

COOPERATIVE AGREEMENT D06-008

BETWEEN

COUNTY OF ORANGE

AND

CITY OF COSTA MESA

THIS AGREEMENT is entered into the \_\_\_\_ day of \_\_\_\_\_ 2006, by and between the County of Orange, a political subdivision of the State of California (“COUNTY”), and the CITY of Costa Mesa, a municipal corporation in the State of California, (“CITY”).

W I T N E S S E T H

WHEREAS, the CITY has entered into a public/private partnership with several private companies/organizations to improve the public right-of-way on several streets within the Theater Arts District (“TAD”), which is generally bounded by Anton Avenue on the south, Bristol Avenue on the west, Sunflower Avenue on the north, and Avenue of the Arts on the east; and

WHEREAS, the CITY is also desirous of improving one roadway immediately adjacent to the TAD, namely, Sunflower Avenue west of Bristol Street, and proposes to construct this improvement at the same time. The proposed public improvements within the TAD and on Sunflower Avenue west of Bristol Street are estimated to cost \$3,000,000; and

WHEREAS, the COUNTY is desirous of also participating with the CITY in the mentioned public/private partnership, as a public partner, due to the regional significance of the TAD. This AGREEMENT memorializes the COUNTY’s one-time contribution of One Million Dollars (\$1,000,000) that represents one-third of the estimated cost of construction for the project.

NOW, THEREFORE, it is mutually understood and agreed by COUNTY and CITY as follows:

ARTICLE 1. COMPLETE AGREEMENT

This AGREEMENT constitutes the complete and exclusive statement of the terms and conditions of the agreement between COUNTY and CITY and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions. Changes hereto shall not be binding upon both parties except when specifically confirmed in writing by an authorized representative of each party.

ARTICLE 2. RESPONSIBILITIES OF COUNTY OF ORANGE

COUNTY agrees to the following responsibilities:

A. To provide a one-time contribution of One Million Dollars (\$1,000,000) to CITY for the construction of improvements, this is COUNTY's total maximum payment obligation under this Agreement.

B. To advance 90% of the construction Nine Hundred Thousand Dollars (\$900,000) to CITY upon award of a construction contract by CITY or CITY's agent for improvements and receipt of an invoice within 30 days of receipt of said invoice. COUNTY will remit the remaining One Hundred Thousand Dollars (\$100,000) to CITY upon receipt by COUNTY of final cost information and an invoice after satisfactory completion of the improvements. COUNTY will remit payment within 30 days of receipt and approval of said invoice.

ARTICLE 3. REPONSIBILITIES OF CITY

CITY agrees to the following responsibilities:

A. To apply COUNTY's contributed funds to the actual costs of construction of road improvements within the TAD.

B. To invoice COUNTY for \$900,000 of the COUNTY's One Million Dollar contribution for construction of improvements upon award of (a) construction contract(s), and to submit a final invoice for the remaining \$100,000 of the COUNTY's contribution upon completion of the construction of improvements and submittal to COUNTY of final cost information.

C. To provide COUNTY, upon completion of construction improvements, final cost information on the final actual costs of construction of improvements.

D. To return to COUNTY, with 120 days of filing of a Notice of Completion funding provided to CITY by COUNTY for improvements that has not been applied to the actual costs of the construction of Road Improvements.

ARTICLE 4. MUTUAL AGREEMENTS

It is mutually agreed by the parties hereto that:

A. All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To COUNTY:

County of Orange  
Bryan Speegle, Director  
Resources & Development Management Department  
300 N. Flower Street  
P.O. Box 4048  
Santa Ana, CA 92702-4048

TO: CITY:

City of Costa Mesa  
Ernesto Munoz, City Engineer  
77 Fair Drive  
P.O. Box 1200  
Costa Mesa, CA 92628-1200

B. CITY and COUNTY agree that all project development, implementation and liability for IMPROVEMENTS rests with the CITY.

C. CITY shall indemnify, defend and hold harmless COUNTY, 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, damage to or loss of property by the negligent acts, omissions or willful misconduct by the CITY arising out of the performance of this AGREEMENT.

D. COUNTY and CITY agree that in the performance of their obligations under this Agreement they shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

E. After receipt of reasonable notice and during business hours of CITY, CITY shall provide COUNTY, or other agents of COUNTY, such access to CITY's books, records, payroll documents and facilities as COUNTY deems necessary to examine, audit and inspect all accounting books, records, work data, documents and activities directly related hereto. CITY shall maintain such books, records, data and documents in accordance with generally accepted accounting principles, and shall clearly identify and make such items readily accessible to such parties during CITY's performance hereunder and for a period of four (4) years from the date of final payment by COUNTY.

F. This AGREEMENT may be terminated upon mutual agreement of the parties.

G. This Agreement may be amended in writing at any time by the mutual consent of the parties. No amendment shall have any force or effect unless executed in writing by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT be executed on the date first above written.

City of Costa Mesa,  
A Municipal Corporation

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

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

ATTEST:

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

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

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT be executed on the date first above written.

COUNTY OF ORANGE,  
A political subdivision of the State of California

By: \_\_\_\_\_  
Chairman, Board of Supervisors

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

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

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors of  
Orange County, CA

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

APPROVED AS TO FORM:  
BENJAMIN P. DE MAYO,  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By: \_\_\_\_\_  
Deputy

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