

## **RESOLUTION NO. 2002-218**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING THE RECEIPT OF FEDERAL AID GRANT FUNDS FOR THE LAGUNA GATEWAY LANDSCAPE PROJECT AND AUTHORIZING THE CITY ENGINEER TO EXECUTE AGREEMENTS**

**WHEREAS**, the City of Elk Grove will implement and carry out the Landscaping of the State Route 99 at Bond Road Interchange (Laguna Gateway Landscape Project); and

**WHEREAS**, in order to be eligible for receipt of Federal Aid Grant Funds administered by the State of California Department of Transportation in the amount of \$87,500 for Landscaping of the State Route 99 at Bond Road Interchange, the City of Elk Grove is contributing matching funds in excess of the required minimum amount of \$12,500.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, that the City Council of the City of Elk Grove authorizes the City Engineer to sign the Federal Aid Grant Fund Agreements; Administering Agency State Agreement Number 03-5479 and Program Supplement Agreement Number 001-M providing for the receipt of Federal Aid Grant Funds for Landscaping of the State Route 99 at Bond Road Interchange.

**NOW, THEREFORE, BE IT FURTHER RESOLVED AND ORDERED**, that the City Engineer is hereby authorized and empowered to execute in the name of the City of Elk Grove all necessary documents to implement and carry out the purpose of this resolution and to undertake all actions necessary to undertake and complete the work defined by said agreements.


**PASSED AND ADOPTED** by the City Council of the City of Elk Grove on this

18<sup>th</sup> day of December 2002.



\_\_\_\_\_  
RICK SOARES, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**AYES:** Soares, Briggs, Cooper  
Scherman, Leary  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

**MASTER AGREEMENT**  
**ADMINISTERING AGENCY-STATE AGREEMENT**  
**FOR**  
**FEDERAL-AID PROJECTS**

**03**  
District

**City of Elk Grove**  
Administering Agency  
Agreement No. **03 - 5479**

This AGREEMENT, made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2002, is by and between the  
**City of Elk Grove**

hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

**WITNESSETH:**

WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act of 1991 to fund programs which include, but are not limited to, the Surface Transportation Program (RSTP), the Congestion Mitigation and Air Quality Improvement Program (CMAQ), the Transportation Enhancement Activities Program (TEA), and the Bridge Replacement and Rehabilitation Program (HBRR) (collectively the "Programs"); and

WHEREAS, the Legislature of the State of California has enacted legislation by which certain Federal funds (RSTP and CMAQ) may be made available for use on local transportation facilities of public entities qualified to act as recipients of these federal funds in accordance with the intent of Federal law; and

WHEREAS, before Federal-aid will be made available for a specific Program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement relative to prosecution of said project and maintenance of the completed facility.

NOW, THEREFORE, the parties agree as follows:

**ARTICLE I - PROJECT ADMINISTRATION**

1. This AGREEMENT shall have no force or effect with respect to any Program project unless and until a project-specific Program Supplement to this AGREEMENT for Federal-aid Projects, hereinafter referred to as "PROGRAM SUPPLEMENT," has been executed.

2. The term "PROJECT," as used herein, means that authorized project financed in part with Federal funds as further described in an "Authorization to Proceed" document executed by STATE, in the subsequent specific PROGRAM SUPPLEMENT, and in a Federal-aid Project Agreement (PR-2).

3. The Financial commitment of STATE administered federal funds will occur only upon the execution of this AGREEMENT, and the execution of each project-specific PROGRAM SUPPLEMENT and PR-2.

4. ADMINISTERING AGENCY further agrees, as a condition to payment of funds obligated to a PROJECT, to comply with all the agreed-upon Special Covenants or Remarks attached to the PROGRAM SUPPLEMENT identifying and defining the nature of the specific PROJECT.

5. The PROGRAM SUPPLEMENT shall designate the party responsible for implementing the various phases of the PROJECT, the Federal funds requested, and the matching funds to be provided by ADMINISTERING AGENCY and/or STATE. Adoption of the PROGRAM SUPPLEMENT by ADMINISTERING AGENCY and approval by STATE shall cause such PROGRAM SUPPLEMENT to be executed and be a part of this AGREEMENT as though fully set forth herein. Unless otherwise expressly delegated in a resolution by the ADMINISTERING AGENCY's governing body, the PROGRAM SUPPLEMENT shall be approved and managed by the ADMINISTERING AGENCY's governing body.

6. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in LPP 95-07, "Reengineering," and subsequent approved revisions and Local Programs Manual updates, hereafter referred to as REENGINEERED PROCEDURES) relating to the Federal-aid Program, all Title 23 Federal requirements, and all applicable Federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise designated in the approved PROGRAM SUPPLEMENT.

7. If PROJECT involves work on the State highway system, it shall also be the subject of a separate standard form of encroachment permit and, where appropriate, a cooperative agreement between STATE and ADMINISTERING AGENCY to determine how the PROJECT is to be constructed.

8. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with REENGINEERED PROCEDURES. The REENGINEERED PROCEDURES describe minimum statewide design standards for local agency streets and roads. The REENGINEERED PROCEDURES for projects off the National Highway System (NHS) allow the STATE to accept either the minimum statewide design standards or ADMINISTERING AGENCY-approved geometric design standards. Also, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, and materials sampling and testing quality assurance programs that meet the conditions described in the REENGINEERED PROCEDURES.

9. When PROJECT is not on the State highway system but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the parties may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

10. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. As provided in the REENGINEERED PROCEDURES, work may be performed by a consultant(s), provided a fully qualified and licensed employee of ADMINISTERING AGENCY is in responsible charge.

11. The Congress of the United States, the Legislature of the State of California, and the Governor of the State of California, each within their respective jurisdiction, have prescribed certain employment practices with respect to work financed with Federal or State funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) whenever State funds finance part of the PROJECT, and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for

performance of work connected with the PROJECT shall incorporate Exhibits A (whenever State funds finance part of the PROJECT) and Exhibit B (with third party's name replacing ADMINISTERING AGENCY) as parts of such agreement.

## ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a Federal-aid PROJECT shall be awarded until the necessary rights of way have been secured. Prior to the advertising for construction of the PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability which may result in the event the right of way for a PROJECT is not clear as certified. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of the PROJECT because utility facilities have not been removed or relocated, or because rights of way have not been made available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

3. Subject to STATE approval and such supervision as is required in REENGINEERED PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from Federal funds for expenditures to purchase only necessary rights of way included in PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

5. Whether or not Federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in Chapter 5 of Title 23, U.S. Code. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least 90-days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of displaced persons for the PROJECT as provided in Federal Highway Programs Manual (FHPM 7-5).

6. In all real property transactions acquired for the PROJECT, following recordation of the deed or such other recorded instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, there shall also be recorded a separate document which is an "Agreement Declaring Restrictive Covenants." Said Agreement Declaring Restrictive Covenants will incorporate the assurances included within Exhibits A and B and Appendices A, B, C and D, as appropriate, when executed by ADMINISTERING AGENCY.

### **ARTICLE III - MANAGEMENT AND MAINTENANCE OF PROPERTY**

1. ADMINISTERING AGENCY will maintain and operate the PROJECT property acquired, developed, rehabilitated, or restored for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the property may transfer this obligation and responsibility to maintain and operate the property to another public entity.

2. Upon ADMINISTERING AGENCY acceptance of the completed Federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting a portion of the work, the agency having jurisdiction over the PROJECT shall maintain the completed work in a manner satisfactory to the authorized representatives of STATE and the United States. If, within 90 days after receipt of notice from STATE that a PROJECT, or any portion thereof, under ADMINISTERING AGENCY's jurisdiction is not being properly maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future Federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of maintenance satisfactory to STATE and the Federal Highway Administration. The provisions of this section shall not apply to a PROJECT which has been vacated through due process of law.

3. The maintenance referred to in paragraph 2, above, includes not only the physical condition of the PROJECT but its operation as well. PROJECT shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as the project requires. Said maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

### **ARTICLE IV - FISCAL PROVISIONS**

1. The PROJECT, or portions thereof, must be included in a Federally-approved Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submittal of the "Request for Authorization."

2. State and Federal funds will not participate in PROJECT work performed in advance of approval of the "Authorization to Proceed." The parties shall execute a PROGRAM SUPPLEMENT between STATE and ADMINISTERING AGENCY subsequently incorporating the "Authorization to Proceed."

3. ADMINISTERING AGENCY may submit invoices in arrears for reimbursement of participating PROJECT costs on a monthly or quarterly progress basis once the PROJECT PROGRAM SUPPLEMENT has been executed by STATE and the PR-2 has been executed by FHWA. The total of all amounts claimed, plus any required matching funds, must not exceed the actual total allowable costs of all completed engineering work, right of way acquisition, and construction.

4. Invoices shall be submitted on ADMINISTERING AGENCY letterhead and shall include this AGREEMENT number, Federal-aid project number, and Progress billing number for the PROJECT, and shall be in accordance with REENGINEERED PROCEDURES.

5. The estimated total cost of PROJECT, the amounts of Federal-aid programmed, and the matching amounts agreed upon may be adjusted by mutual consent of the parties hereto in a Finance Letter/Detail Estimate and a PR-2 document which are to be considered as part of this AGREEMENT. Federal-aid program amounts may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

6. When additional federal-aid funds are not available, the ADMINISTERING AGENCY agrees that the payment of Federal funds will be limited to the amounts approved by the PR-2, or its modification (PR-2A), and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY funds.

7. ADMINISTERING AGENCY shall use its own nonfederal-aid funds to finance the local share of eligible costs and all expenditures ruled ineligible for financing with Federal funds. STATE shall make the determination of ADMINISTERING AGENCY cost eligibility for Federal fund financing.

8. Any overpayment to ADMINISTERING AGENCY of amounts invoiced shall be returned to STATE by ADMINISTERING AGENCY upon written demand.

9. Should ADMINISTERING AGENCY fail to refund all moneys due STATE as provided hereunder or should ADMINISTERING AGENCY breach this Agreement by failing to complete PROJECT, then, within 30 days of demand, or within such other period as may be agreed to in writing between the parties hereto, STATE, acting through the State Controller, the State Treasurer, or any other public agency, may withhold or demand a transfer of an amount equal to the amount owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other funds and/or may withhold approval of future ADMINISTERING AGENCY Federal-aid projects.

10. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 9, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

#### **ARTICLE V - RETENTION OF RECORDS/AUDITS**

1. For the purpose of determining compliance with Public Contract Code Section 10115, et. seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et, seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 10532, ADMINISTERING AGENCY and any third party under contract with ADMINISTERING AGENCY shall retain all original records to the project financed with Federal funds and shall make records available upon request by Federal and State representatives. Following final settlement of the project costs with FHWA the records/documents may be microfilmed by the ADMINISTERING AGENCY, but in any event shall be retained for a period of three years from STATE payment of the final voucher, or a four-year period from the date of the final payment under the contract, whichever is longer. ADMINISTERING AGENCY shall retain records/documents longer if required in writing by STATE.

2. Per the Single Audit Act of 1984, any ADMINISTERING AGENCY that receives \$100,000.00 or more per fiscal year in Federal Financial Assistance shall have an audit performed by an independent audit firm per the Single Audit Act - (see OMB-A128, "Audits of State and Local Governments").

#### **ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION**

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No STATE or Federal appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or Federal contract including this Agreement, the making of any STATE or Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or Federal contract, grant, loan, or cooperative contract.

B. If any funds other than Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this Agreement, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this document that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

## ARTICLE VII - MISCELLANEOUS PROVISIONS

1. Neither STATE nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done, or omitted to be done, by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction delegated to ADMINISTERING AGENCY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE, its officers, and employees from all claims, suits or actions of every name, kind and description brought for, or on account of, injury (as defined in Government Code Section 810.8) occurring by reason of anything done, or omitted to be done, by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction delegated to ADMINISTERING AGENCY under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

2. Neither ADMINISTERING AGENCY nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done, or omitted to be done, by STATE under, or in connection, with any work, authority, or jurisdiction delegated to STATE under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully indemnify and hold ADMINISTERING AGENCY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done, or omitted to be done, by STATE under, or in connection with, any work, authority, or jurisdiction delegated to STATE under this Agreement. ADMINISTERING AGENCY reserves the right to represent itself in any litigation in which ADMINISTERING AGENCY's interests are at stake.

3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of STATE.



4. STATE may terminate this AGREEMENT with ADMINISTERING AGENCY should ADMINISTERING AGENCY fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this AGREEMENT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under this AGREEMENT prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY under this AGREEMENT, and the balance, if any, shall then be paid ADMINISTERING AGENCY upon demand.

5. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

6. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto.

7. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8. In accordance with Public Contract Code Section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two-year period because of ADMINISTERING AGENCY's failure to comply with an order of a Federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.

9. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE or the FHWA that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.

10. ADMINISTERING AGENCY hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.

11. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

12. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

**ARTICLE VIII - TERMINATION OF AGREEMENT**

1. This Agreement and any PROGRAM SUPPLEMENT(s) executed under this AGREEMENT shall terminate upon 60 days' prior written notice by STATE.

2. Each separate PROGRAM SUPPLEMENT shall separately establish the term and funding limits for each described PROJECT funded under this Federal-aid program. No STATE or FHWA funds are obligated against this AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

CITY OF ELK GROVE

By \_\_\_\_\_

By \_\_\_\_\_

Office of Project Implementation  
Division of Local Assistance

ADMINISTERING AGENCY  
Representative Name & Title  
(Authorized Governing Body Representative)

Date \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT A

### FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, religion, ancestry or national origin. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, actual or perceived sexual orientation, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

3. Remedies for Willful Violation:

- (a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.
- (b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

## EXHIBIT B

### NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives Federal financial assistance from the Federal Department of Transportation, ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its Federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the Federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives Federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

- (a) for the subsequent transfer of real property acquired or improved under the Federal-aid Program; and

Appendix D;

- (b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the Federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

- (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, agreements, property, discounts or other Federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the Federal-aid Highway Program.

## APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to ADMINISTERING AGENCY under the Agreement until ADMINISTERING AGENCY complies; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX B TO EXHIBIT B

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

### (GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

- (1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (:) (and) \*
- (2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (:) and
- (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.\*

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\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

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\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.



## APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

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\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**ATTACHMENT 3**  
**Program Supplement Agreement Number 001-M**

PROGRAM SUPPLEMENT NO. M001  
to  
ADMINISTERING AGENCY-STATE AGREEMENT  
FOR FEDERAL-AID PROJECTS NO. 03-5479

Date: October 30, 2002  
Location: 03-SAC-99-ELK  
Project Number: STPL-5479(003)  
E.A. Number: 03-0L0304

This Program Supplement is hereby incorporated into the Agency-State Agreement for Federal Aid which was entered into between the Agency and the State on / / and is subject to all the terms and conditions thereof. This Program Supplement is adopted in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. , approved by the Agency on (See copy attached).

The Agency further stipulates that as a condition to payment of funds obligated to this project, it accepts and will comply with the covenants or remarks setforth on the following pages.

PROJECT LOCATION:  
SR-99 at Bond Road Interchange

TYPE OF WORK: Landscape Interchange

LENGTH: 0 (MILES)

Estimated Cost	Federal Funds		Matching Funds		
			LOCAL		OTHER
\$100,000.00	Q230	\$87,500.00	\$12,500.00	\$0.00	\$0.00

CITY OF ELK GROVE

STATE OF CALIFORNIA  
Department of Transportation

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Chief, Office of Project Implementat  
Division of Local Assistance

Attest \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer Julie Mearns Date 10-31-02 \$87,500.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT
106	2001	2660-101-890	2001-2002	20.30.010.810	C	262040	892-F	87,500.00

STPL-5479(003)

## SPECIAL COVENANTS OR REMARKS

1. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the most current published Local Assistance Procedures Manual.
2. All project repair, replacement and maintenance involving the physical condition and the operation of project improvements referred to in Article III MAINTENANCE, of the aforementioned Master Agreement will be the responsibility of the ADMINISTERING AGENCY and shall be performed at regular intervals and as required for efficient operation of the completed project improvements.
3. The ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act and OMB A-133 if it receives a total of \$300,000 or more in federal funds in a single fiscal year. The federal funds received under this project are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research. OMB A-133 superceded OMB A-128 in 1996. A reference to OMB A-128 in a Master Agreement (if any) is superceded by this covenant to conform to OMB A-133.
4. The ADMINISTERING AGENCY agrees that payment of Federal funds will be limited to the amounts approved by the Federal Highway Administration (FHWA) in the Federal-Aid Project Authorization/Agreement or Amendment/Modification (E-76) and accepts any resultant increases in ADMINISTERING AGENCY funds as shown on the Finance Letter, any modification thereof as approved by the Division of Local Assistance, Office of Project Implementation.
5. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer immediately after the project contract award. Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.
6. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available for new phase(s) of work by future Federal obligations will be encumbered on this PROJECT by use of a STATE approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the

STPL-5479(003)

## SPECIAL COVENANTS OR REMARKS

Federal Highway Administration.

7. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).
8. The ADMINISTERING AGENCY will reimburse the STATE for the ADMINISTERING AGENCY share of costs for work requested to be performed by the STATE.