



MEETING DATE: 9/5/06

ITEM NO: 4

COUNCIL AGENDA REPORT

DATE: AUGUST 22, 2006
TO: MAYOR AND TOWN COUNCIL
FROM: DEBRA J. FIGONE, TOWN MANAGER

[Handwritten signature]

SUBJECT: PPW JOB #05-17 - FEDERAL PROJECT CML-5067(011) - HIGHWAY 9 SAFETY IMPROVEMENTS

ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE A PROGRAM SUPPLEMENT AGREEMENT UNDER THE MASTER AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

RECOMMENDATION:

Adopt resolution (Attachment 1) authorizing the Town Manager to execute a Program Supplement Agreement (Exhibit A) under the Master Agreement with the State of California Department of Transportation.

BACKGROUND:

On July 28, 1998, the Town Council adopted a resolution ratifying the Town Manager's signature on a Master Agreement (Attachment 2) with the California Department of Transportation for Federal-aid Projects. With this agreement the Town is eligible to apply for Intermodal Surface Transportation Efficiency Act (ISTEA) funds, Regional Surface Transportation Program (RSTP) funds, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds, Transportation Enhancement Activities Program (TEA) funds, and Bridge Replacement and Rehabilitation Program (HBRR) funds.

PREPARED BY:

[Handwritten signature: John E. Curtis]
JOHN E. CURTIS
Director of Parks and Public Works

N:\B&E\COUNCIL REPORTS\05-17.highway9.safety improve.approval of master program supplement.doc

Reviewed by: [initials] Assistant Town Manager [initials] Town Attorney
[initials] Clerk Administrator [initials] Finance [initials] Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: PPW JOB #05-17 - FEDERAL PROJECT CML-5067(011) – HIGHWAY 9
SAFETY IMPROVEMENTS

AUGUST 22, 2006

DISCUSSION:

With each Federal-aid project, a Program Supplement specific to the project is required to engage the terms of the Master Agreement.

This project is a multi-jurisdiction effort to improve safety by developing bike lanes, pedestrian pathways and potential streetscapes along Highway 9 from Saratoga through Monte Sereno to Los Gatos. The improvements will offer adequate separation between vehicular and bicycle traffic and close a gap in the County's bicycle network. The project is funded through the Federal Congestion Mitigation and Air Quality (CMAQ) grant program.

The release of Federal funds can only take place upon signing of the Program Supplement Agreement by an authorized official. The authorized official and the Federal project must be clearly identified in the Resolution. The Department of Transportation has notified the Town that it will not accept the Town Manager's signature until a Resolution is presented, authorizing the Town Manager to be the official for signing the Program Supplement. Funds will be released once the resolution is presented. This can be done by signing the Master Agreement to apply toward the Program Supplement on PPW Job #05-17 – Federal Project CML-5067(011). A letter from the Department of Transportation includes the program supplement, special covenants or remarks, and Finance Letter.

CONCLUSION:

Staff recommends the approval of the program supplement agreement (Exhibit A) under the Master Agreement with the State of California Department of Transportation.

ENVIRONMENTAL ASSESSMENT:

Council approval of the attached resolution is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

The signing of this Resolution will allow the Town to obtain grant funding from the Federal Congestion Mitigation and Air Quality (CMAQ) grant program, as approved in the FY2006-07 Capital Improvement Project budget. This agreement will provide documentation to CMAQ staff that each municipality has agreed to provide a match in proportion to the dollar amount of work to be completed in each jurisdiction, and further secure the grant funding.

Attachments:

1. Resolution authorizing the Town Manager to execute a Program Supplement Agreement (Exhibit A)
2. Master Agreement dated August 25, 1998

Distribution:

Denix Anbiah, Chief, Office of Project Implementation, State of California Department of Transportation, Division of Local Assistance, P. O. Box 942874, MS #1, Sacramento, CA 94274-0001

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MAYOR AND TOWN COUNCIL

SUBJECT: PPW JOB #05-17 - FEDERAL PROJECT CML-5067(011) - HIGHWAY 9
SAFETY IMPROVEMENTS

AUGUST 22, 2006

Distribution:

Denix Anbiah, Chief, Office of Project Implementation, State of California Department of
Transportation, Division of Local Assistance, P. O. Box 942874, MS #1, Sacramento,
CA 94274-0001

DEPARTMENT OF TRANSPORTATION

Division of Local Assistance
1120 N STREET
P.O. BOX 942874, MS# 1
Sacramento, CA 94274-0001
TDD (916) 654-4014
(916) 654-3151
Fax (916) 653-7621



August 16, 2006

File : 04-SCL-1-LGTS
CML-5067(011)
SR 9 thro Monte Sereno, Los
Gatos, Saratoga

John Curtis
Parks & Public Works Director
City of Los Gatos
P.O. Box 949
Los Gatos, CA 95031

Attn: Ms. Debra Figone

Dear Curtis:

Enclosed are two originals of the Program Supplement Agreement No. 004-M to Administering Agency-State Agreement No. 04-5067 and an approved Finance Letter for the subject project. Please retain the signed Finance Letter for your records.

We have included two new special covenants that allow any funding for future phases of this project be encumbered upon approval of the "Request for Authorization" and Finance Letter. The Program Supplement Agreement need not be revised for that purpose. **However, please note that federal funding will be lost if you proceed with future phase(s) of the project prior to getting the "Authorization to Proceed" with that phase.**

Please review the covenants and sign both copies of this Agreement and return both to this office, Office of Project Implementation - MS1 within 60 days from the date of this letter. If the signed Agreements are not received back in this office within 60 days, funds will be disencumbered and/or deobligated. Alterations should not be made to the agreement language or funding. Attach your local agency's certified authorizing resolution that clearly identifies the project and the official authorized to execute the agreement. A fully executed copy of the agreement will be returned to you upon ratification by Caltrans. No invoices for reimbursement can be processed until the agreement is fully executed.

In accordance to Government Code 16304, Federal funds appropriated by the State budget are available for liquidation only for seven years and the State funds are available only for five years. The attached Finance Letter shows these deadlines as the "Reversion Date". Please ensure that your invoices are submitted at least 60 days prior to the reversion date to avoid any lapse of funds. If your agency is unable to seek reimbursement by this date you may request an extension through a Cooperative Work Agreement (CWA). A CWA is subject to the final approval of the State Department of Finance. If approved, the CWA may extend the deadline for up to one year for federal funds and up to three years for State funds.

Please note that Government Code 16304 does not supersede any other more restrictive expenditure deadlines.

Your prompt action is requested. If you have questions, please contact your District Local Assistance Engineer.

Sincerely,

WJ
DENIX ANBIAH, Chief
Office of Project Implementation
Division of Local Assistance

Enclosure

EXHIBIT A

c: DLA AE Project Files
(04) DLAE - Muhaned Aljabiry

PROGRAM SUPPLEMENT NO. M004
 to
 ADMINISTERING AGENCY-STATE AGREEMENT
 FOR FEDERAL-AID PROJECTS NO. 04-5067

Date: August 10, 2006
 Location: 04-SCL-1-LGTS
 Project Number: CML-5067(011)
 E.A. Number: 04-383508

This Program Supplement hereby incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 08/25/98 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. _____, approved by the Administering Agency on _____ (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by State of any funds derived from sources noted below obligated to this project, the Administering Agency accepts and will comply with the Special covenants or Remarks set forth on the following pages.

PROJECT LOCATION:

SR 9 thro Monte Sereno, Los Gatos, Saratoga

TYPE OF WORK: Bike/Ped Safety improvements

LENGTH: 0 (MILES)

Estimated Cost	Federal Funds		Matching Funds		
	L400	\$220,000.00	LOCAL		OTHER
\$248,500.00 ⁵			\$28,500.00 ⁵	\$0.00	\$0.00

TOWN OF LOS GATOS

STATE OF CALIFORNIA
 Department of Transportation

By _____

By _____

Date _____

Chief, Office of Project Implementation
 Division of Local Assistance

Attest _____

Date _____

Title _____

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

Accounting Officer Mandy Zp Date 8-11-06 \$220,000.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT
38	2005	2660-102-890	2005-2006	20.30.010.820	C	262040	892-F	220,000.00

SPECIAL COVENANTS OR REMARKS

1. 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.
2. The ADMINISTERING AGENCY will reimburse the STATE for the ADMINISTERING AGENCY share of costs for work requested to be performed by the STATE.
3. 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.
4. Any State and Federal funds that may have been encumbered for this project are only available for disbursement for a period of five (5) years and seven (7) years, respectively, from the start of the fiscal year(s) that those funds were appropriated within the State Budget Act. All project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested and is approved by the California Department of Finance per Government Code Section 16304. The exact date of each fund reversion will be reflected in the approved finance letter(s) issued for this project.

Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement that is not submitted to the Department on or before 60 days after that applicable fixed fund reversion date will not be paid from that fiscal year's encumbered funds because all of these unexpended funds will be irrevocably reverted by the Department's Division of Accounting on that date.

Pursuant to a directive from the State Controller's Office and

SPECIAL COVENANTS OR REMARKS

the Department of Finance, the last date to submit invoices for reimbursed work in each fiscal year is May 15th in order for payment to be made out of those then current appropriations. Project work performed and invoiced after May 15th will be reimbursed only out of available funding that might be encumbered in the subsequent fiscal year, and then only when those funds are actually allocated and encumbered as authorized by the California Transportation Commission and the Department's Accounting Office.

5. ~~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 Federal Highway Administration.
6. 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).
7. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the most current published Local Assistance Procedures Manual.
8. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer immediately after the project contract award. A copy of the award package shall also be included with the submittal of the ADMINISTERING AGENCY's first invoice for the construction contract to:

Department of Transportation
Division of Accounting
Local Programs Accounting Branch, MS#33
P. O. Box 942874
Sacramento, CA 94274-0001

Failure to do so will cause a delay in the State processing

SPECIAL COVENANTS OR REMARKS

invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual and LPP 01-06.

9. "ADMINISTERING AGENCY certifies that neither the ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this agreement. ADMINISTERING AGENCY agrees that it will notify the STATE immediately, in the event a suspension or a debarment happened after the execution of this agreement."

10. Billing Cycle

ADMINISTERING AGENCY agrees to submit invoices in arrears for reimbursement of participating PROJECT costs at least once every six months commencing after the funds are encumbered for each phase by the execution of this PROJECT PROGRAM SUPPLEMENT or by STATE's future approval of an applicable Finance Letter. The total of all invoiced amounts claimed, plus any required matching funds, must not exceed the actual total cost allowable under this PROGRAM SUPPLEMENT for all authorized and completed PROJECT engineering work, right of way acquisition, and construction.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY shall submit a written explanation (with target billing date and target billing amount) of the absence of PROJECT activity.

Should ADMINISTERING AGENCY fail to invoice for participating PROJECT costs incurred (including a written explanation when no invoice is submitted) within one year of the issuance of the PROJECT authorization to proceed by STATE or from the next invoice due date following the last PROJECT invoice, STATE may de-obligate and reassign to another party any unexpended Federal funds without notice to ADMINISTERING AGENCY. STATE may also not process any future request for authorization to proceed submitted by the ADMINISTERING AGENCY.

Final Billing

ADMINISTERING AGENCY agrees that it shall submit the Final Invoice and Final Detail Estimate within 180 days of PROJECT

SPECIAL COVENANTS OR REMARKS

completion. ADMINISTERING AGENCY's failure to submit these documents will result in sanctions imposed upon ADMINISTERING AGENCY by STATE in accordance with Chapter 17.6, "Consequences For Non-Compliance", of the Local Assistance Procedures Manual.

De-obligate Federal Funds for Construction Phase

ADMINISTERING AGENCY agrees that if the estimated PROJECT construction cost is less than the obligated amount for construction by more than \$50,000, that excess amount of federal funds initially obligated is subject to de-obligation by STATE once the project has been awarded by ADMINISTERING AGENCY.

11. 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 \$500,000 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 & 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.

DEPARTMENT OF TRANSPORTATION
 DIVISION OF ACCOUNTING
 LOCAL PROGRAM ACCOUNTING BRANCH

FINANCE LETTER

Date: 08/15/2006
 Agency: 04-SCL-T-LGTS
 Project No: CML-5067(011)
 EA No: 04-383508

Attention: Local Agency

FINANCE ITEMS	TOTAL COST OF FEDERAL PART. WORK	FED. REIMB %	FED FUND 1 L400	LOCAL FUNDS
Plans, Specifications & Estimates	\$248,505	88.53	\$220,000	\$28,505
Totals:	\$248,505		\$220,000	\$28,505

Fed. Partic: 100.00% This Finance Letter was created based on specific financial information provided by the responsible local agency. The following encumbrance history is prepared by Local Assistance Accounting Office and is provided here for local agency's information and action.

Signature: 

Title: Area Engineer

For questions regarding finance letter, contact:

Printed Name: Bill Sandoval

Telephone No: (916) 653-4231

Remarks: Maximum federal funds authorized for PE = \$220,000 via MTC Formal FTIP AMD 05-12.

ACCOUNTING INFORMATION - CML-5067(011)					
Fund	Program	Fed/State	Encumbrance Amount	Approp Year	Reversion Date
06DJ	L.A. CMAQ	F	\$220,000	2005	06/30/12
					Expenditure Amount \$0

OFFICE OF THE TOWN CLERK
ACK 98.133
FILE _____
ORD _____
REC _____
RESO _____

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

04 City of Los Gatos
District Administering Agency

Agreement No. **04-5067**

This AGREEMENT, made effective this 25th day of August, 1998, is by and between the **City of Los Gatos**, 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

CITY OF LOS GATOS

By William J. Selap By David W. Kern

Chief, Office of Local Programs
Project Implementation

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

Date 8/25/98

Date _____

APPROVED AS TO FORM:

Natalie West
TOWN ATTORNEY

ATTEST:

Marian W. Cosgrove - Sec Deputy
MARIAN W. COSGROVE, TOWN CLERK