

RECOMMENDATION

It is recommended that the City Council:

- Authorize the Mayor to execute the Agreement on behalf of the City
- Authorize the Finance Director to appropriate \$350,000 to the Fiscal Year 2010-11 Budget


KEITH G. JONES
Public Works Director

By: 
William E. Murray, Jr.
City Engineer

Attachment: County Agreement

Recommended for Approval


Matthew Fertal
City Manager

**PROPOSITION 1B
CITY AGREEMENT**

This PROPOSITION 1B CITY AGREEMENT, Agreement No. D10-075 ("Agreement") is made and entered into this day of DECEMBER 14, 2010, by and between the County of Orange, California, a political subdivision of the State of California ("County"), and the City of Garden Grove, a municipal corporation in the State of California ("City"). The County and City shall sometimes be referred to separately as a "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, the City owns and operates streets in need of traffic congestion and traffic safety improvements, including routine roadway maintenance and storm drain improvements, and acknowledges that it has limited funds by which to address these needs;

B. WHEREAS, pursuant to Section 1686 of the Streets & Highways Code, the California State Legislature has determined that the improvement and maintenance of all city streets is of general county interest. It is of general interest to the County and the City to extend financial aid to the City for the general improvement and maintenance of City streets in that the improvement of transportation congestion is of benefit to all Orange County residents;

C. WHEREAS, the County desires to assist the City with a portion of the County's Proposition 1B ("Prop. 1B") fourth allocation (2009-10 State Appropriation) for the improvement and maintenance of City streets, and to help improve regional transportation needs within the county;

D. WHEREAS, the County will allocate a portion of the County's Prop. 1B fourth allocation funds to the City for the purposes of improvements to local transportation facilities that will assist in reducing traffic congestion and further deterioration, improving traffic flows, or increasing traffic safety ("Prop. 1B Funds"). The expenditure of Prop. 1B Funds is to be in accordance with Government Code section 8879.20 et seq., and all other applicable State rules, regulations and guidelines ("Prop. 1B Requirements"); and

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual covenants and conditions contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION I

A. Upon approval of the City's project(s) by the Board of Supervisors, County shall include the City's project(s) in the Prop. 1B fourth allocation project list to be submitted to the

State Department of Finance. The City project(s) approved by the Board of Supervisors for Prop. 1B funding is attached hereto as the County of Orange funded Proposition 1B Fourth Allocation Project(s) in City of Garden Grove (Exhibit A).

B. Upon full execution of this agreement by both City and County, County will disburse a portion of its Prop. 1B Funds to the City in the amount shown on Exhibit A, or as limited by Section II.A, below.

C. The City shall expend Prop. 1B Funds on the project(s) listed in Exhibit A exclusively within City's jurisdiction in accordance with all Prop 1B Requirements. This includes, but is not limited to, meeting the project delivery and expenditure deadlines, and using the County's Prop. 1B allocation to reduce City's traffic congestion and further deterioration, improving traffic flows, or increasing traffic safety.

D. Prop. 1B Funds shall be expended no later than June 30, 2013 ("Deadline"). Any Prop. 1B Funds not expended by the Deadline or by the State-authorized extension shall promptly be returned to the County, but in no event shall funds be returned later than sixty (60) days after the Deadline or by the State-authorized extension. If the City determines at any time that the City cannot expend Prop. 1B Funds by the Deadline or by the State-authorized extension, the City shall immediately notify the County in writing of this determination. The City shall then return its remaining Prop. 1B Funds within sixty (60) days of said notification.

E. County will conduct a City expenditure assessment status report in accordance with the reporting schedule set by the Department of Finance in order to verify if City is expending its Prop. 1B Funds in accordance with Prop. 1B Requirements. The status report shall include the date of project award, amount of award, percent completion of project, estimated completion date, the amount of funds that have been expended, the remaining County Prop. 1B allocation to be expended, and any other information or documentation relating to City's expenditure of Prop. 1B Funds. Upon request by County, the City shall provide County with said Prop. 1B Funds status report within fourteen (14) days of the request.

F. In the event of an audit by the State, the City shall provide State and/or County all documentation requested by the State within the timeframe required by the State. The City shall work cooperatively with the County during the course of the audit. The City shall attend all audits and audit proceedings, as needed. If the State finds that any City expenditure of Prop. 1B Funds is ineligible or does not comply with Prop. 1B Requirements, the amount of the ineligible expenditure and any other penalties or assessments shall be immediately reimbursed to the County, which will be returned to the State. The amount of the ineligible expenditure including any other penalties or assessments shall be reimbursed to the County no later than 60 days from the State's determination.

SECTION II

MISCELLANEOUS PROVISIONS:

A. Availability of Funds The County's obligation is subject to the availability of funds appropriated for this Agreement, and nothing herein shall be construed as obligating the County to expend funds or as involving the County in any contract or other obligation for future payment of money in excess of appropriations authorized by law. Further, County's distribution of funds to the City depends entirely on the County receiving its Prop. 1B allocation from the State. County shall not disburse the City's allocation until such time that the County receives its Prop. 1B allocation from the State. County also reserves the right to limit, reduce, delay or terminate the City's Prop. 1B disbursement identified in Exhibit A for any reason, and at any time, including, but not limited to, a State delay or reduction in the County's Prop. 1B allocation, ineligibility of all or a portion of City's project(s), or suspension or reduction of other County road funds.

B. Indemnification City shall indemnify, defend with counsel approved in writing by County, save and hold County and each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses of every type and description to which they may be subjected arising out of any act or omission of, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this Agreement. Should the State determine that any City Prop. 1B Funds to be ineligible, City is liable for any interest payments, fines, penalties or other forfeitures that may be assessed by the State.

City shall return Prop. 1B Funds to the County within the timeframe contemplated under this Agreement should 1) City fail to expend any portion of its Prop. 1B Funds within the timeframe under this Agreement; 2) the State or County deem any City expenditure of Prop. 1B Funds to be ineligible; or 3) this Agreement be found to be incompatible with State law.

C. Assignment This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. No assignment of City's interest in this Agreement shall be made without the written consent of the County. Furthermore, City agrees that Prop 1B Funds shall not be expended on, given to, shared with, or otherwise provided to any other city, local agency or other entity not contemplated under this Agreement.

D. Entirety & Amendments This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

E. Severability If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

F. Calendar Days Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

G. Notices Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

City: Director of Public Works/City Engineer
Public Works Department
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Phone: (714) 741-5375
Facsimile: (714) 741-5205

and

County: Director/Chief Engineer, OC Engineering
Orange County Public Works
County of Orange
PO Box 4048
Santa Ana, CA 92702-4048
Phone 714-667-3213
Facsimile 714-834-2496

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this Agreement, addressed in any other fashion shall be deemed not given.

H. Termination County may terminate this Agreement for any reason provided that such termination shall be accomplished by delivery of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt.

I. Breach The failure of the City to comply with any of the terms and conditions of this Agreement shall be a material breach of this Agreement. In such event the County may:

1. Afford the City a written Notice of Breach and Notice of Termination, and in the County's discretion, provide for thirty (30) days within which to cure the breach;
2. Discontinue all Prop. 1B Fund allocations during the period in which the City is in breach; and/or
3. Offset Prop. 1B Fund allocations against any invoices billed by the City.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Mayor or any City official authorized to sign agreements on behalf of the City and attested by its Clerk, on the dates written opposite their signatures, all thereunto duly authorized by the City Council.

City of Garden Grove,
a municipal corporation

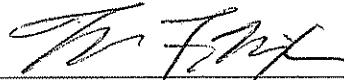
Date: _____

By: _____
Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

By:  _____
City Attorney

IN WITNESS WHEREOF, County has caused this Agreement to be executed by the Chairman of the Board of Supervisors and attested by its Clerk on the dates written opposite their signatures, all thereunto duly authorized by the Board of Supervisors.


County of Orange,
a political subdivision of the State of California

Date: 12-14-10

By: 
Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: 
Darlene J. Bloom
Clerk of the Board of Supervisors of
Orange County, California



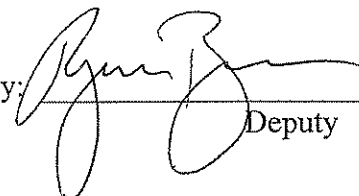
By: 
Deputy

EXHIBIT A

County of Orange funded PROPOSITION 1B Projects in City of Garden Grove

2009-10 State Appropriation (FOURTH ALLOCATION to County of Orange)

Supervisory District	Project & Limits	Lead Agency	Prop. 1B Allocation
1	Prop 1B Central Garden Grove Street Rehabilitation (Overlay) Phase III	City of Garden Grove	\$350,000
TOTAL =			\$350,000