payment in accordance with the terms of this Note or the Master Agreement) or any other person, whether in connection with this Note or the Master Agreement or any transaction contemplated thereby or any unrelated transaction;

(c) any breach of contract or other dispute between Maker and LACMTA;

(d) any Draw Notice or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of gross negligence or willful misconduct by LACMTA with respect to same); or

(e) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein or in the Master Agreement.

Maker hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the Master Agreement or which releases or purports to release Maker therefrom. Nothing contained herein shall be construed as prohibiting Maker from pursuing any rights or remedies it may have against any person in a separate legal proceeding.

7. **Remedies Upon Default.** In the event of a Default by Maker, LACMTA shall provide written notice of such Default to Maker with a 30-day period to cure the Default. In the event Maker fails to cure the Default, or commit to cure the Default and commence the same within such 30-day period to the satisfaction of LACMTA, LACMTA shall have the following remedies: (i) LACMTA may terminate this Master Agreement or the applicable Project Addendum; (ii) LACMTA may make no further disbursements of Funds to Maker under the Project Addendum; (iii) LACMTA may recover from Maker any Funds disbursed to Maker as allowed by law or in equity; (iv) LACMTA may apply to the Agency or CTC, as applicable, for deobligation and reprogramming of Programmed Funds; (v) declare all sums due and payable under the Working Capital Loan and/or (vi) LACMTA shall have any rights or remedies available to it as provided by law or in equity.

8. **Reasonable Costs and Expenses.** Maker shall pay all reasonable out of pocket expenses and costs, including, without limitation, reasonable out-of-pocket expenses and reasonable fees of attorneys, incurred by LACMTA as a result of any default under this Note or in connection with successful efforts to collect any amount due under this Note, or to successfully enforce the provisions of the Master Agreement including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding).

9. **Forbearance.** Any forbearance by LACMTA in exercising any right or remedy under this Note or the Master Agreement or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by LACMTA of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of LACMTA's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by LACMTA of any security for Maker's obligations under this Note shall not constitute an election by LACMTA of remedies so as to preclude the exercise of any other right or remedy available to LACMTA.

10. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for

payment, notice of nonpayment, grace, and diligence in collecting all amounts owed by Maker under this Note and the Master Agreement are waived by Maker and all endorsers and guarantors of this Note and all other third party obligors.

11. **Commercial Purpose.** Maker represents that the Working Capital Loan is being incurred by Maker solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household or agricultural purposes.

12. **Counting of Days.** Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days.

13. **Notices.** All notices or other written communications hereunder shall be made in accordance with Section 14.16 of the Master Agreement (or to such other addresses as may be specified in writing by any party hereto to the other party hereto).

14. **Payments on Non-Business Day.** If the date for the making of any payment under this Note is not a business day of Maker and LACMTA, such payment shall be due and payable on the immediately preceding business day of Maker and LACMTA.

15. **Terms of Note Governing Payment Matters Control in the Event of any Conflict.** In the event the provisions of the Master Agreement conflict with the provisions of this Note which govern the terms of repayment of the Working Capital Loan or the payment of other amounts due in connection with the Working Capital Loan (including, without limitation, the provisions of this Note which govern the required payments of any outstanding balance of the Additional Loan Balance, all accrued and outstanding CP Costs, any Fees and other amounts due in connection with the Working Capital Loan, the manner of payment, the payment of LACMTA’s costs and expenses, the application of payments received by LACMTA, the acceleration of amounts owed by Maker, prepayments or similar charges), the provisions of this Note shall govern and control.

16. **Determinations by LACMTA.** Except to the extent expressly set forth in this Note to the contrary, in any instance where the consent or approval of LACMTA may be given or is required, or where any determination, judgment or decision is to be rendered by LACMTA under this Note, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by LACMTA, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

17. **Release.** Maker covenants and agrees that, in performing any of its rights or duties under this Note, neither LACMTA, nor its agents or employees, shall be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the misconduct or negligence of such party.

18. **Governing Law.** The governing law and related provisions contained in Section 14.10 of the Master Agreement are hereby incorporated by reference as if fully set forth herein.

19. **Severability.** The invalidity, illegality or unenforceability of any provision of this Note shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

20. **Remedies Cumulative.** In the event of Maker's default under this Note, LACMTA may exercise all or any one or more of its rights and remedies available under this Note, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent LACMTA from exercising any other right or remedy available to LACMTA. LACMTA may exercise any such remedies from time to time as often as may be deemed necessary by LACMTA.

21. **No Agency or Partnership.** Nothing contained in this Note shall constitute LACMTA as a joint venturer, partner or agent of Maker, or render LACMTA liable for any debts, obligations, acts, omissions, representations or contracts of Maker.

22. **Entire Agreement; Amendment and Waiver.** This Note contains the complete and entire understanding of the parties with respect to the matters covered. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Note shall be considered as a general waiver.

23. **Further Assurances.** Maker shall, at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that LACMTA may reasonably request, in order to protect any right or interest granted by this Note or to enable LACMTA to exercise and enforce its rights and remedies under this Note.

24. **Captions.** The captions of the sections of this Note are for convenience only and shall be disregarded in construing this Note.

25. **Time of the Essence.** Time is of the essence with respect to this Note.

IN WITNESS WHEREOF, the undersigned has caused this Promissory Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**MAKER:**

**ALAMEDA CORRIDOR EAST  
CONSTRUCTION AUTHORITY OF THE SAN  
GABRIEL VALLEY COUNCIL OF  
GOVERNMENTS**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

[Signature page to Promissory Note]

**SCHEDULE I**

<u>Date</u>	<u>Amount of Draw</u>	<u>Amount of Draw Paid or Prepaid</u>	<u>Unpaid Balance</u>	<u>Name of Person Making Notation</u>
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