



1 update is incorporated herein by reference; and

2       **WHEREAS**, AUTHORITY has approved AGENCY's competitive project(s) (hereinafter referred  
3 to as "PROJECT(s)") as specified in Attachment A "Projects List" to receive funding under the CTFP;  
4 and

5       **WHEREAS**, AUTHORITY has determined that AGENCY's PROJECT(s) has met the  
6 requirements of and is eligible under the CTFP Guidelines; and

7       **WHEREAS**, AGENCY's "Project List" may be amended to include new projects with each  
8 competitive call for projects and will be incorporated by Letter Agreement (See Attachment B) executed  
9 by both parties and incorporated herein; and

10       **WHEREAS**, the Letter Agreement may include additional requirements for PROJECT(s) funded  
11 with sources other than M2 or Local Fair Share Net Revenues sources; and

12       **WHEREAS**, AUTHORITY and AGENCY agree that Local Fair Share Program Net Revenues  
13 are distributed on a formula basis to eligible jurisdictions; and

14       **WHEREAS**, payment terms for this Master Funding Agreement will be in accordance with  
15 Chapter 10 of the CTFP Guidelines; and

16       **WHEREAS**, this Master Funding Agreement defines the specific terms and conditions and  
17 funding responsibilities between AUTHORITY and AGENCY for CTFP and Local Fair Share Program  
18 Net Revenues; and

19       **WHEREAS**, AUTHORITY's Board of Directors approved this Master Funding Agreement on  
20 June 27, 2011; and

21       **WHEREAS**, the AGENCY's City Council approved this Agreement on the \_\_\_\_\_ day of  
22 \_\_\_\_\_ 2011;

23       **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and AGENCY as  
24 follows:

25       **ARTICLE 1. COMPLETE AGREEMENT**

26       A. This Agreement, including any attachments incorporated herein and made applicable by

1 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this  
2 agreement between AUTHORITY and AGENCY and it supersedes all prior representations,  
3 understandings, and communications. The invalidity in whole or in part of any term or condition of this  
4 Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement. The above  
5 referenced Recitals are true and correct and are incorporated by reference herein.

6 B. AUTHORITY'S failure to insist on any instance(s) of AGENCY's performance of any  
7 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of  
8 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s), and  
9 AGENCY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of  
10 this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by  
11 an authorized representative of AUTHORITY by way of a written amendment to this Agreement and  
12 issued in accordance with the provisions of this Agreement.

13 C. AGENCY's failure to insist on any instance(s) of AUTHORITY's performance of any  
14 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of  
15 AGENCY's right to such performance or to future performance of such term(s) or condition(s), and  
16 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any  
17 portion of this Agreement shall not be binding upon AGENCY except when specifically confirmed in  
18 writing by an authorized representative of AGENCY by way of a written amendment to this Agreement  
19 and issued in accordance with the provisions of this Agreement.

20 **ARTICLE 2. SCOPE OF AGREEMENT**

21 This Agreement specifies the roles and responsibilities of both AUTHORITY and AGENCY as  
22 they pertain to the subjects and projects addressed herein. Both AUTHORITY and AGENCY agree  
23 that each will cooperate and coordinate with the other in all activities covered by this Agreement and  
24 any other supplemental agreements, including Letter Agreements, which may be required to facilitate  
25 purposes thereof.

26 /

11 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

12 AUTHORITY agrees to the following responsibilities for funding of PROJECT(s):

3 A. AUTHORITY shall allocate M2 Net Revenues as specified in Ordinance No. 3 and pay  
4 AGENCY in accordance with the policies and procedures contained in the CTFP manual and  
5 AUTHORITY's Board of Directors approved PROJECT budgets.

6 B. AUTHORITY shall provide guidance and oversight of the M2, state and federal funds in  
7 compliance with M2 eligibility guidelines, CTFP Guidelines, state and federal funding requirements and  
8 allocation and reporting requirements.

9 C. Within thirty (30) days of receipt of an acceptable initial payment CTFP invoice and  
10 within sixty (60) days for an acceptable final payment invoice for eligible expenditures, AUTHORITY  
11 shall, in accordance with Chapter 10 of the CTFP Guidelines, remit to AGENCY the required  
12 reimbursement for applicable planning, environmental, engineering, right-of-way and construction  
13 activities.

14 D. AUTHORITY shall pay Net Revenues allocated for the Local Fair Share Program to  
15 eligible AGENCY within sixty (60) days of receipt by AUTHORITY.

16 E. AUTHORITY shall process any required Federal Transportation Improvement Program  
17 (FTIP) amendments, Subject to state and federal regulations and guidelines prepared by the Southern  
18 California Association of Governments.

19 F. At the request of AGENCY, AUTHORITY shall, in accordance with AUTHORITY  
20 specification and no cost to the AGENCY excluding installation and removal expenses, provide signage  
21 for all construction PROJECT(s) that are in excess of FIVE HUNDRED THOUSAND DOLLARS  
22 (\$500,000) and exceed a ninety (90) day construction schedule.

23 G. AUTHORITY, or agents of AUTHORITY, may upon close-out of each PROJECT(s)  
24 under this Agreement, perform an audit and or technical review to ensure that CTFP Guidelines policies  
25 and procedures were followed. Such audit shall be performed within one hundred and eighty (180)  
26 days of AUTHORITY receiving the final report for each PROJECT(s). If the audit or technical review

1 determines that any of the activities performed are ineligible for CTFP funding, AGENCY must return  
2 the amount of funding used to perform the ineligible activity to AUTHORITY in accordance with Article  
3 4.G.

4 **ARTICLE 4. RESPONSIBILITIES OF AGENCY**

5 AGENCY agrees to the following responsibilities for PROJECT(s):

6 A. AGENCY or AGENCY's designee will act as the lead agency for all phases of the  
7 PROJECT(s) identified in Attachment A, approved for M2 funding.

8 B. AGENCY agrees that M2 funding is subject to AGENCY meeting all of the requirements  
9 outlined in the M2 Eligibility Guidelines and CTFP Guidelines.

10 C. AGENCY agrees to implement and complete PROJECT(s) funded under this  
11 Agreement in accordance with the CTFP Guidelines, M2 Eligibility requirements and application  
12 submitted to AUTHORITY.

13 D. AGENCY agrees to submit all PROJECT information to the Federal Transportation  
14 Improvement Program and OCFundTracker during semi-annual reviews and as requested by the  
15 AUTHORITY in accordance with the prescribed deadlines.

16 E. AGENCY agrees to obligate funds in the programmed year in accordance with the  
17 CTFP Guidelines and adhere to any additional requirements identified in any and all Letter  
18 Agreement(s) amended hereto.

19 F. AGENCY agrees to enter into and required Letter Agreement for PROJECT(s) approved  
20 by the Board to define specific funding and reporting requirements.

21 G. AGENCY shall return funds expended on activities, other than those approved by the  
22 AUTHORITY's Board of Directors, within thirty (30) day's of AUTHORITY's written demand. Any  
23 AGENCY which uses funds for other than transportation purposes shall be deemed ineligible to receive  
24 funds for a period of five (5) years.

25 H. AGENCY agrees to dispose of any acquired right-of-way in excess of the required  
26 transportation use. Excess right-of-way must be identified at the time of initial payment submittal and

1 prior to the disposal process. Resolution of any issues regarding whether or not a right-of-way is  
2 excess to the transportation improvement will be by the mutual agreement of AUTHORITY and  
3 AGENCY. Excess land acquired with CTFP funds shall be sold by AGENCY in accordance with  
4 Government Code Sections 54220-54232 and proceeds from the sale shall be returned immediately to  
5 AUTHORITY.

6 I. AGENCY will comply with all federal, state and local laws and regulations, including the  
7 Renewed Measure M2 Eligibility Guidelines – Local Agency Preparation Manual and the CTFP  
8 Guidelines, which are incorporated herein by reference.

9 J. AGENCY shall install and remove signage for all competitively awarded construction  
10 PROJECT(s) that are in excess of \$500,000 and exceed a 90 day construction period in accordance  
11 with AUTHORITY specifications during construction period. AGENCY may request AUTHORITY  
12 furnished signage or it may choose to provide AGENCY furnished signage so long as said signage  
13 conforms to AUTHORITY specifications as follows: Signage shall include a Measure M2 logo that is a  
14 minimum of twelve inches (12") tall, an OCTA logo that is a minimum of three inches (3") tall (image  
15 files provided by OCTA upon request), verbiage stating "Street Improvements Funded by Measure M"  
16 in Myriad Pro, bold condensed font at two hundred and fifty six (256) pt. and "Your dollars at Work" in  
17 Myriad Pro, bold condensed font at one hundred and eighty (180) pt.

18 **ARTICLE 5. DELEGATED AUTHORITY**

19 The actions required to be taken by AGENCY in the implementation of this Agreement are  
20 delegated to its Director of Public Services, or his/her designee, and the actions required to be taken by  
21 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive  
22 Officer.

23 **ARTICLE 6. AUDIT AND INSPECTION**

24 AUTHORITY and AGENCY shall maintain a complete set of records in accordance with  
25 generally accepted accounting principles. Upon reasonable notice, AGENCY shall permit the  
26 authorized representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books,

1 accounts, and other data and records of AGENCY for a period of four (4) years after final payment, or  
 2 completion of audit by the AUTHORITY, or after final payment of debt service where local fair share  
 3 revenues were pledged, whichever is longer. For purposes of audit, the date of completion of this  
 4 Agreement shall be the date of AUTHORITY's payment of AGENCY's final billing (so noted on the  
 5 invoice) under this Agreement. AUTHORITY shall have the right to reproduce any such books, records,  
 6 and accounts. The above provision with respect to audits shall extend to and/or be included in contracts  
 7 with AGENCY's contractor(s).

8 **ARTICLE 7. INDEMNIFICATION**

9 A. AGENCY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,  
 10 employees and agents from and against any and all claims (including attorney's fees and reasonable  
 11 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's  
 12 compensation subrogation claims, damage to or loss of use of property alleged to be caused by the  
 13 negligent acts, omissions or willful misconduct by AGENCY, its officers, directors, employees or agents  
 14 in connection with or arising out of the performance of this Agreement.

15 B. AUTHORITY shall indemnify, defend and hold harmless AGENCY, its officers, directors,  
 16 employees and agents from and against any and all claims (including attorney's fees and reasonable  
 17 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's  
 18 compensation subrogation claims, damage to or loss of use of property alleged to be caused by the  
 19 negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors, employees or  
 20 agents in connection with or arising out of the performance of this Agreement.

21 C. The indemnification and defense obligations of this Agreement shall survive its  
 22 expiration or termination.

23 **ARTICLE 8. ADDITIONAL PROVISIONS**

24 A. Term of Agreement: This Agreement shall continue in full force and effect through final  
 25 acceptance of PROJECT by AUTHORITY, or until March 31, 2041 whichever is later. This Agreement  
 26 may be extended at the mutual consent of both parties

1           B.     Termination: This agreement is null and void if PROJECT is not awarded. However,  
2     AUTHORITY agrees to reimburse AGENCY for any costs incurred up to the official date of notification  
3     to AGENCY that PROJECT will not be awarded.

4           C.     AUTHORITY and AGENCY shall comply with all applicable federal, state, and local  
5     laws, statues, ordinances and regulations of any governmental authority having jurisdiction over the  
6     PROJECT(s).

7           D.     Legal Authority: AUTHORITY and AGENCY hereto consent that they are authorized to  
8     execute this Agreement on behalf of said parties and that, by so executing this agreement, the parties  
9     hereto are formally bound to the provisions of this Agreement.

10          E.     Severability: If any term, provision, covenant or condition of this Agreement is held to be  
11     invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the  
12     remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or  
13     condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14          F.     Counterparts of Agreement: This Agreement may be executed and delivered in any  
15     number of counterparts, each of which, when executed and delivered shall be deemed an original and  
16     all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

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

24          H.     Assignment: Neither this Agreement, nor any of the Parties rights, obligations, duties, or  
25     authority hereunder may be assigned in whole or in part by either Party without the prior written consent  
26     of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed

void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

I. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.

J. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

K. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party.

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

To AGENCY:	To AUTHORITY:
City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626	Orange County Transportation Authority 550 South Main Street P.O. Box 14184 Orange, CA 92863-1584
ATTENTION: Peter Naghavi, Director of Public Services	ATTENTION: Marvin Cruz, Senior Contract Administrator
Tel: (714) 754-5343 Email: <a href="mailto:PNaghavi@ci.costa-mesa.ca.us">PNaghavi@ci.costa-mesa.ca.us</a>	Tel: (714) 560 – 5568 Email: <a href="mailto:mcruz@octa.net">mcruz@octa.net</a>

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This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-1-2757 to be executed on the date first above written.

CITY OF COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

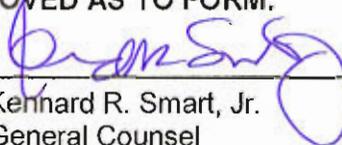
By: \_\_\_\_\_  
Gary Monahan  
Mayor

By: \_\_\_\_\_  
Will Kempton  
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Julie Folcik  
City Clerk

By: \_\_\_\_\_  
  
Kennard R. Smart, Jr.  
General Counsel

APPROVED AS TO FORM:  
AGENCY Attorney

APPROVAL RECOMMENDED:

By: \_\_\_\_\_  
Tom Duarte  
City Attorney

By: \_\_\_\_\_  
Kia Mortazavi  
Executive Director, Planning

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_





June 27, 2011

*AFFILIATED AGENCIES*

*Orange County  
Transit District*

*Local Transportation  
Authority*

*Service Authority for  
Freeway Emergencies*

*Consolidated Transportation  
Service Agency*

*Congestion Management  
Agency*

*Service Authority for  
Abandoned Vehicles*

City of Costa Mesa  
77 Fair Drive  
P.O. Box 1200  
Costa Mesa, CA 92626

**Subject: Agreement No. C-1-2757, City of Costa Mesa, "M2 CTFP Master Funding Agreement" – Letter Agreement No. 1**

Dear Mr. Monahan:

This letter agreement serves as the Orange County Transportation Authority's (Authority) approval to incorporate Attachment A, in its entirety, as identified in Article 3. A, "Project List and Reporting Requirements", dated and effective June, 27, 2011 attached hereto as Attachment A, which is incorporated and made a part of the Agreement. All provisions set forth in Cooperative Agreement No. C-1-2757 apply. The Authority's Board of Directors approved the Project(s) on June 27, 2011.

The following additional Provisions apply to Project(s) approved by the Board on June 27, 2011:

1. For project(s) granted State-Local Partnership Program (SLPP) funds, the project is subject to additional reporting and allocation procedures identified in the 2010 Call for Projects – Regional Capacity Program State-Local Partnership Program (SLPP) Requirements. Request for California Transportation Commission (CTC) allocation documents must be submitted to Authority Local Programs no later than February 1, 2012. Additional requirements include:
  - a. Submittal of the California Environmental Quality Act (CEQA) environmental document to the CTC for consideration of funding no later than February 1, 2012.
  - b. 100% design completion.
  - c. Right-of-Way Certification approval by the California Department of Transportation (Caltrans) by February 1, 2012, in accordance with the California Department of Transportation (Caltrans) Local Procedures Manual (LAPM) Chapter 13.
2. The Agency agrees that SLPP funds are for construction phase work only. Cost savings realized in construction phase must be applied proportionately. Reprogramming of SLPP funds to other phases is not allowable.
3. The Agency is responsible for preparing and submitting to Authority all the CTC documentation needed including CEQA documentation for the Authority SLPP program of projects project nomination, baseline agreement, and allocation request three months prior to the required CTC meeting or in accordance with Item 1.
4. The Agency agrees that allocation approval or Letter of No Prejudice (LONP) approval from CTC is required prior to contract award and expenditure of funds. CTC allocation is currently expected in April/May 2012.
5. The Agency may advertise at its own risk for construction following completion of the required tasks in Item 1 but may not award a contract until either the allocation or LONP request is approved by the CTC.

AGREEMENT NO. C-1-2757  
ATTACHMENT B

6. The Agency agrees that contract must be awarded within six months following the CTC allocation of funds or CTC approval of a LONP. If contract award is not possible within 6 months of allocation, Agency must immediately notify Authority and must notify Authority within 4 months of either LONP or allocation approval in order to be eligible to receive an extension for contract award.
7. The Agency agrees that unless noted in the allocation request, the project will be complete no later than 36 months following contract award for construction.
8. The Agency agrees that construction funds expire 36 months after the contract award date, unless extended by the CTC.
9. The Agency agrees to provide copies of all contractor contracts, invoices, and cancelled checks to Authority on a quarterly basis and any additional information required in accordance with invoicing requirements as outlined in the Caltrans LAPM Chapter 5.
10. The Agency agrees to follow procurement guidelines in the LAPM Chapter 15 and 16.
11. The Agency is responsible for submitting the required information for the quarterly reports to Authority at least 1 week prior to the due date required by Caltrans and a Caltrans Final Delivery Report to Caltrans within six months of project construction completion and the project becoming operable.
12. The Agency agrees that SLPP funded projects are subject to Caltrans audit within six months following submittal of the Final Delivery Report.

If you have any questions, you may contact Marvin Cruz at 714-560-5568, [macruz@octa.net](mailto:macruz@octa.net).

Please execute this letter agreement and return the signed original to the attention of Marvin Cruz.

Accepted and Agreed

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Kia Mortazavi  
Executive Director, Planning  
Orange County Transportation Authority

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Gary Monahan  
Mayor of Costa Mesa

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Meena Katakia  
Department Manager  
Orange County Transportation Authority

c: - Roger Lopez, Adriann Cardoso, Abbe McClenahan  
- Accounting  
- Contract File

Enclosure