

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	William E. Murray
Dept.:	City Manager	Dept.:	Public Works
Subject:	MEASURE M2 COMPREHENSIVE TRANSPORTATION FUNDING PROGRAMS MASTER AGREEMENT NO. C-1-2764 WITH THE ORANGE COUNTY TRANSPORTATION AUTHORITY		
		Date:	August 9, 2011

OBJECTIVE

To recommend that the City Council approve Master Agreement with the Orange County Transportation Authority (OCTA) for the Measure M2 Comprehensive Transportation Funding Program (CTFP).

BACKGROUND

In November 2006, Orange County voters approved the renewal of Measure M for the next thirty years in order to meet the expected regional growth and continue the investment in the County's infrastructure. One of the financing plans included was the Comprehensive Transportation Funding Program, which is a collection of competitive grant programs offered to local agencies.

DISCUSSION

All cities are required to execute a CTFP Master Agreement with OCTA to be eligible to receive competitive funding during future grant cycles. Selected projects will be incorporated into a Project List by way of a Letter Agreement executed between the City and OCTA.

The OCTA's Board of Directors executed the attached Master Agreement in June 2011 and is requiring City's approval. All terms, conditions and funding responsibilities between OCTA and the City are included in the Master Funding Agreement.

FINANCIAL IMPACT

There is no impact to the General Fund. The attached agreement is required to receive future CTFP grant funding.

MEASURE M2 COMPREHENSIVE TRANSPORTATION FUNDING PROGRAMS MASTER
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AUTHORITY

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RECOMMENDATION

It is recommended that the City Council:

- Approve the Master Funding Agreement No. C-1-2764 with the Orange County Transportation Authority for M2 Comprehensive Transportation Funding Programs; and
- Authorize the Mayor to execute Agreement on behalf of the City.



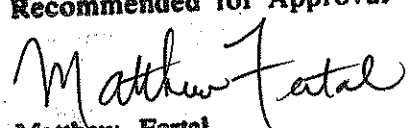
WILLIAM E. MURRAY, P.E.
Public Works Director/City Engineer



By: Ana Ramirez
Administrative Aide

Attachment: Master Agreement

Recommended for Approval



Matthew Fernal
City Manager

MASTER FUNDING AGREEMENT NO. C-1-2764**BETWEEN****ORANGE COUNTY TRANSPORTATION AUTHORITY****AND****CITY OF GARDEN GROVE****FOR****M2 COMPREHENSIVE TRANSPORTATION FUNDING PROGRAMS**

THIS AGREEMENT is effective this _____ day of _____ 2011, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, CA 92840, a municipal corporation (hereinafter referred to as "AGENCY").

RECITALS:

WHEREAS, Voters approved Renewed Measure M (M2) on November 7, 2006; and

WHEREAS, Orange County Local Transportation Authority Ordinance No. 3 outlines the M2 Transportation Ordinance and Investment Plan to fund transportation facility and service improvement programs for a period of thirty years commencing on April 1, 2011; and

WHEREAS, AUTHORITY and AGENCY agree that M2 funding is subject to AGENCY fulfilling M2 eligibility requirements; and

WHEREAS, AUTHORITY's Board of Directors approved the Renewed Measure M Eligibility Guidelines - Local Agency Preparation Manual on January 25, 2010 and subsequent amendments on March 14, 2011 and April 11, 2011; and

WHEREAS, AUTHORITY's Board of Directors approved the Comprehensive Transportation Funding Programs (CTFP) Guidelines on March 22, 2010; and

WHEREAS, AUTHORITY will periodically update the Renewed Measure M2 Eligibility Guidelines - Local Agency Preparation Manual and the CTFP Guidelines whereby the most recent

1 update is incorporated herein by reference; and

2 **WHEREAS**, AUTHORITY has approved AGENCY's competitive project(s) (hereinafter referred
3 to as "PROJECT(s)") as specified in Attachment A "Projects List" to receive funding under the CTFP;
4 and

5 **WHEREAS**, AUTHORITY has determined that AGENCY's PROJECT(s) has met the
6 requirements of and is eligible under the CTFP Guidelines; and

7 **WHEREAS**, AGENCY's "Project List" may be amended to include new projects with each
8 competitive call for projects and will be incorporated by Letter Agreement executed by both parties and
9 incorporated herein; and

10 **WHEREAS**, the Letter Agreement may include additional requirements for PROJECT(s) funded
11 with sources other than M2 or Local Fair Share Net Revenues sources; and

12 **WHEREAS**, AUTHORITY and AGENCY agree that Local Fair Share Program Net Revenues
13 are distributed on a formula basis to eligible jurisdictions; and

14 **WHEREAS**, payment terms for this Master Funding Agreement will be in accordance with
15 Chapter 10 of the CTFP Guidelines; and

16 **WHEREAS**, this Master Funding Agreement defines the specific terms and conditions and
17 funding responsibilities between AUTHORITY and AGENCY for CTFP and Local Fair Share Program
18 Net Revenues; and

19 **WHEREAS**, AUTHORITY's Board of Directors approved this Master Funding Agreement on
20 June 27, 2011; and

21 **WHEREAS**, the AGENCY's City Council approved this Agreement on the _____ day of
22 _____ 2011;

23 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and AGENCY as
24 follows:

25 **ARTICLE 1. COMPLETE AGREEMENT**

26 A. This Agreement, including any attachments incorporated herein and made applicable by

1 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this
2 agreement between AUTHORITY and AGENCY and it supersedes all prior representations,
3 understandings, and communications. The invalidity in whole or in part of any term or condition of this
4 Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement. The above
5 referenced Recitals are true and correct and are incorporated by reference herein.

6 B. AUTHORITY'S failure to insist on any instance(s) of AGENCY's performance of any
7 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
8 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s), and
9 AGENCY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of
10 this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by
11 an authorized representative of AUTHORITY by way of a written amendment to this Agreement and
12 issued in accordance with the provisions of this Agreement.

13 C. AGENCY's failure to insist on any instance(s) of AUTHORITY's performance of any
14 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
15 AGENCY's right to such performance or to future performance of such term(s) or condition(s), and
16 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any
17 portion of this Agreement shall not be binding upon AGENCY except when specifically confirmed in
18 writing by an authorized representative of AGENCY by way of a written amendment to this Agreement
19 and issued in accordance with the provisions of this Agreement.

20 **ARTICLE 2. SCOPE OF AGREEMENT**

21 This Agreement specifies the roles and responsibilities of both AUTHORITY and AGENCY as
22 they pertain to the subjects and projects addressed herein. Both AUTHORITY and AGENCY agree
23 that each will cooperate and coordinate with the other in all activities covered by this Agreement and
24 any other supplemental agreements, including Letter Agreements, which may be required to facilitate
25 purposes thereof.

26 /

ARTICLE 3. RESPONSIBILITIES OF AUTHORITY

AUTHORITY agrees to the following responsibilities for funding of PROJECT(s):

A. AUTHORITY shall allocate M2 Net Revenues as specified in Ordinance No. 3 and pay AGENCY in accordance with the policies and procedures contained in the CTFP manual and AUTHORITY's Board of Directors approved PROJECT budgets.

B. AUTHORITY shall provide guidance and oversight of the M2, state and federal funds in compliance with M2 eligibility guidelines, CTFP Guidelines, state and federal funding requirements and allocation and reporting requirements.

C. Within thirty (30) days of receipt of an acceptable initial payment CTFP invoice and within sixty (60) days for an acceptable final payment invoice for eligible expenditures, AUTHORITY shall, in accordance with Chapter 10 of the CTFP Guidelines, remit to AGENCY the required reimbursement for applicable planning, environmental, engineering, right-of-way and construction activities.

D. AUTHORITY shall pay Net Revenues allocated for the Local Fair Share Program to eligible AGENCY within sixty (60) days of receipt by AUTHORITY.

E. AUTHORITY shall process any required Federal Transportation Improvement Program (FTIP) amendments, Subject to state and federal regulations and guidelines prepared by the Southern California Association of Governments.

F. At the request of AGENCY, AUTHORITY shall, in accordance with AUTHORITY specification and no cost to the AGENCY excluding installation and removal expenses, provide signage for all construction PROJECT(s) that are in excess of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) and exceed a ninety (90) day construction schedule.

G. AUTHORITY, or agents of AUTHORITY, may upon close-out of each PROJECT(s) under this Agreement, perform an audit and or technical review to ensure that CTFP Guidelines policies and procedures were followed. Such audit shall be performed within one hundred and eighty (180) days of AUTHORITY receiving the final report for each PROJECT(s). If the audit or technical review

determines that any of the activities performed are ineligible for CTFP funding, AGENCY must return the amount of funding used to perform the ineligible activity to AUTHORITY in accordance with Article 4.G.

ARTICLE 4. RESPONSIBILITIES OF AGENCY

AGENCY agrees to the following responsibilities for PROJECT(s):

A. AGENCY or AGENCY's designee will act as the lead agency for all phases of the PROJECT(s) identified in Attachment A, approved for M2 funding.

B. AGENCY agrees that M2 funding is subject to AGENCY meeting all of the requirements outlined in the M2 Eligibility Guidelines and CTFP Guidelines.

C. AGENCY agrees to implement and complete PROJECT(s) funded under this Agreement in accordance with the CTFP Guidelines, M2 Eligibility requirements and application submitted to AUTHORITY.

D. AGENCY agrees to submit all PROJECT information to the Federal Transportation Improvement Program and OCFundTracker during semi-annual reviews and as requested by the AUTHORITY in accordance with the prescribed deadlines.

E. AGENCY agrees to obligate funds in the programmed year in accordance with the CTFP Guidelines and adhere to any additional requirements identified in any and all Letter Agreement(s) amended hereto.

F. AGENCY agrees to enter into and required Letter Agreement for PROJECT(s) approved by the Board to define specific funding and reporting requirements.

G. AGENCY shall return funds expended on activities, other than those approved by the AUTHORITY's Board of Directors, within thirty (30) day's of AUTHORITY's written demand. Any AGENCY which uses funds for other than transportation purposes shall be deemed ineligible to receive funds for a period of five (5) years.

H. AGENCY agrees to dispose of any acquired right-of-way in excess of the required transportation use. Excess right-of-way must be identified at the time of initial payment submittal and

1 prior to the disposal process. Resolution of any issues regarding whether or not a right-of-way is
2 excess to the transportation improvement will be by the mutual agreement of AUTHORITY and
3 AGENCY. Excess land acquired with CTFP funds shall be sold by AGENCY in accordance with
4 Government Code Sections 54220-54232 and proceeds from the sale shall be returned immediately to
5 AUTHORITY.

6 I. AGENCY will comply with all federal, state and local laws and regulations, including the
7 Renewed Measure M2 Eligibility Guidelines – Local Agency Preparation Manual and the CTFP
8 Guidelines, which are incorporated herein by reference.

9 J. AGENCY shall install and remove signage for all competitively awarded construction
10 PROJECT(s) that are in excess of \$500,000 and exceed a 90 day construction period in accordance
11 with AUTHORITY specifications during construction period. AGENCY may request AUTHORITY
12 furnished signage or it may choose to provide AGENCY furnished signage so long as said signage
13 conforms to AUTHORITY specifications as follows: Signage shall include a Measure M2 logo that is a
14 minimum of twelve inches (12") tall, an OCTA logo that is a minimum of three inches (3") tall (image
15 files provided by OCTA upon request), verbiage stating "Street Improvements Funded by Measure M"
16 in Myriad Pro, bold condensed font at two hundred and fifty six (256) pt. and "Your dollars at Work" in
17 Myriad Pro, bold condensed font at one hundred and eighty (180) pt.

18 **ARTICLE 5. DELEGATED AUTHORITY**

19 The actions required to be taken by AGENCY in the implementation of this Agreement are
20 delegated to its Director of Public Works, or his/her designee, and the actions required to be taken by
21 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive
22 Officer.

23 **ARTICLE 6. AUDIT AND INSPECTION**

24 AUTHORITY and AGENCY shall maintain a complete set of records in accordance with
25 generally accepted accounting principles. Upon reasonable notice, AGENCY shall permit the
26 authorized representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books,

accounts, and other data and records of AGENCY for a period of four (4) years after final payment, or completion of audit by the AUTHORITY, or after final payment of debt service where local fair share revenues were pledged, whichever is longer. For purposes of audit, the date of completion of this Agreement shall be the date of AUTHORITY's payment of AGENCY's final billing (so noted on the invoice) under this Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above provision with respect to audits shall extend to and/or be included in contracts with AGENCY's contractor(s).

ARTICLE 7. INDEMNIFICATION

A. AGENCY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's compensation subrogation claims, damage to or loss of use of property alleged to be caused by the negligent acts, omissions or willful misconduct by AGENCY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

B. AUTHORITY shall indemnify, defend and hold harmless AGENCY, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's compensation subrogation claims, damage to or loss of use of property alleged to be caused by the negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

C. The indemnification and defense obligations of this Agreement shall survive its expiration or termination.

ARTICLE 8. ADDITIONAL PROVISIONS

A. Term of Agreement: This Agreement shall continue in full force and effect through final acceptance of PROJECT by AUTHORITY, or until March 31, 2041 whichever is later. This Agreement may be extended at the mutual consent of both parties

1 B. Termination: This agreement is null and void if PROJECT is not awarded. However,
2 AUTHORITY agrees to reimburse AGENCY for any costs incurred up to the official date of notification
3 to AGENCY that PROJECT will not be awarded.

4 C. AUTHORITY and AGENCY shall comply with all applicable federal, state, and local
5 laws, statues, ordinances and regulations of any governmental authority having jurisdiction over the
6 PROJECT(s).

7 D. Legal Authority: AUTHORITY and AGENCY hereto consent that they are authorized to
8 execute this Agreement on behalf of said parties and that, by so executing this agreement, the parties
9 hereto are formally bound to the provisions of this Agreement.

10 E. Severability: If any term, provision, covenant or condition of this Agreement is held to be
11 invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
12 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or
13 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14 F. Counterparts of Agreement: This Agreement may be executed and delivered in any
15 number of counterparts, each of which, when executed and delivered shall be deemed an original and
16 all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

17 G. Force Majeure: Either Party shall be excused from performing its obligations under this
18 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
19 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;
20 commandeering of material, products, plants or facilities by the federal, state or local government;
21 national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of
22 such cause is presented to the other Party, and provided further that such nonperformance is
23 unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

24 H. Assignment: Neither this Agreement, nor any of the Parties rights, obligations, duties, or
25 authority hereunder may be assigned in whole or in part by either Party without the prior written consent
26 of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed

void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

I. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.

J. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

K. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party.

L. Notices: Any notices, requests, or demands made between the parties pursuant to this Agreement are to be directed as follows:

To AGENCY:	To AUTHORITY:
City of Garden Grove 11222 Acacia Parkway Garden Grove, CA 92840	Orange County Transportation Authority 550 South Main Street P.O. Box 14184 Orange, CA 92863-1584
ATTENTION: William Murray, Director of Public Works	ATTENTION: Marvin Cruz, Senior Contract Administrator
Tel: (714) 741-5375 Email: wem@ci.garden-grove.ca.us	Tel: (714) 560 – 5568 Email: mcruz@octa.net

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This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-1-2764 to be executed on the date first above written.

CITY OF GARDEN GROVE

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

William Dalton
Mayor

By: _____

Will Kempton
Chief Executive Officer

ATTEST:

APPROVAL RECOMMENDED:

By: _____

Kathy Bailor
City Clerk

By: _____

Kia Mortazavi
Executive Director, Planning

Dated: _____

Dated: _____