



Meeting Date: 1/25/2011

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Cynthia Daniels *CD* Agenda Item No. I-7

Reviewed By: City Manager *JEB* City Attorney *SMF* Finance *JL* Other (Specify) \_\_\_\_\_

**DATE:** January 25, 2011

**TO:** City Council

**FROM:** Cynthia Daniels, Project Manager *Cynthia Daniels*  
Development Services Department

**SUBJECT:** Request for Cooperative Work Agreement with the California Department of Finance (DOF) for the Oxnard Blvd. Bicycle & Pedestrian Path

**RECOMMENDATION**

That City Council approve and authorize the Mayor to execute the request for a cooperative work agreement (CWA) with the California Department of Finance (DOF) in the amount of \$842,025.29 for the Oxnard Boulevard bicycle and pedestrian path between Vineyard Avenue and E. Fourth Street.

**DISCUSSION**

Background. In 1999, the City received from the federal Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) a grant for congestion mitigation and air quality improvements, known as CMAQ, (for expenditure beginning in federal fiscal year 2001/2002) for a bicycle and pedestrian path along Oxnard Boulevard from Vineyard Avenue to the Oxnard Transportation Center at 201 E. Fourth Street. On November 18, 2003, the City Council adopted Resolution 12,525 approving the preferred alignment for the Oxnard Boulevard bicycle and pedestrian facility. In March 2005, the City Council approved a special budget appropriation for \$857,000 for preliminary engineering and purchase of right of way. The facility is consistent with the Bicycle and Pedestrian Facilities Master Plan. The grant funding will expire on June 30, 2011.

Cooperative Work Agreement. The California Department of Transportation (Caltrans) requests City Council approval of a request for a CWA with the DOF to extend the expiration date of the grant funding. Attachment 1 is a spreadsheet of the request. Caltrans provided the format and did not permit revisions to make the document more readable. The project expended \$14,974.71 as of October 2010. The remaining grant funding is \$842,025.29. The delay in spending the grant funding is due to design changes and delay in acquiring the right of way. The request for the CWA would allow the City to retain the grant funding for one additional year. If DOF approves the City's request, no further action is required by the City Council. Without the CWA, the City would have to submit an invoice for reimbursement of the remaining funds by April 2011 to avoid losing the money. The City is unlikely to

meet this deadline. In February, staff will bring the issue of acquiring the right of way for this project to the City Council. The grant funds are expected to be used for constructing the bicycle and pedestrian path and related amenities within the sports park on the southeast corner of Gonzales Road and Oxnard Boulevard, however, construction is not expected to start before June 30, 2011. Caltrans expects DOF to make a decision on the request for a CWA by April 1, 2011.

## **FINANCIAL IMPACT**

The requested action is the first step in retaining for one additional year the remaining grant funding of \$842,025.29 in the project budget named "Oxnard Blvd. Ped & Bicycle," Account No. 265-3167-826 Project No. 003113.

CD

Attachment #1 - CWA Request

Attachment #2 - CWA Frequently Asked Questions

Dist	Agency Name	Project Prefix	Project Number	Location Name	Work Type Description	Project Status Code	Initial Project Amount (for FY)	Expenditure Amt (for FY)
07	City of Oxnard	CML	5129(029)	Oxnard	Construct bicycle and pedestrian facility along Oxnard Blvd. between Vineyard Avenue and E. Fourth St.	6A	\$ 857,000.00	\$ 14,974.71

Number of Projects: 1 \$ 857,000.00 \$ 14,974.71

Signature of Approving Agency's Board or Council:

\_\_\_\_\_

Print Name:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

Date:

\_\_\_\_\_

ATTACHMENT 1  
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Local Assistance Program (20.30)  
 CWA Master Report for Cycle VIII  
 As of September 28, 2010

Unliquidated Encumbrance Balance (for FY)	Date Balance will be billed to Caltrans (month/year)	Requesting a CWA? (Yes/No)	Is project consistent with original scope & purpose of Appropriation?	Delay Code
\$ 842,025.29	Mar-12	Yes	Yes	1, 2

\$ 842,025.29

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Reason for Delay (Enlarged Text):

On November 25, 2003, the city council approved Resolution 12,525 approving the alignment for the bicycle and pedestrian facility. The city hired consultants to prepare design plans and appraisals for the right of way to be acquired as easements. In June 2007, the city presented offers to the Union Pacific Railroad (UPRR) and Southern California Edison (SCE) for purchase of the right of way easements needed for the bike path along the railroad tracks. Both parties rejected the offers. In June 2007, the city council did not adopt a resolution of necessity to condemn both UPRR and SCE properties. SCE objected to the condemnation effort, and city council was persuaded not to condemn either property.

Staff considered a redesign that avoided the SCE easement. SCE offered a license agreement rather than agree to an easement. A redesign of the bike path alignment required a new appraisal and offer to UPRR. The new offer was given to UPRR in July 2009, and rejected by UPRR in August 2009. The city council's transportation policy committee directed staff to hold off on pursuing the acquisition of right of way from UPRR until the negotiations over a separate at-grade crossing at Camino Del Sol (along the bike path alignment) had been satisfactorily settled with UPRR.

In January 2011, city staff requested a federal transportation improvement program (FTIP) amendment to shift funds from the right of way phase to the construction phase for the project. This request would allow the city to expend funds for the construction of the bike path within a proposed public park in the approved alignment. The construction is estimated to begin in June 2011 and be completed by February 2012. In February 2011, staff will bring the issue of acquiring right of way for this project to the city council.

The estimate for design and construction within the public park is \$256,322. The FTIP amendment would leave \$563,397 in the right of way phase, and \$140,281 in the preliminary engineering phase.



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Identify Any Impediments For Completion	Will Project Be Completed Within Extension? (Yes/No) Completion Date?	Name of Local Agency Contact Providing Info	Additional Comments
<p>The FTIP must be amended to shift funds from the right of way phase to the construction phase. The request for a FTIP amendment was submitted to the Ventura County Transportation Commission in January 2011. We do not expect any problem with obtaining the amendment. The city council must approve a resolution of necessity to condemn the Union Pacific Railroad right of way for the bike path alignment outside of the public park. The city estimates the cost for acquiring right of way through eminent domain proceedings will exceed the city's project budget so the city is unlikely to complete acquisition of the entire alignment. The city must advertise, award, and construct the bike path within the public park within the time extension period provided by an approved CWA.</p>	<p>Yes, we expect the construction of the bike path within the public park will be completed by October 2012. We request a one year extension to June 20, 2012.</p>	<p>Cynthia Daniels, Project Manager, Email: cynthia.daniels@ci.oxnard.ca.us</p>	<p>Please open the cell with the explanations because the screen and print out aren't showing the full text.</p>

ATTACHMENT 1  
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**Cooperative Work Agreements (CWA)  
Frequently Asked Questions  
September 30, 2010**

**Board of Supervisors/Council Approval:**

- 1. Can the Public Works Director approve the extension requests on behalf of the Board of Supervisors or Council?**

The Board of Supervisors or the Council has to approve the extension request. The Public Works Director may sign the request if he/she has delegation authority from the Council or Board. The intent is to ensure the Board of Supervisors or the Council understands the potential financial responsibility if the Department of Finance (DOF) does not approve fund extension requests.

- 2. Is there a resolution needed from the Board of Supervisors or Council? Does the Local Agency need to submit a resolution?**

The Local Agency shall submit documentation stating that the Board of Supervisors or the Council has approved the request. This could be in the form of a resolution, letter, or meeting minutes.

**Due Dates and Transmittal of Information:**

- 3. The letter dated October 27, 2010 states that responses are due to the District Local Assistance Engineers (DLAEs) by November 23, 2010. Does this mean the Department will accept responses up until 5:00 PM on that date?**

Yes. The Department will accept responses until 5:00 PM on November 23, 2010.

- 4. The letter dated October 27, 2010 states that the form must include the Board/Council's signature. Not every Local Agency has the capability to submit "signed" electronic copies.**

Electronic copies of the request should be submitted indicating that the Board/Council has approved such request to extend funds. Please state that a signed paper copy has been mailed to the DLAEs. (See questions #1 and #2)

**Indirect Cost Proposals:**

- 5. When will the Indirect Cost Proposals be approved so that Local Agencies can bill for projects that have been completed?**

Pending Indirect Cost Proposals should be brought to the attention of Headquarters Local Assistance who will coordinate with the Division of Audits to prioritize the completion of the Indirect Cost Proposals for projects with funds that are lapsing.

**Cooperative Work Agreements (CWA)  
Frequently Asked Questions  
September 30, 2010**

**What should the Local Agency do if the project is not final invoiced only because the Indirect Cost Proposal is not yet approved by the Department of Transportation, Division of Audits?**

The Local Agency should still submit a request for an extension and state that as the reason.

**Fiscal Year Assigned to Projects/Project Phases:**

**6. How are fiscal years assigned to projects?**

New projects are normally funded from the most current fiscal year.

The fiscal year may be assigned based on the funding availability on the fiscal years that are open for encumbrances and other factors such as the Budget Act being passed on time and the overlap of federal and state fiscal years.

**7. How do Local Agencies know what fiscal years have been assigned to their projects?**

Local Agencies can contact the DLAEs for detail information.

All program supplements include a fiscal year for funds that were approved at the time the program supplement was originally developed. However, additional funds may have been approved via a finance letter. The finance letter has been modified to include the fund's reversion or lapsing date.

**8. From what fiscal years are project augmentations funded?**

Project augmentations are funded from fiscal years that are open for encumbrances. Most of the local assistance funds are available for encumbrances for 3 years with the exception of General Fund, Bicycle Transportation Account, and Environmental Enhancement Mitigation, which are available for encumbrances for 1 year.

**Projects Not Completed:**

**9. Can Local Agencies bill unspent funds for projects that are not completed? Will the Agencies be in jeopardy of having to pay these funds back if project is not completed?**

Since there is no guarantee that a CWA will be approved by the DOF, Local Agencies should submit progress invoices for eligible costs that have been incurred for a project or project phase not yet completed.

**Cooperative Work Agreements (CWA)  
Frequently Asked Questions  
September 30, 2010**

Local Agencies may have to pay federal funds back if the projects are not completed.

**Notification of Approval/Denial:**

**10. Is there a formal signed CWA agreement that the Local Agencies will be receiving once an extension is granted?**

There will be no “formal” agreement signed. The DOF will provide their approval/denial responses on the same form used by Local Agencies requesting extensions.

The Department will be sending a letter to the Local Agencies advising them of the DOF’s decision. We anticipate a response from the DOF by April 1, 2011.

**Funds Needed Beyond 8 Years:**

**11. If funding for a project is needed beyond the 8 years allowed by GC Section 16304.3 (CWAs), what funding alternatives are available?**

Local Agencies are responsible for completing the project or a project phase with their own revenues if the funds lapsing cannot be spent and billed within the 8 years.

**12. If funds for a project cannot be expended within the maximum extension of 8 years allowed, can the extension request be submitted for 2 or 3 years beyond the 8 years?**

The Government Code Section 16304.3 only allows a maximum of 8 years. The DOF can only approve up to 8 years.

**13. Timely Use of Funds (TUF) per STIP guidelines may not agree with the maximum number of years allowed by the Government Code Section 16304.3.**

Requirements for STIP timely use of funds and GC Section 16304.3 are independent. The most restrictive deadline will apply.

**14. If a project is currently inactive due to unresolved environmental issues or loss of state match (seismic match) and the state funds are disencumbered, can these funds be used for a different project? How about if work for the same project resumes at a later time?**

Funds older than 3 years are not available for encumbrance. If the funds disencumbered are more than three years old, the State does not have the ability to spend those funds on other projects.

**Cooperative Work Agreements (CWA)  
Frequently Asked Questions  
September 30, 2010**

Local Agencies will be responsible for covering funds that lapse, if the project is to continue.

**Cancelled Projects/Projects (Phase) Completed:**

- 15. Who clears the unspent funds for projects (phase of a project) that have been cancelled/dropped or completed? Do funds need to be de-obligated and disencumbered?**

If a project has been cancelled / dropped or completed, unspent funds need to be zeroed out. The funds need to be de-obligated and disencumbered. Please, contact your DLAE so that the project records can be properly updated.

**Projects and Project Phase – What Lapses, When:**

- 16. Will funds lapse by project or by phase?**

Funds may lapse on a project or a phase of a project.

The lapse of funds is based on the first fiscal year funds became available for expenditure in the Budget Act. A given project or phase of a project may have received funds from multiple Budget Acts depending on when funds were encumbered at the time a program supplement or a finance letter was processed. Thus, not all the funds on a project may be at risk of lapsing.

- 17. When does the clock start ticking for funds that are lapsing? When the funds are obligated or when they are encumbered?**

The clock starts ticking based on the fiscal year funds were appropriated in the State Budget. This fiscal year is generally assigned at the time a program supplement and/or finance letter is done for a project or a project phase.

The 8-year lapsing of funds applies only to the budget authority and not the obligation authority.

**General Questions:**

- 18. Are funds for Demonstration, High Priority, and Emergency Relief programs subject to lapse?**

**Cooperative Work Agreements (CWA)**  
**Frequently Asked Questions**  
**September 30, 2010**

Yes. Budget authority for these programs is subject to lapse. However, Federal Obligation Authority may remain available for a project until the obligation authority is expended. [Per CFR 630 projects with inactive obligations are subject to quarterly review by the Federal Highway Administration and may be de-obligated]. Lapsing of budget authority applies to all local assistance funds regardless of the program using the funds (i.e. Bridge Rehabilitation, Emergency Relief, Demonstration, etc).

**19. What is the difference between a 1-year extension for projects listed under CWA and a re-appropriation?**

**Re-appropriations** were traditionally included in the annual budget bill. Federal and state funds could be extended for 1 year only. Through this process, federal and state funds could be extended every year as long as the project remained active.

The **CWA process** will allow up to a maximum extension of 8 years from the original year of appropriation. This provides only 1 additional year for federal funds and 2 to 3 additional years for state funds, depending upon the provisional language contained in the Budget Act of that year.

**20. How are invoices paid for projects funded from several fiscal years? Are payments processed from the oldest fiscal years?**

Generally, payments are made from the oldest fiscal years for projects that have funding from multiple years. The type of costs being billed (i.e. preliminary engineering, construction, right of way) may be considered when charging a specific fiscal year. If an invoice for construction cost is submitted for payment, it will be applied to the fiscal year funding the construction phase of the project.

There are some instances where the work for a particular phase has been completed and not all the funds for that phase were spent.

**21. What criteria will be used for approving/denying extension requests?**

The DOF will have its own criteria.