



MEMORANDUM

TO: CITY COUNCIL

FROM: BILL ROBESON, ASSISTANT CITY MANAGER/PUBLIC WORKS DIRECTOR

BY: JILL MCPEEK, CAPITAL IMPROVEMENT PROJECT MANAGER

SUBJECT: CONSIDERATION OF PROGRAM SUPPLEMENT NO. F018 REV. 1 TO ADMINISTERING AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS NO. 05-5199F15 FOR THE HABITAT MITIGATION PHASE OF THE BRIDGE STREET BRIDGE REHABILITATION PROJECT, PW 2020-08

DATE: MAY 11, 2021

SUMMARY OF ACTION:

Approve Program Supplement No. F018 Rev. 1 to allow for Federal Highway Bridge Program (HBP) reimbursement for the Habitat Mitigation Phase of the Bridge Street Bridge Rehabilitation project.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

Federal Highway Bridge Program (HBP) funds in the amount of \$250,000 were initially secured for the subject project. Following the solicitation and receipt of construction bids, it was determined that additional funding was needed to fully fund the project. Staff applied for additional HBP funds and was successful in securing \$176,000 for a total of \$426,000 for the project. There is no local match requirement to the HBP funds for this project.

RECOMMENDATION:

It is recommended the City Council adopt a Resolution authorizing the Mayor to execute Program Supplement No. F018 Rev. 1 to Administering Agency-State Agreement for Federal-aid Projects No. 05-5199F15 for the Habitat Mitigation Phase of the Bridge Street Bridge Rehabilitation project.

BACKGROUND:

In order for a local agency to expend Federal-aid funds, it must enter into a general Master Agreement with the State. The Master Agreement contains general provisions and identifies responsibilities of each agency for any Federally funded project. The City entered into a Master Agreement on August 7, 2018.

Once a Master Agreement is in place, the City and the State can enter into a Program Supplement to the Master Agreement which contains specific covenants or remarks for a particular project. On October 13, 2020, the Council adopted Resolution No. 5039

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authorizing the Mayor to execute Program Supplement No. F018 in the amount of \$250,000 for the Habitat Mitigation Phase of the Bridge Street Bridge Rehabilitation project. Also on October 13, 2020, the Council awarded a construction contract and approved a transfer of \$166,060 of Local Sales Tax from the Annual Pavement Management Program budget to fully fund construction and consultant services for the project. Concurrently, staff applied for and was successful in securing a total of \$176,000 of additional HBP funding for the project which also included \$9,940 for reimbursement of City costs, including staff time. On November 24, 2020, based on the approval of the additional HBP funding, the Council approved an amendment to add the additional HBP funds to the CIP budget and to return the \$166,060 of Local Sales Tax to the Annual Pavement Management Program budget.

ANALYSIS OF ISSUES:

Before the City can begin invoicing for reimbursement of the additional \$176,000 of HBP funds for work performed, a revised program supplement must be executed. A Resolution must be adopted by the City Council that clearly identifies the official authorized to execute Program Supplement No. F018 Rev. 1.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve staff's recommendations;
2. Do not approve staff's recommendations and request further information;
3. Modify staff's recommendation and approve; or
4. Provide other direction to staff.

ADVANTAGES:

Approving Program Supplement No. F018 Rev. 1 will allow the City to request 100% reimbursement for up to \$426,000 in expenditures for the Habitat Mitigation Phase of the Bridge Street Bridge Rehabilitation project.

DISADVANTAGES:

None identified at this time.

ENVIRONMENTAL REVIEW:

Caltrans, as lead agency, determined that the project is categorically excluded from the requirements to prepare and Environmental Assessment (EA) or Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) pursuant to 23 CFR 771.117(d): activity (d)(13) covering bridge rehabilitation that avoids an adverse effect to historic properties under the National Historic Preservation Act.

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On September 26, 2017, the City, as lead agency, adopted a Mitigated Negative Declaration (MND) prepared in accordance with the California Environmental Quality Act (CEQA), Public Resources Code §21000 et seq., and the State CEQA Guidelines, California Code of Regulations (CCR) §15000 et seq. for the Bridge Street Bridge Rehabilitation project, including the Habitat Mitigation Phase of the project.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachment:

1. Proposed Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE APPROVING PROGRAM SUPPLEMENT NO. F018 REV. 1 TO ADMINISTERING AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS NO. 05-5199F15 FOR THE HABITAT MITIGATION PHASE OF THE BRIDGE STREET BRIDGE REHABILITATION PROJECT

WHEREAS, the City and the State have entered into a Master Agreement Administering Agency-State Agreement for Federal-Aid Projects No. 05-5199F15; and

WHEREAS, the City applied for and received approval of Federal Highway Bridge Program (HBP) funds for the Habitat Mitigation phase of the Bridge Street Bridge Rehabilitation Project; and

WHEREAS, the City Council approved Program Supplement No. F018 to Administering Agency-State Agreement for Federal-Aid Projects No. 05-5199F15 on October 13, 2020, for \$250,000 of HBP funds; and

WHEREAS, Caltrans has submitted for approval and execution by the City, Program Supplement No. F018 Rev. 1 for an additional \$176,000 of HBP funds; and

WHEREAS, the City of Arroyo Grande is eligible to receive Federal funds.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Arroyo Grande hereby:

1. Approves Exhibit A attached, entitled "Program Supplement No. F018 Rev. 1 to Administering Agency-State Agreement for Federal-Aid Projects No. 05-5199F15".
2. Appoints the Mayor as the official representative authorized to sign the Program Supplement.

On motion of Council Member _____, seconded by Council Member _____, and on the following roll call vote, to wit:

AYES:
NOES:
ABSENT:

the foregoing Resolution was passed and adopted this 11th day of May, 2021.

**RESOLUTION NO.
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CAREN RAY RUSSOM, MAYOR

ATTEST:

JESSICA MATSON, CITY CLERK

APPROVED AS TO CONTENT:

WHITNEY McDONALD, CITY MANAGER

APPROVED AS TO FORM:

TIMOTHY J. CARMEL, CITY ATTORNEY

EXHIBIT A

PROGRAM SUPPLEMENT NO. F018 Rev. 1
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 05-5199F15

Adv Project ID Date: April 13, 2021
0520000017 Location: 05-SLO-0-ARGD
Project Number: BHLO-5199(032)
E.A. Number:
Locode: 5199

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 08/07/18 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 the 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: Plant Establishment (Long-Term Post-Construction Environmental Mitigation & Monitoring)
Bridge St bridge (Br. No. 49C-0196)
Related to parent 5199(027)

TYPE OF WORK: Bridge Related - Other LENGTH: 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds		
	Z2E3	\$176,000.00	LOCAL		OTHER
\$426,000.00	Z233	\$250,000.00			
			\$0.00		\$0.00

CITY OF ARROYO GRANDE

STATE OF CALIFORNIA
Department of Transportation

By _____
Title _____
Date _____
Attest _____

By _____
Chief, Office of Project Implementation
Division of Local Assistance
Date _____

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

Accounting Officer  Date 4/20/21 \$426,000.00

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. 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).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available 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.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

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assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

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Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be

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used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be

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examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

3. Appendix E of the Title VI Assurances (US DOT Order 1050.2A)

During the performance of this agreement, the ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractor, (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

C. Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), (prohibits discrimination on the basis of sex);

D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);

F. Airport and Airway Improvement Act of 1982, (49 U.S.C. 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

H. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation

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systems, places of public accommodation, and certain testing entities (42 U.S.C. 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).