

PROPOSITION 1B CITY AGREEMENT

This CITY AGREEMENT, Agreement No. D08-034 ("Agreement") is made and entered into this day of _____, ~~2012~~ 2008, 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. Pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, codified at Government Code sections 8879.20 et. seq., the County anticipates receipt of approximately \$61.6 million in Local Streets and Roads State bond funds over the next ten years to be used for the purposes of reducing local traffic congestion and further deterioration, improving traffic flows, or increasing traffic safety ("Proposition 1B"). The County's first allocation will be for Fiscal Year 2007-08 in the amount of \$24,683,910.29. Prior to receiving this allocation, the County is required to adopt into the County budget projects expected to be funded with Proposition 1B funds, and submit a list of these projects to the State Department of Finance for review. The County shall have three fiscal years to expend its Proposition 1B allocation following the fiscal year in which the allocation was made by the Controller, and any funds not expended within that period shall be returned to the Controller for reallocation.

B. The California State Legislature has determined that the improvement and maintenance of all city streets is of general County interest.

C. The County believes that it is of general County interest to extend aid to the cities within the County for the general improvement and maintenance of City streets and therefore desires to extend a portion of the County's Proposition 1B allocations to participating cities.

D. The City owns and operates streets in need of traffic congestion and traffic safety improvements, such as routine roadway maintenance and storm drain improvements, and acknowledges that it has limited funds by which to address these needs. Therefore, the City is in support of receiving a portion of the County's Proposition 1B allocation.

E. Pursuant to Streets & Highways Code section 1686, the Board of Supervisors has passed Resolution No. 08-016 on March 4, 2008, finding that the purposes of this Agreement are of general County interest and that County aid shall be extended therefore. This resolution provides for the basis and conditions upon which allocations will be made from the County Road Fund (Proposition 1B) for the improvement and maintenance of City streets.

F. On March 4, 2008, the Board of Supervisors approved a list of County and City Proposition 1B projects to be submitted to the Department of Finance for review and disbursement of Proposition 1B funds.

Exhibit B

Agreement No. D08-034

G. This Agreement sets forth the terms and conditions by which the County will extend a portion of its Proposition 1B allocation to the City, and the City will follow all State Proposition 1B laws, State regulations, and any and all guidelines or other documents issued by the Department of Finance, the Controller, or any other State agency that is intended to interpret Proposition 1B ("Proposition 1B Requirements").

WHEREAS, on June 17, 2008 the County entered into Agreement No. D08-034 for the City to receive as aid, a portion of the County's Proposition 1B allocation in order to fund necessary roadway improvements in the City that are in the general County interest; and

WHEREAS, a portion of the funds the City was allocated includes \$500,000 for the Bolsa Avenue Utility Undergrounding and Traffic Safety Improvements project; and

WHEREAS, such funds were deposited with the City on July 30, 2008; and

WHEREAS, the City wishes to redirect the \$500,000 allocation to the Fairview Street/Trask Avenue Intersection Improvements project; and

WHEREAS, the City and County mutually agree to redirect the \$500,000 allocation from the Bolsa Avenue Utility Undergrounding and Traffic Safety Improvements project to the Fairview Street/Trask Avenue Intersection Improvements project; and

WHEREAS, City has identified additional Proposition 1B eligible projects that the City wishes to fund utilizing an additional portion of the County's Proposition 1B allocation in the total amount of \$800,000; and

WHEREAS, the County desires to extend additional Proposition 1B aid to the City in the total amount of \$800,000 in order to fund additional roadway and traffic safety improvements that are in the general County interest; and

WHEREAS, on September 29, 2009 the County and City executed Amendment No. 1 to D08-034, which included providing City an additional \$300,000 of County's Proposition 1B funds to help fund the City's Civic Center Dynamic Message Sign Project; and

WHEREAS, these additional funds were deposited with the City on December 23, 2008; and

WHEREAS, the City completed the Civic Center Dynamic Message Sign Project with a total cost of \$81,753.26, which resulted in \$218,246.74 in unexpended Proposition 1B funds; and

WHEREAS, on September 1, 2011, the City provided written notification to the County of the unexpended amount of Proposition 1B funds, and pursuant to Section I.F of the Agreement, unexpended funds must be returned to the County within a timely manner; and

WHEREAS, the City and County desire to redirect a portion of the unexpended Proposition 1B funds in an amount totaling \$90,000 to fund additional roadway and traffic safety improvements projects in the City that are in the general County interest; and

SECTION I

IT IS MUTUALLY UNDERSTOOD BY THE PARTIES THAT:

A. County shall submit a Proposition 1B project list to the Department of Finance for review and disbursement of the County's first Proposition 1B allocation. The City project(s) approved by the Board of Supervisors for Proposition 1B funding is attached hereto as Exhibit A. This Agreement allows the disbursement of a portion of the County's Proposition 1B funds to the City without the requirement of City submitting an invoice requesting Proposition 1B funds.

B. Upon receipt of this allocation from the State, County will timely issue a portion of its allocation to City, in the amount shown on Exhibit A, or as limited by the State should the State pre-determine that any City project or portion of the project is ineligible.

C. City shall abide by all Proposition 1B Requirements, as these requirements may change from time to time. This includes, but is not limited to, meeting the project delivery and expenditure deadlines, and using the County's Proposition 1B allocation to reduce City's traffic congestion and further deterioration, improving traffic flows, or increasing traffic safety.

D. County will conduct a City expenditure assessment at the end of the twelve (12) and twenty-four (24) month periods in order to verify if City is expending its Proposition 1B allocation as provided for by Proposition 1B Requirements. City shall report the status of its Proposition 1B project(s) to County on or before June 10, 2009 and June 10, 2010 for FY 2007-08 allocation. 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, and the remaining County Proposition 1B allocation to be expended. In the event County wishes to conduct a City expenditure assessment at any time prior to the end of a fiscal year, City shall provide a status report to County within two (2) weeks of a written request in accordance with Section 1.D.

E. County will prepare any necessary amendments to the Proposition 1B project list in June 2009 and June 2010 based on the status reports of all Proposition 1B participating cities. If one or more city status reports show an inability to expend the entire Proposition 1B allocation within the required statutory timeframe, or if the County or State deems any expenditure to be ineligible, County in its sole discretion will determine whether to reallocate the unexpended city funds to the City by preparing a revised Proposition 1B project list for the DOF and an amendment to this Agreement. In no event will County submit a revised project list to the DOF more than once per fiscal year.

Exhibit B

Agreement No. D08-034

F. City shall expend its Proposition 1B allocation no later than June 30, 2011 per Proposition 1B Requirements. Fiscal year 07-08 Proposition 1B funds may only be expended after County receives its 1B allocation from the State. Any portion of the city's allocation not expended by this deadline shall be returned to the County in a timely manner, but no later than August 31, 2011.

G. In the event of an audit, City shall provide County, and the State if necessary, all project and finance documentation as required within the timeframe specified by the State. City shall attend all audits involving its Proposition 1B projects as required by State. If the State finds that any City expenditure is ineligible or is out of compliance with Proposition 1B Requirements, that expenditure shall be reimbursed to the County no later than 60 days from the State's determination.

Exhibit A has been revised to redirect the \$500,000 County's Proposition 1B allocation from the Bolsa Avenue Utility Undergrounding and Traffic Safety Improvements project to the Fairview Street/Trask Avenue Intersection Improvements project, and to provide the City with an additional \$800,000 of County's Proposition 1B funds to be allocated as follows: 1) \$500,000 for the City's Central Garden Grove Overlay project, and 2) \$300,000 for its Civic Center Dynamic Message Sign project.

City will return \$128,246.74 in unexpended Proposition 1B funds to County within thirty (30) calendar days of the County's invoice.

Exhibit A of this Agreement, attached hereto, shall be revised to redirect a portion of the unexpended Proposition 1B funds in the amount of \$90,000 to the City's Central Garden Grove Street Rehabilitation (Overlay) Phase III Project.

All other conditions and requirements of Agreement No. D08-034 remain in full force.

SECTION II

MISCELLANEOUS PROVISIONS:

A. Availability of Funds County's distribution of funds to the City depends entirely on the County receiving its Proposition 1B allocation from the State. County shall not disburse the City's allocation until such time that the County receives its Proposition 1B allocation from the State.

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. City shall return its Proposition 1B

Exhibit B

Agreement No. D08-034

allocation to the County (or State as appropriate, with written consent from the County) within the timeframe contemplated under this Agreement should 1) City fail to expend all of its Proposition 1B allocation within the specified timeframe; 2) the State or County deems any City expenditure to be ineligible; or 3) the County's Proposition 1B aid to cities be found to be incompatible with Proposition 1B Requirements.

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 Proposition 1B allocations 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
Fax 714-741-5205

and

County: Director of Public Works
County of Orange
PO Box 4048
Santa Ana, CA 92702-4048
Phone 714-834-2308
Facsimile 714-834-2496

Exhibit B

Agreement No. D08-034

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 the City has not awarded any project on which its allocation will be expended. After the City has awarded a project on which its allocation will be expended, County may terminate this Agreement if the City is in breach of this Agreement. Any such termination shall be accomplished by delivery to City a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding is terminated, and the date upon which the termination is effective.

No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, City either cures the default involved or, if not reasonably susceptible to cure within said thirty (30) day period, City proceeds thereafter to complete the cure in a manner and time line acceptable to County. During this period before the effective termination date, City and County shall meet to attempt to resolve any dispute.

I. Breach The failure of the City to comply with any of the terms and conditions of this Agreement or the Proposition 1B Requirements shall be a material breach of this Agreement.

J. Binding Obligation The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

K. Governing Law and Venue This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

L. Attorney's Fees In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

M. Waiver of Jury Trial Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any

Exhibit B

Agreement No. D08-034

way connected with this Agreement and/or any other claim of injury or damage.

Exhibit B

Agreement No. D08-034

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Mayor and attested by its Clerk, and 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 City Council and the Board of Supervisors, respectively.

City of Garden Grove,
a municipal corporation

Date: _____

By: _____
Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

By: _____
City Attorney

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

Date: _____

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 B

Amendment No. 42 to Agreement No. D08-034

EXHIBIT A (Revision 12)

County of Orange funded Proposition 1B Projects in City of Garden Grove
2007-08 Appropriation (First Allocation to County of Orange)

Supervisory District	Project & Limits	Lead Agency	Prop. 1B allocation
1	Garden Grove Blvd. Median Modifications between Beach Blvd. and Brookhurst St.	City of Garden Grove	\$100,000.00
	Harbor Blvd. Intelligent Traffic Systems (ITS) project, Traffic Light Synchronization	City of Garden Grove	\$300,000.00
	Fairview Street/Trask Avenue Intersection Improvements	City of Garden Grove	\$500,000.00
	Central Garden Grove Overlay	City of Garden Grove	\$500,000.00
	Civic Center Dynamic Message Sign at the intersection of Euclid St. and Acacia Parkway	City of Garden Grove	\$300,000.00 \$81,753.26
	Central Garden Grove Rehabilitation (Overlay) Phase III	City of Garden Grove	\$90,000.00
TOTAL			\$1,700,000.00
			\$1,571,753.26