

REIMBURSEMENT AGREEMENT
BETWEEN
ORANGE COUNTY TRANSPORTATION AUTHORITY
AND
CITY OF COSTA MESA

THIS AGREEMENT (“AGREEMENT”), is made and entered into this _____day of _____, 2006, 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 “OCTA”) and the City of Costa Mesa (hereinafter referred to as “CITY”).

RECITALS:

WHEREAS, The CITY, in cooperation with the County of Orange (hereinafter referred to as “COUNTY”), and OCTA have mutually agreed to fund improvements in the public right-of-way within the City of Costa Mesa’s Theater & Arts District (hereinafter referred to as “TAD”), which is generally bounded by Anton Avenue on the South, Bristol Street on the West, Sunflower Avenue on the North, and Avenue of the Arts on the East. 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 consist of rehabilitating and reconstructing degraded portions of pavement, sidewalks, and medians on Sunflower Avenue between Bear Street and Avenue of the Arts, on Avenue of the Arts between Sunflower Avenue and the first signal-controlled intersection south of Anton Boulevard, on Anton Boulevard between Bristol Street and Avenue of the Arts, on Bristol Street between Sunflower Avenue and Anton Boulevard, and on Park Center Drive between Sunflower Avenue and Town Center Drive. These improvements are herein referred to as the “PROJECT”.

1 **WHEREAS**, The COUNTY agrees to provide One Million Dollars (\$1,000,000) to the CITY
2 towards design and construction of the Project. OCTA agrees to provide Two Million Dollars
3 (\$2,000,000) to the CITY towards design and construction of the Project, with the understanding that
4 the CITY will reimburse OCTA in the amount of \$1,000,000 plus interest. Said reimbursable
5 amount will be the CITY's share of the partnership. Said reimbursement will be secured by City
6 Measure M "Turnback" funds, which the City receives and will continue to receive from OCTA on an
7 annual basis through April 2011. The schedule and amount of repayment is identified in this
8 agreement, and provides for full repayment of the \$1,000,000 plus interest by the City on or before
9 April 2011.

10 **WHEREAS**, The City agrees to reimburse OCTA as provided above. The City also agrees to
11 administer the PROJECT in a timely manner, with completion estimated in September of 2006.
12

13 **NOW, THEREFORE**, OCTA and the CITY mutually agree as follows:

14
15 **ARTICLE 1. COMPLETE AGREEMENT**

16 This Agreement, including all exhibits and documents incorporated herein and made
17 applicable by reference, constitutes the complete and exclusive statement of the term(s) and
18 condition(s) of the agreement between OCTA and the CITY, and it supersedes all prior
19 representations, understandings and communications. The invalidity in whole or part of any term or
20 condition of this Agreement shall not affect the validity of other term(s) or condition(s).
21

22 **ARTICLE 2. RESPONSIBILITIES OF OCTA**

23 OCTA agrees to the following responsibilities for the PROJECT:

24 A. OCTA shall provide Two Million Dollars (\$2,000,000) to the City for construction of the
25 Project . OCTA will not be obligated for any additional costs beyond this amount.
26

- \$1 million advance payment of Measure M turnback funds from future years that the CITY will reimburse OCTA (plus interest as set forth in Article 3, section D below) as the CITY's contribution to the project.
- Allow the CITY to utilize \$1 million from a previously Measure M funded Regional Interchange project (Bristol Street at the San Diego Freeway, OCTA Project number 95-CMSA-RIP-1041) to cover cost of restoring damaged streets.

ARTICLE 3. RESPONSIBILITIES OF CITY

CITY agrees to the following responsibilities for the PROJECT:

A. CITY shall take full responsibility to cause the design and construction of the PROJECT. CITY shall oversee and perform complete project management of the PROJECT, including but not limited to all necessary staff services, design, construction, and construction management with no assistance from OCTA. It is CITY's responsibility to provide all necessary staff and services for completion of the PROJECT.

B. CITY shall cause all related work to take place within eight months of execution of this Agreement.

C. CITY shall reimburse OCTA the sum of \$1,000,000 from Measure M "Turnback" allocations the CITY receives annually. Reimbursement shall be made in four (4) equal annual payments of Two Hundred and Fifty Thousand Dollars (\$250,000) each, and will begin at the time of the City's 2008 Measure M allocation. OCTA will deduct the annual reimbursement payment from the City's annual allocation amount until the \$1,000,000 involved in this Agreement is repaid.

D. CITY shall pay to OCTA interest due on the amounts outstanding, as calculated on a quarterly basis. The interest rate is variable and is based upon the yields on OCTA's short-term portfolio. The yields on the short-term portfolio are reported each quarter on OCTA's custodian bank statements. Outstanding principal balances will be multiplied by the variable rate at quarter-end (Mar 31, Jun 30, Sep 30, and Dec 31) to determine the interest due for the period. The number of days for the period will be determined using a 30/360 calendar. Interest amounts are due each

quarter in equal installments. OCTA will generate an invoice by the 15th of each month following the end of the quarter (Apr 15, Jul 15, Oct 15, and Jan 15) and deliver to the City.

E. In the event CITY does not qualify to receive Measure M "Turnback" allocations for any reason, then CITY agrees to pay OCTA the amount of money as provided in paragraphs C and D above, which are unpaid as a result of the City's failure to qualify to receive the Measure M "Turnback" allocations. CITY shall pay OCTA with funds that may be used for transportation programs.

ARTICLE 7. MUTUAL RESPONSIBILITIES

OCTA and CITY agree to the following mutual responsibilities:

A. That the PROJECT proceed in accordance with the schedule and budget defined in this Agreement.

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

To CITY:

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

Attention: Ernesto Munoz P.E.

City Engineer

714-754-5343, 714-754-5028 fax

To OCTA:

Orange County Transportation Authority
550 South Main Street
P.O. Box 14184
Orange CA 92863-1584

Attention:

C. All changes to this Agreement shall be done by written mutual consent of the parties to this Agreement.

D. OCTA and CITY shall comply with all applicable federal, state, and local laws, statutes, ordinances and regulations of any governmental authority having jurisdiction of the PROJECT in the performance of this Agreement.

1 E. After receipt of reasonable notice and during regular business hours, CITY agrees to
2 provide OCTA or agent thereof, access to books, records, payroll documents and facilities as
3 necessary to examine, audit and inspect all accounting books, records, work data, documents and
4 activities directly related hereto. CITY shall maintain such books, records, data and documents in
5 accordance with generally accepted accounting principles and shall clearly identify and make such
6 items readily accessible during performance hereunder and for a period of two (2) years from the
7 date of PROJECT funding by OCTA to CITY.

8 **ARTICLE 8. TERM OF THE AGREEMENT**

9 This Agreement shall commence upon execution of this Agreement by all parties and shall
10 continue in full force and effect for twenty-four months unless earlier terminated or extended as
11 provided in this Agreement.

12 **ARTICLE 9. INDEMNIFICATION**

13 A. OCTA shall indemnify, defend and hold harmless CITY, its respective officials,
14 officers, directors, employees, volunteer representatives, subcontractors or suppliers, member
15 agencies and agents from and against any and all claims (including attorney's fees and reasonable
16 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,
17 damage to or loss of use of property, caused by negligent acts omissions or willful misconduct by
18 OCTA, its officers, directors, employees, agents, subcontractors or suppliers in connection with or
19 arising out of the performance of this Agreement that are asserted or claimed against CITY, its
20 respective officers, directors, employees, agents, member agencies, subcontractors or suppliers.

21 B. CITY shall indemnify, defend and hold harmless OCTA, its officers, directors,
22 employees, subcontractors or suppliers, and agents from and against any and all claims, actions,
23 damages, liabilities and expenses (including attorney's fees and reasonable expenses for litigation
24 or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of
25 property, caused by negligent acts omissions or willful misconduct by CITY and its officials, officers,
26 directors, employees, agents, representatives, subcontractors or suppliers in connection with or

arising out of the performance of this Agreement that are asserted or claimed against OCTA, its officers, directors, employees, agents, member agencies, subcontractors or suppliers.

ARTICLE 10. FORCE MAJUERE

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

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

COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Mayor, City of Costa Mesa

By: _____
Arthur T. Leahy, Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
City Clerk

By: _____
General Counsel

APPROVED AS TO FORM:

City Attorney

By: _____