

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into by and between Avila Construction Inc. ("Avila") and City of Redlands ("City") who are sometimes referred to herein as the "Parties."

RECITALS

A. Avila alleges in a claim (the "Claim") dated February 27, 2001 and received by the City on March 5, 2001, that pertained to certain Public Work improvements known as "California Street Improvements - Contract No. 26-9521-4230," that conditions and circumstances resulted in additional cost incurred by Avila. Said Claim is incorporated herein by reference and attached as Exhibit "A."

B. It is the intention of the Parties to resolve and settle their dispute and to discharge all claims, demands, causes of action, obligations, damages and liabilities Avila may have against the City that arise from, or are related to, the Claim.

C. This Agreement is a compromise of the Claim asserted by Avila and shall not be treated as an admission of liability by any Party.

AGREEMENT

1. The Parties acknowledge that the Recitals are true and correct and incorporate the Recitals into this Agreement.

2. The City shall pay to Avila the sum of Three Thousand One Hundred Ninety-two and 14/100 Dollars (\$3,192.14) within thirty (30) days from the date the City has executed this Agreement. The payment shall be made by check payable to Avila Construction, Inc., and its Attorney of Record, Robert J. Reynolds.

4. The Parties shall bear their own attorneys' fees and costs incurred in connection with this claim and settlement.

5. Avila, on behalf of itself and its respective attorneys, representatives, assigns, heirs and successors-in-interest hereby releases and forever discharges the City, and its elected officials,

officers, employees, representatives, assigns and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees of every kind and character, known or unknown, existing or contingent, latent or patent, regarding any matter arising from, or related to, the incident which was the subject of this Claim.

6. Avila represents and warrants that it has the legal authority to settle any and all causes of action and claims it may have against the City which relate or pertain to Avila's Claim. By executing this Agreement, Avila hereby releases and waives all claims or causes of action which in any way relate to Avila's Claim. To the extent any person or entity should file, subsequent to the execution of this Agreement, any claim or cause of action against the City arising out of, or which is related to, the incident which is the subject of this Claim, Avila shall indemnify, defend and hold the City harmless from any and all damages, including any attorneys' fees and costs that result therefrom.

7. Avila expressly waives the rights afforded it under Civil Code section 1542 which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

8. Avila represents and warrants that it has received the advice of its Attorney of Record with respect to the advisability of making the release provided for herein and the meaning of Civil Code section 1542. Avila is aware that he may hereafter discover claims or facts in addition to or different from those he now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of Avila to fully, finally and forever settle and release all such matters, and all claims related to those matters.

9. Avila represents and warrants that it has not assigned or transferred, or purported to assign or transfer, and shall not hereafter assign or transfer, any obligations, liabilities, demand, claims, costs, expenses, debts, controversies, damages, actions and causes of action released pursuant to this Agreement. Avila shall defend, indemnify and hold the City harmless against any obligation, liability, demand, claim, cost, expense (including, but not limited to attorneys' fees incurred), debt, controversy, damage, action or cause of action based on, arising out of or in connection with any such transfer or assignment or purported transfer or assignment.

10. Avila acknowledges that it has read this Agreement; that it has had the Agreement explained to it by counsel of his choice; that it is aware of the content and legal effect of the Agreement; that it is acting on the advice of counsel of its choice; and that it is not relying on any representations made by any other party or any of the employees, agents, representatives, or attorneys of any other party.

11. The Parties agree to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement.

12. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No modification of this Agreement shall be valid unless made in writing and signed by the Parties. The Parties shall not be bound by any representation, warranty, promise or statement unless it is specifically set forth in this Agreement.

13. This Agreement shall bind and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties.

14. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties.

15. Each party executing this Agreement represents and warrants to the other signatories that it has the authority to execute this Agreement on behalf of the person or entity for whom it is signing this Agreement.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. In the event any action is commenced enforce or interpret the terms or conditions of this Agreement the prevailing Party shall, in addition to costs and any other relief be entitled to recover its reasonable attorneys' fees.

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Avila Construction, Inc.

Dated: 10-15-01

By: RAA
Richard Avila, Vice President

Dated: October 16, 2001

CITY OF REDLANDS

Pat Gilbreath
Pat Gilbreath, Mayor

Attest:

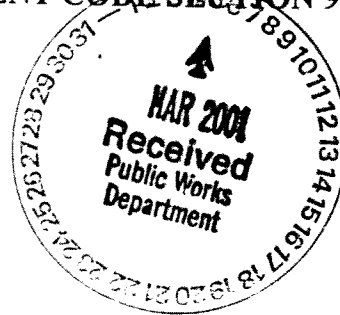
Beatrice Sanchez Deputy
City Clerk

Original to City Attorney

**CLAIM AGAINST THE CITY OF REDLANDS
PRESENTED PURSUANT TO GOVERNMENT CODE SECTION 900, ET SEQ.**

The name and post office address of the claimant:

Richard Avila
Avila Construction, Inc.
4022 N. "F" Street
San Bernardino, CA 92407



The post office address to which the person presenting the claim desires notices to be sent:

Robert J. Reynolds
Law Offices of Robert J. Reynolds
3525 Del Mar Heights Road, Number 600
San Diego, CA 92130

The date, place and other circumstances of the occurrence or transaction, which gave rise to, the claim asserted:

This claim pertains to the following public work: California Street Improvements
Contract No. 20-9521-4230

The items claimed include the following:

1. The removal, by Avila Construction, Inc. on behalf of and at the request of the City of Redlands, of an unforeseen extra thickness of asphalt and hauling of the same, performed on April 26 and 27, 2000, resulted in charges of \$2026.59 which, to date, have not been paid.
2. The removal, by Avila Construction, Inc. on behalf of and at the request of the City of Redlands, of an unforeseen extra thickness of asphalt and hauling of the same, performed on May 30 and 31, 2000, resulted in additional charges of \$1766.88 which, to date, have not been paid.
3. Additions pertaining to the completion, by Avila Construction, Inc. on behalf of and at the request of the City of Redlands, of the eastbound ramp, completed on May 30, 2000 resulted in additional charges of \$3200.81 which, to date, have not been paid.

4. Delay caused by the City of Redlands' failure to coordinate the project and the work of the railroad on May 30, 2000, resulted in an increase in the contract amount of \$3677.36 which, to date, have not been paid.
5. During the period between May 11, 2000 in May 26, 2000, when Avila Construction's crew was unavailable to conduct other work due to the requirements that it be available to commence construction once delays, caused by the City of Redlands' failure to coordinate the work of the railroad, were concluded. Clearly, this delay was caused by lack of coordination between the city and the railroad and did not result from the acts or omissions of Avila Construction, Inc. This delay resulted in charges of \$22,500.00, which, to date, have not been paid.
6. With regard to Crushed Aggregate Base, 1,668.52 tons were actually completed by Avila Construction, Inc., not the 1,323.50 tons claimed by the City of Redlands. As such, Avila Construction, Inc. was underpaid by 117 tons. Furthermore, the contract called for 2,875 tons and, as such, Avila construction, Inc. is entitled to an overhead payment of 7 dollars per ton on the remaining 1,206.48 tons.

In addition to the foregoing, miscellaneous items were completed for which charges are outstanding. All of the foregoing charges were incurred as a result of City of Redlands requirements or the failure of the City of Redlands to properly coordinate the construction project.

On October 12, 2000, the City of Redlands made a progress payment under the contract. Since October 12, 2000, the City of Redlands has failed and refused, and continues to fail and refuse to honor the terms of the agreement and, as such, has not paid the amounts described herein.

A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim:

The amounts set forth above exceed \$41,000.00.

The name or names of the public employee or employees causing the injury, damage, or loss, if known:

The contract was administered by the City of Redlands. Alan K. Griffiths was the Contract Administration Engineer.

The amount claimed:

The amount claimed in excess of the jurisdictional requirements of unlimited cases in the Superior Court, County of San Bernardino.

Claim submitted this 27th day of February 2001 to:

City Clerk
City of Redlands
P.O. Box 3005
Redlands, CA 92373



Robert J. Reynolds
Attorney at Law

Note: This claim is submitted pursuant to Government Code § 910.4, which states: "The board may provide forms specifying the information to be contained in claims against the public entity. If the board provides forms pursuant to this section, the person presenting a claim need not use such form if he presents his claim in conformity with Sections 910 and 910.2. A claim presented on a form provided pursuant to this section shall be deemed to be in conformity with Sections 910 and 910.2 if the claim complies substantially with the requirements of the form or with the requirements of Sections 910 and 910.2."