

**REIMBURSEMENT AGREEMENT NO. U-2017-151087 BETWEEN THE  
ORANGE COUNTY TRANSPORTATION AUTHORITY AND WEST ORANGE  
COUNTY WATER BOARD**

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between West Orange County Water Board, a Joint Powers Authority (hereinafter referred to as "WOCWB"), whose mailing address is 19001 Huntington Street, Huntington Beach California, 92648 and the Orange County Transportation Authority (hereinafter referred to as "OCTA") whose mailing address is 550 South Main Street / P. O. Box 14184, Orange, CA 92863-1584.

**I. BACKGROUND:**

A. OCTA, by and through a cooperative agreement with the California Department of Transportation, is constructing improvements on Interstate 405 (I-405) between State Route 73 (SR-73) and Interstate 605 (I-605). The improvements include one general purpose lane in each direction from Euclid Street to I-605, and an additional lane in each direction that would combine with the existing high-occupancy vehicle lane to provide dual express lanes in each direction of I-405 from SR-73 to I-605 (Project).

B. As a result of the construction for the Project, it is necessary for WOCWB to relocate its existing thirty-three (33) inch waterline located in Westminster Boulevard where it crosses Interstate 405 from east of Willow Lane to Springdale Street in conflict with Project.

C. In accordance with Project requirements, Utility Agreement No. UK 151087 ("UA 151087") has been entered into between OCTA and WOCWB (**Exhibit A**). UA 151087 specifies the relocation work to be performed, performance of work responsibility, and that the cost liability of relocation responsibility based on existing property rights. Under the terms of UA 151087, one-hundred (100) percent cost responsibility for the relocation work is assigned to WOCWB including, but not limited to, all services, final design, property acquisition costs and construction cost (hereafter, the "Relocation Work"). UA 151087 also allows for the advancement of funds for the relocation work by OCTA upon determination of a hardship in accordance with Section 706 of the Streets and Highways Code.

D. Whereas the WOCWB has formally requested an advancement of funds and by entering into this Agreement, OCTA finds that a hardship exists and that funds in the amount estimated at \$4,700,000 shall be advanced to WOCWB conditioned upon WOCWB's agreement to repay such funds in accordance with this Agreement.

**II. AGREEMENT**

In consideration of the promises and mutual covenants herein contained, WOCWB and OCTA hereby agree as follows:

A. WOCWB will perform the necessary relocation work in accordance with UA 151087 subject to the reimbursement terms and provisions of this Agreement.

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B. Funds advanced under this Agreement shall be exclusively used by WOCWB for the Relocation Work in the amount not to exceed the amount set forth in **Exhibit B, Proposed Project Loan**. A reconciliation of the actual bid price shall be performed upon receipt of bids by WOCWB for the relocation and shall provide the basis for the actual loan amount. An amount not to exceed 22 percent shall be applied to the bid price for project management, engineering, inspection, soils and materials testing and construction contingency. Should the bid price exceed the not to exceed amount in Exhibit B, a cost analysis of bid shall be submitted by WOCWB to OCTA for review to address the bid amount. Should WOCWB desire an advance of funds in excess of the not to exceed amount, it must submit a written request for an amendment to this Agreement which is subject to OCTA Board Approval. If OCTA identifies any bid anomalies it may request that WOCWB reject all bids and re-bid and re-procure the Relocation Work.

C. Pursuant to Section 706 of the Streets and Highways Code, OCTA agrees, upon the terms and conditions contained in this Agreement, to loan funds for a period not to exceed 10 (ten) years from the date of deposit of funds into a WOCWB account for the Relocation Work.

D. Interest for the loan shall be charged to WOCWB at the rate of earnings equal to the State of California Surplus Money Investment Fund (SMIF) and shall be accrued daily based on this rate. OCTA shall inform the WOCWB when the rate of earnings changes.

E. OCTA shall furnish a cashier's check representing 100% (one hundred percent) of the loan proceeds within 30 (thirty) days of receipt of acceptable invoice from WOCWB. Such an invoice shall include this Agreement number, signature by an authorized agent, proof of actual expenses bid for the Relocation Work by a WOCWB contractor, and a reconciliation of the actual bid identified in Section B above.

F. A loan repayment plan shall be developed between parties which includes standard quarterly payments identified in **Exhibit C, Proposed Quarterly Payment Schedule**, to establish a 10 (ten) year re-payment structure. Prior to the end of each calendar year during the loan repayment period, a reconciliation of payments and interest due may be performed by OCTA based on interest rates updates made to the SMIF and requested adjustments shall be incorporated within the loan repayment plan to maintain conformance with the SMIF.

G. WOCWB shall submit to OCTA repayment for the loan based on a 10 (ten)-year duration including interest accrued daily. This payment shall be made by the 1<sup>st</sup> of month in which it is due and shall be paid on a quarterly basis of each calendar year. The first payment is due no later than the 1<sup>st</sup> of the month that is no longer than 90 (ninety) days from the date of WOCWB's receipt of the funds. Any payments which are late by more than five days shall accrue a one-time penalty of 5% (five percent) of the amount that is due. Such penalty shall be paid within 30 (thirty) days of receipt by WOCWB of a written notice from OCTA that the penalty is being imposed. Interest shall accrue on the penalty amount at the same rate as the principal amount if the penalty is not paid within the 30 (thirty)-day period.

H. Any advanced funds which are in excess of WOCWB's actual expenditures at the time in which WOCWB accepts the Relocation Work as complete, shall be returned to OCTA no later than 90 (ninety) days from the date WOCWB accepts the Relocation Work. Funds not returned within this 90 (ninety)-day period shall be treated in the same manner as a late payment under



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Section 7 above. WOCWB shall provide OCTA with an accounting of all funds expended on the Relocation Work in a manner which is reasonably acceptable to OCTA. WOCWB shall keep all records relating to the loan and the Relocation Work for a period of at least 7 (seven) years from acceptance of the Relocation Work. OCTA shall be permitted access to such records during WOCWB's normal business hours and be able to audit such records.

I. Advanced payment or early pay-off of the loan is acceptable and no penalty shall be applied. WOCWB shall be responsible for interest of outstanding funds to the date of final payment. A cost accounting of interest due will be performed at final payment. Advanced payment(s) must be addressed in the reconciliation of payments and interest due as described in Section 6 above.

J. By entering into this Agreement, WOCWB represents that it has the present and future ability to repay the funds advanced under the terms and conditions set forth in this Agreement and that it will take any and all actions required, including, if necessary and lawful, raising rates, fees or charges to those served by WOCWB and/or raising contributions from its member agencies, to pay off the loan in a timely manner.

K. In the event that WOCWB identifies other funds to pay for the Relocation Work, including enacted State Legislation or from other sources, either in whole or part, OCTA agrees to reasonably cooperate with WOCWB to identify and secure such funds and to the extent such funds are made available to pay for the Relocation Work. To the extent such funds are made available, WOCWB shall, within 90 (ninety) days of receipt of such funds, remit to OCTA an equivalent amount from the funds advanced under this Agreement.

L. If either party breaches any of the terms, covenants or provisions of this Agreement, and either party commences litigation to enforce any provisions of this Agreement arising out of such a breach, the prevailing party shall be entitled to all reasonable legal costs incurred in filing such litigation, including court costs, expert costs, attorney's fees and any other reasonably incurred legal expenses.

M. No Board member of OCTA or WOCWB, no official, agent, or employee of OCTA and no official, agent, employee or member city of WOCWB shall be personally liable to the other parties, or any successor in interest, in the event of any default or breach by OCTA or WOCWB, or for any amount which may become due to OCTA or WOCWB, or successor, or on any obligations under the terms of this Agreement

N. To the fullest extent permitted by law, OCTA and WOCWB agree to save, indemnify, defend, and hold harmless each other (and their respective officers, directors, agents, employees, member cities, and agents) from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other. Following a determination of the percentage of fault and or liability by agreement between the Parties or a court of competent jurisdiction, the Party responsible for liability to the other will indemnify the other Party to this Agreement for the percentage of liability determined.

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O. OCTA may, at its own expense, inspect any construction by WOCWB hereunder, to assure itself that WOCWB work is being performed in accordance with Project requirements

P. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereon, and supersedes all prior negotiations, understandings, or agreements pertaining to the 33- inch waterline relocation work by and between WOCWB and OCTA.

Q. The terms of this Agreement shall be binding upon any successors and assigns of the parties; provided that neither party shall assign this Agreement to a third party that is not a governmental agency without the express written consent of the other party, which consent shall not be unreasonably withheld.

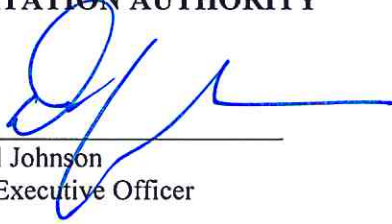
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In executing this Agreement, the parties represent and warrant that each has received all necessary approval authority and that the persons executing this Agreement on behalf of each party is authorized to do so by law.

**WEST ORANGE COUNTY WATER  
BOARD**

**ORANGE COUNTY  
TRANSPORTATION AUTHORITY**

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY:   
Darrell Johnson  
Chief Executive Officer

DATE: \_\_\_\_\_

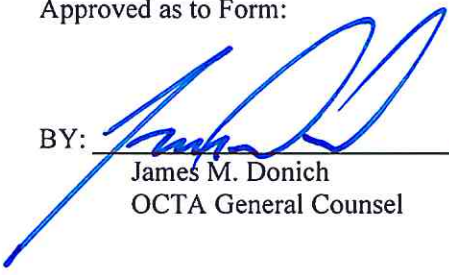
DATE: 8-15-17

ATTEST

Approved as to Form:

Approved as to Form:

BY: \_\_\_\_\_  
WOCWB General Counsel

BY:   
James M. Donich  
OCTA General Counsel

**EXHIBIT B**  
**Proposed Project Loan**

<b>Construction Not to Exceed Bid Loan Amount</b>	<b>\$3,853,000</b>
<b>Project Management/Engineering/Inspection/Materials Testing and Other Service (12 %)</b>	<b>\$462,000</b>
<b><u>Project Loan Contingency (10 %)</u></b>	<b><u>\$385,000</u></b>
<b>Total Loan Amount</b>	<b>\$4,700,000</b>

Notes:

- 1.) Exhibit B shall be amended at bid approval by OCTA to include the actual bid value which shall be increased by 12 percent for Services and 10 percent for total Loan Project Contingency.
- 2.) A request for a loan exceeding \$4.7 million is subject to approval of the Orange County Transportation Authority Board of Directors and West Orange County Water Board.



**EXHIBIT C**

**Proposed Quarterly Payment Schedule**

Payment Number	Payment Due Date	Payment Number	Payment Due Date	Payment Number	Payment Due Date
1	February 1, 2018	15	August 1, 2021	29	February 1, 2025
2	May 1, 2018	16	November 1, 2021	30	May 1, 2025
3	August 1, 2018	17	February 1, 2022	31	August 1, 2025
4	November 1, 2018	18	May 1, 2022	32	November 1, 2025
5	February 1, 2019	19	August 1, 2022	33	February 1, 2026
6	May 1, 2019	20	November 1, 2022	34	May 1, 2026
7	August 1, 2019	21	February 1, 2023	35	August 1, 2026
8	November 1, 2019	22	May 1, 2023	36	November 1, 2026
9	February 1, 2020	23	August 1, 2023	37	February 1, 2027
10	May 1, 2020	24	November 1, 2023	38	May 1, 2027
11	August 1, 2020	25	February 1, 2024	39	August 1, 2027
12	November 1, 2020	26	May 1, 2024	40	November 1, 2027
13	February 1, 2021	27	August 1, 2024		
14	May 1, 2021	28	November 1, 2024		

**Notes:**

- 1.) The proposed quarterly Payment schedule assumes a loan date of November 1, 2017. This quarterly payment schedule shall be adjusted based on the actual date of loan, however payment shall be provided no later than the first day of the month for each quarter for the preceding payment period.
- 2.) For each quarterly payment, quarterly loan Interest, quarterly loan principal, and any late fees for previous billing shall be included for the anticipated 40 payment (10 year) loan. If the interest rate of earnings is unavailable for the prior billing period from the State of California's Surplus Money Investment Fund (SMIF), then interest shall payable to OCTA based on the most recent rate available. Annually, an adjustment shall be made to make WOCWB current on payment should any variations from the published SMIF occur in accordance with Agreement terms.
- 3.) Early payment of the loan is acceptable in accordance with agreement terms. At final invoice, WOCWB shall work with OCTA to develop a final accounting for the final payment.