

**RESOLUTION NO. 2003-68**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE EXECUTION OF AN ELK GROVE / WEST VINEYARD PUBLIC  
FACILITIES FINANCING PLAN CREDIT AGREEMENT FOR THE DESIGN OF  
IMPROVEMENTS TO THE INTERSECTION OF ELK GROVE BOULEVARD AND  
WATERMAN ROAD AND OTHER RELATED SERVICES ASSOCIATED WITH THE  
DEVELOPMENT OF WATERMAN PLAZA**

**WHEREAS**, Chapter 16.82 of the Sacramento County Code and Chapter 16.82 of the Elk Grove Municipal Code provide for the establishment of development fees and special funds; and

**WHEREAS**, Chapter 16.82.160 of the Sacramento County Code and Chapter 16.82.160 of the Elk Grove Municipal Code authorize the County of Sacramento, a political subdivision of the State of California (the "COUNTY") and the City of Elk Grove, a municipal corporation (the "CITY") to enter into credit agreements for the design and/or construction of any roadway facilities, or portions thereof, designated in the Elk Grove / West Vineyard Public Facilities Financing Plan upon application of the property owner; and

**WHEREAS**, FHK East Elk Grove, a property owner within the Elk Grove / West Vineyard Public Facilities Financing Plan area, designed the improvements to the intersection of Elk Grove Boulevard and Waterman Road associated with the development of Waterman Plaza; and

**WHEREAS**, CITY and COUNTY desire to reimburse FHK East Elk Grove for the design.


**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the execution as follows:

1. The above recitals are true and correct and the COUNCIL so finds and determines.
2. The City Council does hereby authorize the Mayor to execute an Agreement, in the form attached hereto, on behalf of the CITY with the County of Sacramento, a political subdivision of the State of California, and FHK East Elk Grove, a California limited liability company, for an Elk Grove / West Vineyard Public Facilities Financing Plan Credit Agreement, and to do and perform everything necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 2<sup>nd</sup> day of April 2003.

  
\_\_\_\_\_  
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

**ATTACHMENT 2**

**AGREEMENT**

**COUNTY OF SACRAMENTO  
CITY OF ELK GROVE**

**ELK GROVE / WEST VINEYARD PUBLIC FACILITIES FINANCING PLAN**

**CREDIT AGREEMENT FOR  
THE DESIGN OF IMPROVEMENTS TO THE INTERSECTION OF  
WATERMAN ROAD AND ELK GROVE BOULEVARD**

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", the CITY OF ELK GROVE, a municipal corporation, hereinafter referred to as "CITY", and FHK East Elk Grove, a California limited liability company, hereinafter referred to as "PROPERTY OWNER".

**WITNESSETH:**

WHEREAS, Chapter 16.82 of the Sacramento County Code (SCC) and Chapter 16.82 of the Elk Grove Municipal Code established development fees and special funds within the Elk Grove/West Vineyard Public Facilities Financing Plan (the "FINANCING PLAN") Area and provides for credit agreements between COUNTY and PROPERTY OWNER for the cost of certain public facilities; and

WHEREAS, Chapter 16.82 of the SCC and Chapter 16.82 of the Elk Grove Municipal Code provide that upon application by the PROPERTY OWNER or his authorized agent, the Administrator of the COUNTY Public Works Agency and the Director of the CITY Public Works may authorize the construction of any roadway facilities, or portions thereof, within (6) months prior to the beginning of the fiscal year for which it is scheduled for construction and after that time as designated in the FINANCING PLAN Development Fee Program in lieu of all, or a portion of, the roadway development impact fee required ("Credit"); and

WHEREAS, PROPERTY OWNER, is funding and has applied for Credit for the design and construction support of improvements to the intersection of Waterman Road and Elk Grove Boulevard (the "PROJECT") at the location shown on Exhibit "A", attached hereto and incorporated herein by this reference; and

WHEREAS, the County and the CITY requested that the property owner provide a design for the ultimate improvements at this location which is over and above what is required based upon the conditions of approval; and

WHEREAS, the PROJECT is scheduled to be funded in fiscal years 2002/2003 in the FINANCING PLAN and is therefore eligible for Credit against the roadway development impact fee; and

WHEREAS, the COUNTY, CITY, and the PROPERTY OWNER desire to enter into a Credit agreement (the "AGREEMENT") to provide for the design and construction support of the PROJECT by the PROPERTY OWNER as described in Exhibit "B" and Exhibit "C" of this Agreement in lieu of all, or a portion of, the roadway development impact fee required to be paid by the PROPERTY OWNER in connection with the development of Waterman Plaza (Raley's Belair).

NOW, THEREFORE, in consideration of the mutual promises contained herein, COUNTY, CITY, and PROPERTY OWNER hereby agree as follows:

I. PROJECT SCOPE

(A) Design

COUNTY and CITY agree to authorize Credit for the cost of design of the PROJECT in lieu of all, or a portion of, the roadway development impact fee required to be paid by the PROPERTY OWNER in connection with the development of Waterman Plaza (Raley's Belair) subject to the terms of this Agreement. Said Credit is only for design of improvements required by the PROPERTY OWNER's conditions of approval and improvements requested by the County related to the PROJECT and does not apply to

design of any frontage improvement requirements for development projects adjacent to the PROJECT.

(B) Construction Support and Other Services

COUNTY and CITY agree to authorize Credit for the cost of construction support and other services provided, or caused to be provided, by Property Owner related to the PROJECT, including but not limited to bidding assistance, construction staking assistance, construction staking, plan revisions/as built and tree removal, in lieu of all, or a portion of, the roadway development impact fee required to be paid by the PROPERTY OWNER in connection with the development of Waterman Plaza (Raley's Belair) subject to the terms of this Agreement.

II. CREDIT

For items detailed in PROJECT SCOPE, COUNTY and CITY agree to Credit PROPERTY OWNER, subject to the following conditions:

- (A) The design, construction support and other services of the PROJECT shall be done in accordance with the applicable sections of California law, including but not limited to the California Public Contracts Code and Labor Code.
- (B) The design, construction support and other services of the PROJECT must be in compliance with the CITY's Improvement Standards approved by the City Department of Transportation.
- (C) Credit for the design of the PROJECT shall not exceed the amounts identified in Exhibit "B".
- (D) Credit for the construction support and other services related to the PROJECT shall be based upon the cost of the engineering services and subject to a not-to-exceed amount of \$45,005, as identified in Exhibit "C".
- (E) Prior to Credit for the design of the PROJECT, PROPERTY OWNER must provide a copy of all invoices for the PROJECT and proof that the consultants that performed the PROJECT have been paid.
- (F) Prior to Credit for the construction support and other services related to the PROJECT, the construction of the PROJECT shall be accepted, and invoices

for construction support, evidence of payment, and releases from all consultants are provided.

- (G) Reimbursement shall be authorized if the amount of the Credit is greater than the amount of the development fees or if any Credit is remaining after development fees for Waterman Plaza have been paid. Reimbursement shall be made no earlier than June 1, 2003 and subject to the conditions set forth in this Section. If reimbursement is not made as of June 30, 2003 after all conditions set forth in this Section are met, the balance due will earn interest at the COUNTY Treasury Pool Rate until paid.
- (H) Upon completion of the Credit/reimbursement described herein, the plans and specifications for the PROJECT hereby become property of the City of Elk Grove.

### III. LIMITATIONS

(A) Neither the General Funds of the COUNTY or CITY, nor any other fund of COUNTY or CITY, except the Elk Grove/West Vineyard East Elk Grove Roadway Fund ("FUND") designated by this Agreement, shall be liable for payment of any obligations arising from this Agreement. The credit or taxing power of the COUNTY and CITY is not pledged for the payment of any obligations arising from this Agreement. PROPERTY OWNER shall not compel the exercise of COUNTY'S or CITY'S taxing power or police power, or the forfeiture of any COUNTY or CITY property to satisfy any obligations arising from this Agreement. The obligations arising from this Agreement are not a debt of the COUNTY or CITY, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues, and is payable only from the revenues of the Elk Grove/West Vineyard East Elk Grove Roadway Fund arising from the fees or charges transferred to the FUND.

(B) No Credit shall be made for any cost not listed in Exhibits "B" and "C" except for any additional cost agreed by the parties pursuant to Paragraph IV.

IV. AMENDMENTS

Amendments or modifications to this agreement shall be in writing and executed by all parties.

V. TERMINATION UPON CREDIT

This Agreement shall terminate when the COUNTY and CITY have fully credited and/or reimbursed PROPERTY OWNER. PROPERTY OWNER shall then provide COUNTY and CITY with receipt acknowledging full payment.

VI. MISCELLANEOUS PROVISIONS

(A) Payments, correspondence, demands, notice, or other communication between parties shall be sufficiently given if dispatched by postage prepaid first class as follows:

COUNTY: County of Sacramento  
Department of County Engineering and Administration  
Attn: Robert Davison, Senior Civil Engineer  
827 - 7th Street, Room 304  
Sacramento, CA 95814

CITY: City of Elk Grove  
Public Works Department  
Attn: Public Works Director  
8400 Laguna Palms Way  
Elk Grove, CA 95758

PROPERTY OWNER: FHK East Elk Grove  
640 Watt Avenue, Suite 100  
Sacramento, CA 95864  
Attn: Fred M. Katz

If a change of address occurs, or the rights herein are assigned, the transferee shall give notice to the other parties of any change of address.

(B) This Agreement, Exhibit "A", Exhibit "B" and Exhibit "C" constitute the entire Agreement and understanding between the COUNTY, CITY and PROPERTY OWNER



concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed as of the day and year first written above.

COUNTY: COUNTY OF SACRAMENTO, a political subdivision of the State of California

By: \_\_\_\_\_  
Warren H. Harada, Administrator  
Public Works Agency

APPROVED AS TO FORM:

\_\_\_\_\_  
M. Holly Gilchrist  
Supervising Deputy County Counsel

CITY: CITY OF ELK GROVE, a municipal corporation

By: \_\_\_\_\_  
Richard Soares, Mayor of Elk Grove

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony Manzanetti  
City Attorney

PROPERTY OWNER: FHK East Elk Grove, a California Limited Liability Company

By: \_\_\_\_\_

Name: Fred Katz

Title: Member

# EXHIBIT A

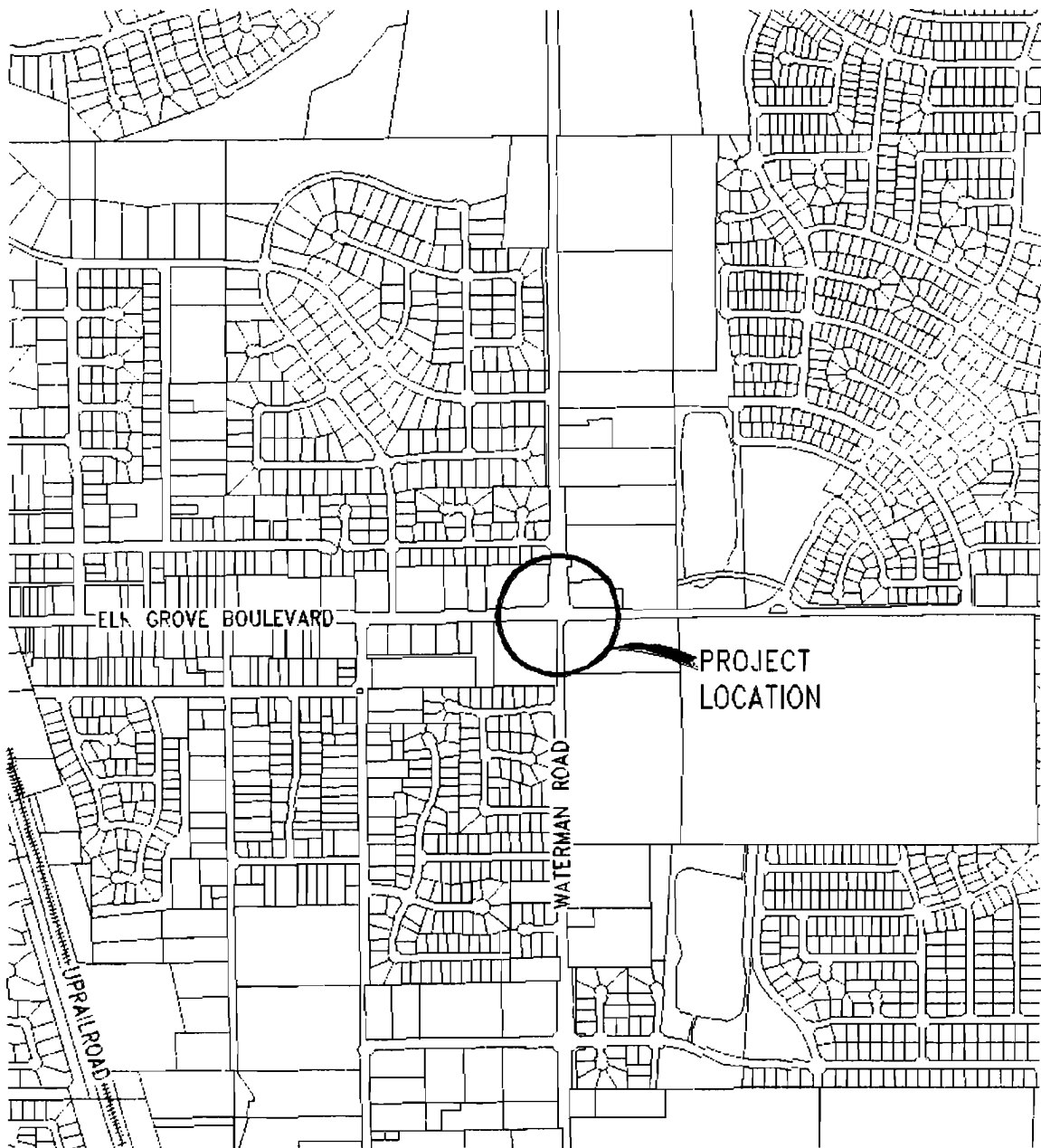
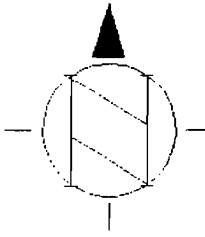


EXHIBIT "B"

ELK GROVE / WEST VINEYARD  
PUBLIC FACILITIES FINANCING PLAN ROADWAY CAPITAL IMPROVEMENT PROGRAM

**CREDIT WORKSHEET**  
**For Waterman Plaza (Raley's Belair)**  
*Waterman Road / Vintage Park Drive Traffic Signal*

C.I.P. BUDGET YEAR:	<u>2002/2003</u>	REVISED BY:	<u>Bob Davison</u>
SUBMITTED BY:	<u>FHK East Elk Grove</u>		
SUBDIV. / PROJ. NAME	<u>County Acquisition of Intersection Design</u>	REVISED:	<u>06/03/02</u>
ROADWAY PROJECT :	<u>Design of Elk Grove/Waterman Intersection</u>	PRINTED:	<u>01/10/03</u>
LIMITS OF PROJECT :	<u>Waterman / Elk Grove Intersection</u>	PROJECT ID:	<u>Project 120</u>
ENGINEERING Baker Williams		\$108,045.00	
<b>TOTAL DESIGN COST</b>		<b>\$108,045.00</b>	

## **Exhibit C**

### **CONSTRUCTION SUPPORT AND OTHER RELATED SERVICES**

#### **CONSTRUCTION SUPPORT - \$10,000**

- Provide assistance, as required by the County, to the County during bidding and construction of the project.
- Answer questions from prospective bidders
- Assist the County in preparation of addenda to the Plan, Specifications, and Estimates (PS&E) during the advertisement period
- Attend bid opening and providing ongoing consultation and interpretation of the construction documents.
- Provide assistance for plan and specification revisions for the project that result from unforeseen field conditions that are not legitimately an error or omission from the original design.
- Provide assistance for preparation of the final As-built drawings (provided by others) in electronic format for County archiving.

#### **CONSTRUCTION SURVEYS/STAKING - \$22,905**

For the Public portion of the project, perform construction survey/staking services as described in section 5-9.01 of the Sacramento County Standard construction specifications. The invoices for this work shall clearly demarcate between the reimbursable work and that work associated with the private development.

#### **TREE REMOVAL - \$12,100**

Removal of trees within the County Right-of-way, which have been approved by the County for removal.

#### **Estimated Cost of Services Not to Exceed - \$45,005**