



# **CITY COUNCIL AGENDA REPORT**

MEETING DATE: FEBRUARY 5, 2008

ITEM NUMBER:

**VI-6**

**SUBJECT:** COUNTY OF ORANGE CITY AID PROGRAM AGREEMENT FOR FY 08/09

**DATE:** JANUARY 24, 2008

**FROM:** PUBLIC SERVICES/ADMINISTRATION

**PRESENTATION BY:** PETER NAGHAVI, ACTING PUBLIC SERVICES DIRECTOR

**FOR FURTHER INFORMATION CONTACT:** DONNA THERIAULT, 714-754-5024

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## **RECOMMENDATION:**

Approve the agreement (Attachment 1) with the County of Orange for participation in the Proposition 42 City Aid Program funding for Fiscal Year 2008/2009, and authorize the Mayor and the City Clerk to sign.

## **BACKGROUND:**

On July 31, 2007, the Orange County Board of Supervisors adopted Resolution No. 07-109, allowing for the sharing of the County's Proposition 42 (Prop. 42) funds with Orange County cities, and approved an allocation of \$10M for the City Aid Program (CAP) for Fiscal Year (FY) 08/09. The CAP has been formulated to provide Orange County cities with additional funds for city roadway maintenance projects. Of this grant funding, Costa Mesa is to receive \$381,898 in FY 08/09 as our population based percentage of the County's CAP program. There is no City matching fund requirement to receive this funding. Further, the County's CAP grant funds are in addition to the Prop. 42 programmed funds the city is to receive in FY 08/09, directly from the State.

In August 2007, the County issued a "call for projects" to Orange County cities requesting cities submit a list of Prop. 42 eligible projects to participate in the CAP program. Costa Mesa submitted a project list (Exhibit A to Attachment 1) and was notified by the County in December 2007 that our project list met the criteria for participation in the CAP program.

## **ANALYSIS:**

The attached Prop. 42 CAP agreement requires the City to commit to the following:

1. maintain its existing "Maintenance of Effort" use of local funds for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair;
2. expend its CAP allocation by June 30, 2010 on Prop. 42 eligible projects or return CAP allocations to the County; and
3. provide the County with FY 08/09 CAP expenditure certification by August 31, 2010.

County staff will distribute CAP allocations to the City once the County receives its Prop. 42 funding from the State, and receives the attached CAP agreement executed by the Orange County Board of Supervisors. Distribution of CAP allocations will be made to the City, on a first come first serve basis, with the submittal of proof of project award documentation and a City invoice. It must also be noted that successful implementation of the CAP is dependent on the County receiving its programmed Prop. 42 funding from the State for FY 08/09. Any delay or change to the State's Prop. 42 grant program may directly impact the CAP implementation. The County's tentative schedule to approve the CAP agreements is April 2008.

The streets listed on Exhibit A of Attachment 1 are the top priority streets as listed on the City's Pavement Management System, and are in need of major repair.

**ALTERNATIVES CONSIDERED:**

The City Council could choose to not approve the CAP agreement, in which case the City would not receive the \$381,898 Prop. 42 funding.

**FISCAL REVIEW:**

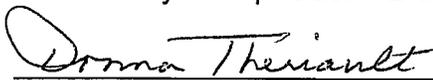
There is no General Fund fiscal impact associated with this action. The City will utilize the CAP funding, in addition to Gas Tax and Measure M revenues, to fund the total cost to rehabilitate the streets on the Project List (Exhibit A to Attachment 1).

**LEGAL REVIEW:**

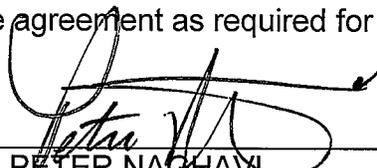
The City Attorney's Office has reviewed the documents and approved them as to form.

**CONCLUSION:**

It is recommended that City Council execute the agreement as required for participation in the County's Proposition 42 City Aid Program.



\_\_\_\_\_  
DONNA THERIAULT  
Management Analyst



\_\_\_\_\_  
PETER NAGHAVI  
Acting Public Services Director

DISTRIBUTION: City Manager  
City Attorney  
Finance Director  
City Clerk  
City Engineer  
Staff

ATTACHMENT: 1 Proposition 42 City Aid Program Agreement with Exhibits

**PROPOSITION 42  
CITY AID PROGRAM AGREEMENT**

This CITY AID PROGRAM AGREEMENT, Agreement No. D07-136 ("Agreement") is made and entered into this day of \_\_\_\_\_, 200\_, by and between the County of Orange, California, a political subdivision of the State of California ("County"), and the City of Costa Mesa, 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. The California State Legislature has determined that the improvement and maintenance of all city streets is of general County interest. Likewise, 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.

B. The County desires to assist Orange County cities with the improvement and maintenance of city streets and to help improve regional transportation needs within the County. Pursuant to California Constitution Article XIX B § 1 and Revenue Taxation Code § 7104, the County receives State Proposition 42 (Prop. 42) allocations from the State's Transportation Investment Fund (TIF) and Traffic Congestion Relief Fund (TCRF) for the purposes of street and highway maintenance, rehabilitation, reconstruction and storm damage repair, which are required to be deposited in the County's Road Fund.

C. Orange County cities have streets in need of routine roadway maintenance, minor roadway widening (non-capacity enhancing) and storm drain improvements, but have limited funds to address these needs.

D. With authorization from the State, the County has established its Prop. 42 City Aid Program (CAP) whereby the County will provide a portion of the County's Prop. 42 funds to the cities for the purposes of routine roadway maintenance, minor roadway widening (non-capacity enhancing) and storm drain improvements within the cities. Such purposes are to be in accordance with any and all laws, rules, regulations, and guidelines governing Prop. 42 allocations ("Prop. 42 Requirements").

E. The City owns and operates streets in need of routine roadway maintenance, minor roadway widening (non capacity enhancing) 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 Prop. 42 allocation funds through CAP.

F. Pursuant to Streets & Highways Code section 1686, the Board of Supervisors has passed Resolution No. 07-109, adopted by a four-fifths vote of its members, finding that the Purposes under 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 for expenditures upon City streets, bridges and culverts in cities within the County.

G. The County's City Aid Program (CAP) provides the guidelines for CAP, and is incorporated by reference and made a part of this Agreement.

## SECTION I

IT IS MUTUALLY UNDERSTOOD BY THE PARTIES THAT:

County shall:

- A. Distribute city aid allocation(s) per requirements of this agreement, the CAP, and Exhibit B. CAP allocations to cities shall be based on each city's population as of January 2007 information published by Demographic Research Unit of the California Department of Finance.
- B. Distribute city aid allocation(s) to cities, on a first come first serve basis, after receiving invoice along with proof of award documentation from the City for its project(s). Each City project will require invoice and proof of award documentation. The allocation will be based on City's invoice amount, which can include design, construction and construction administration costs. County will not begin disbursing allocations until County has received its first Prop. 42 allocation from the State for fiscal year 08/09. After County has received its first Prop. 42 allocation, County will disburse an allocation to the City upon receipt of award documents. County CAP allocations are entirely subject to Prop. 42 allocations to County from the State including any delays or changes in State law, rules, regulations, and guidelines.
- C. Coordinate with Cities on CAP projects. County's Director of Public Works or designee can authorize the substitution of CAP project(s) listed on Exhibit A to maximize full expenditure of the City's CAP allocation(s). The City must make this request in writing, and the proposed new project(s) shall be eligible for Prop. 42 funds and shall not exceed the Board approved City CAP allocation(s).
- D. Make every effort to expend any CAP funds returned to the County by the City if City returns funds in a timely manner. However, funds cannot be expended by the County; they shall be returned to the State.
- E. Review Annual CAP expenditure certification submitted by City (City's submittal will be no later than August 31 of each year). This certification is a list of completed projects and a statement that each project meets Prop. 42 requirements and is in compliance with the purposes of CAP (See CAP for sample of certification). City is responsible for ensuring that all projects meet CAP and Prop. 42 eligibility requirements and have expended such funds in the appropriate fiscal year.
- F. Conduct a City expenditure assessment each year to verify if City is expending its CAP funds in the timeframe contemplated under this Agreement.

SECTION II

City shall:

A. Maintain its existing "Maintenance of Effort" (MOE) of local funds for street and highway, maintenance, rehabilitation, reconstruction, and storm damage repair. The City must annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 1996-97, 1997-98, and 1998-99 fiscal years, as reported to the controller pursuant to the Streets & Highways Code Section 2151, in order to participate in the County Proposition 42 City Aid Program.

B. Provide County with invoice, along with proof of award documentation, for its project(s) in order to receive CAP funds. Each City project will require invoice and proof of award documentation. CAP allocation will be based on the contract award amount. County will not begin disbursing allocations until County has received its first Prop. 42 allocation from the State for fiscal year 08/09. After County has received its first Prop. 42 allocation, County will disburse a CAP allocation to the City upon receipt of invoice and award documents on a first come first serve basis. County's CAP allocations are subject to receiving Prop. 42 allocations from the State.

C. After receiving CAP funds from the County, advise the County, no later than two (2) months before the end of the expenditure cycle of each year, of any CAP funds that the City determines will not be expended within the time requirements of CAP. Any such CAP funds the City will be unable to expend by the deadline shall be returned to the County a minimum of thirty (30) calendar days prior to the end of the respective expenditure cycle. The County will attempt to reallocate these funds to other County projects that will expend the funds within the time requirements. However if the County is unable to expend or reallocate these funds, they will be returned to the State.

D. Expend CAP funds no later than June 30, 2010. Eligible expenditure for fiscal year 08/09 CAP allocation must occur between July 1, 2008 and June 30, 2010. Any funds not expended by this deadline shall be returned to the County in a timely manner, but no later than 60 days.

E. Prepare and submit to County annually, no later than August 31, 2010, CAP expenditure certification for all project(s) completed that corresponding fiscal year. This certification is a list of projects and a statement that each project meets Prop. 42 requirements and is in compliance with the purposes of CAP (See CAP for sample of certification).

F. In the event of an audit by the State, provide State all project and finance documentation as required within the timeframe specified by the State. City shall attend all audits involving its CAP projects as required by State. If the State finds that any City expenditure is ineligible or out of compliance with Prop. 42 requirements, that expenditure shall be reimbursed to the County, which will be returned to the State. The City shall reimburse the

County no later than 60 calendar days from State's formal determination, if State determines CAP expenditures are ineligible.

### SECTION III

#### Miscellaneous Provisions:

A. Availability of Funds County will recalculate the \$10M total CAP allocation to the cities if the County's total Prop. 42 allocation falls 10% or more below the anticipated \$19M yearly allocation. The adjustment down of the \$10M City allocations will be in the same ratio as the County's allocation is adjusted down from the anticipated \$19M. There will be no adjustment if the County's Prop. 42 allocation exceeds \$19M.

B. Project Documentation Cities shall promptly provide County and/or State, upon request, all project and finance documentation.

C. Indemnification City shall indemnify, defend with counsel approved in writing, 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 CAP funds to the County (or State as appropriate) within the timeframe contemplated under this Agreement should 1) City fail to expend all of its CAP allocation within the specified timeframe; 2) the State deem any City expenditure to be ineligible; or 3) the City Aid Program be found to be incompatible with State requirements.

D. 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 CAP allocations shall not be expended on, given to, shared with, or otherwise provided to any other city, local agency or other entity that is not contemplated under this Agreement.

E. 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.

F. 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.

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

H. 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 Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Phone 714-754-5298  
Facsimile 714-754-4942

and

**County:** Director of Public Works, RDMD  
County of Orange  
PO Box 4048  
Santa Ana, CA 92702-4048  
Phone 714-834-4377  
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.

I. Termination County may terminate this Agreement for any reason provided that the City has not awarded any project on which its CAP allocation will be expended. After the City has awarded a project on which its CAP 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 CAP 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 of 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. In the event of termination, County may proceed with the project work in a manner deemed proper by County.

J. 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 providing for thirty (30) days within which to cure the breach, in accordance with Section III.I (Termination);
2. Discontinue all CAP allocations during the period in which the City is in breach; and
3. Offset CAP allocations against any invoices billed by the City.

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 Costa Mesa,  
a municipal corporation

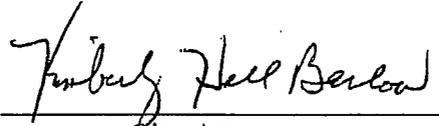
Date: \_\_\_\_\_

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

By:   
City Attorney

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

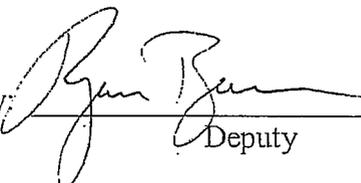
Date: \_\_\_\_\_

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



Proposition 42 City Aid Program  
Project List

*Exhibit A*

Agreement No.: (D07-136)

Date: November 14, 2007

Fiscal Year: FY08/09

To: County of Orange

City Contact Person: Fariba Fazeli, Senior Civil Engineer Phone: 714-754-5378

CAP Allocation Amount\*: (See Exhibit B)

Existing Pavement Condition Index (PCI)\*\*: Average PCI is 60

Item	Project	Project Limits	Project Description (Pavement Maintenance and/or Storm Damage Repair)	Estimated Cost	Estimated Award Date
1	Bear Street	Bristol Street to Baker Street	Removal and reconstruction of the pavement, damaged curb and gutter, sidewalk and driveways. Includes construction of access ramps per the Americans with Disabilities Act (ADA) standards.	\$1,350,000	December 2008
2	E. Wilson Street	SR 55 Freeway to Fairview Road	See Project 1	\$440,000	December 2008
3	Orange Avenue	E. 17 <sup>th</sup> Street to E. 18 <sup>th</sup> Street	See Project 1	\$770,000	December 2008
4	Pomona Avenue	W. 16 <sup>th</sup> Street to W. 18 <sup>th</sup> Street	See Project 1	\$1,540,000	December 2008
5	East 18 <sup>th</sup> Street	Newport Boulevard to Orange Avenue	See Project 1	\$990,000	December 2008
6	West 18 <sup>th</sup> Street	Newport Boulevard to Anaheim Avenue	See Project 1	\$520,000	December 2008
7	Newport Boulevard Alley #61	Bounded by Newport Blvd., Orange Ave., E. 15 <sup>th</sup> St. and E. 16 <sup>th</sup> St.	Removal of pavement and reconstruction with Portland concrete cement, and alley entrance approaches per the Americans with Disabilities Act (ADA) standards.	\$280,000	December 2008
8	Esther Street Alley #107	Bounded by Esther St., Westminster Ave., Santa Ana Ave., and Walnut St.	See Project 7	\$115,000	December 2008
9	Westminster Avenue Alley #108	Bounded by Esther St., Westminster Ave., Santa Ana Ave., and Walnut St.	See Project 7	\$70,000	December 2008
Total Cost:				<u>\$6,075,000</u>	

\*City Aid allocation for FY 08/09 must be fully expended by 6/30/10

\*\*Evaluation of Pavement Condition Index (PCI) should be consistent with OCTA's final report on "Countywide Assessment of Existing and Future Pavement Needs," dated March 2006.

## Orange County Funded Proposition 42 City Aid Program FY08/09 Allocation Schedule to Cities

ID	Orange County Cities	Population (Department of Finance Jan. 1, 2007)	% Population in O.C.	Prop. 42 CAP Allocations Based on Population
1	Santa Ana	353,428	11.86%	\$1,186,006
2	Anaheim	345,556	11.60%	\$1,159,590
3	Huntington Beach	202,250	6.79%	\$678,695
4	Irvine	202,079	6.78%	\$678,121
5	Garden Grove	172,781	5.80%	\$579,805
6	Orange	138,640	4.65%	\$465,237
7	Fullerton	137,367	4.61%	\$460,965
8	Costa Mesa *	113,805	3.82%	\$381,898
9	Mission Viejo	98,483	3.30%	\$330,482
10	Westminster	92,870	3.12%	\$311,646
11	Newport Beach	84,218	2.83%	\$282,612
12	Buena Park	82,452	2.77%	\$276,686
13	Lake Forest	78,243	2.63%	\$262,562
14	Tustin	70,350	2.36%	\$236,075
15	Yorba Linda	67,904	2.28%	\$227,867
16	San Clemente	67,373	2.26%	\$226,085
17	Laguna Niguel	66,608	2.24%	\$223,518
18	La Habra	62,483	2.10%	\$209,676
19	Fountain Valley	57,741	1.94%	\$193,763
20	Placentia	51,597	1.73%	\$173,145
21	Rancho Santa Margarita	49,718	1.67%	\$166,840
22	Cypress	49,284	1.65%	\$165,383
23	Aliso Viejo	45,037	1.51%	\$151,132
24	Brea	39,870	1.34%	\$133,793
25	Stanton	38,981	1.31%	\$130,809
26	Dana Point	36,946	1.24%	\$123,980
27	San Juan Capistrano	36,452	1.22%	\$122,323
28	Laguna Hills	33,391	1.12%	\$112,051
29	Seal Beach	25,962	0.87%	\$87,121
30	Laguna Beach	25,131	0.84%	\$84,333
31	Laguna Woods	18,426	0.62%	\$61,833
32	La Palma	16,162	0.54%	\$54,235
33	Los Alamitos	12,146	0.41%	\$40,759
34	Villa Park	6,251	0.21%	\$20,977
	<b>Total</b>	<b>2,979,985</b>	<b>100%</b>	<b>\$10,000,000</b>

Note: \$10M City Aid Program is based on the County receiving its expected Prop. 42 allocation of approx. \$19M for FY08/09.