

**CITY OF COSTA MESA
REIMBURSEMENT AGREEMENT
WITH
COSTA MESA CONFERENCE & VISITOR BUREAU**

THIS AGREEMENT is made and entered into this 1st day of July, 2014 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and the COSTA MESA CONFERENCE & VISITOR BUREAU, a California nonprofit corporation (“Bureau”).

WITNESSETH:

A. **WHEREAS**, the City has a Business Improvement Area formed under the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code sections 36500 et seq.) (“BIA”); and

B. **WHEREAS**, the City has contracted with the Bureau to administer the BIA, to undertake those activities which promote tourism to the benefit of the BIA, and to sponsor related tourist events that benefit the BIA as permitted by the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code sections 36500 et seq.), City Resolutions, and City Ordinances; and

C. **WHEREAS**, the Bureau is compensated using the assessment funds collected from the BIA; and

D. **WHEREAS**, the City, in addition to and in conjunction with the Bureau, desires to also undertake certain activities which promote tourism and sponsor related tourist events to the benefit of the BIA as permitted by the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code sections 36500 et seq.), City Resolutions, and City Ordinances (“Activities”); and

E. **WHEREAS**, Bureau agrees to reimburse the City for carrying out the Activities, because the Activities are to the benefit of both the Bureau and BIA; the City desires to be reimbursed by the Bureau for carrying out the Activities; and the parties desire to set forth their rights, duties and liabilities in connection with the Activities and the reimbursement thereof; and

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. Recitals

The recitals above are true and correct and are incorporated herein by this reference.

2.0. Activities

The City may, but is not obligated to, carry out the Activities and the Bureau shall reimburse the City for carrying out the Activities pursuant to Paragraph 3.0. In carrying out the Activities, the City will follow its own purchasing policies and procedures.

3.0. Reimbursement for Activities

3.1. Reimbursement. The Bureau agrees to pay the City an amount equal to the cost of the City to carry out the Activities. The City's total compensation under this Agreement for the carrying out of the Activities shall not exceed One Hundred Sixty Four Thousand Dollars (\$164,000.00).

3.2. Additional Activities. The City shall not receive reimbursement for any additional activities outside of the permitted Activities unless the Bureau, prior to the City performing the additional activities, approves such additional activities in writing. It is specifically understood that oral requests and/or approvals of such additional activities or additional compensation shall be barred and are unenforceable. Compensation for additional activities, as described herein, shall be in addition to the City's total compensation as described under Paragraph 3.1.

3.3. Method of Reimbursement. The City may submit reimbursement requests to the Bureau for approval and reimbursement on a progress basis. Said reimbursement request shall be based on the total of all the Activities which have been completed. Bureau shall reimburse the City within thirty (30) days from the date Bureau receives said reimbursement request. Each reimbursement request shall describe in detail, the activities performed, the costs of such activities, and the date of performance. Any additional activities approved and performed pursuant to this Agreement shall be designated as "Additional Activities" and shall identify the number of the authorized change order, where applicable, on all reimbursement requests.

4.0. Term and Termination

4.1. Term. This Agreement shall commence on the Effective Date and shall automatically renew for consecutive one year terms until terminated as provided herein.

4.2. Notice of Termination. The City and the Bureau each reserve and have the right and privilege of terminating, canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to the other party. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination.^[A1]

4.3. Compensation. In the event of termination, Bureau shall pay the City for reasonable costs incurred and Activities performed up to and including the date of the City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Bureau in its performance of this Agreement shall be delivered to the City within ten (10) days of delivery of termination notice to Bureau, at no cost to the City.

5.0. General Provisions

5.1. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

5.2. Representatives. The City CEO or his or her designee shall be the representative of the City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement. Bureau shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Bureau called for by this Agreement, except as otherwise expressly provided in this Agreement.

5.3. Project Managers. The City shall designate a Project Manager to work directly with Bureau in the performance of this Agreement. Bureau shall designate a Project Manager who shall represent it and be its agent in all consultations with the City

during the term of this Agreement. Bureau or its Project Manager shall attend and assist in all coordination meetings called by the City.

5.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO BUREAU:

Costa Mesa Conference and Visitor
Bureau
Tel: 714-786-8583
Fax: 714-668-93350
Attn: Paulett Lombardi-Fries

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-754-
Fax: 714-754-
Attn: Dan Baker

5.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

5.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

5.7. Assignment. Bureau shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Bureau's interest in this Agreement without the City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of the City's consent, no subletting or assignment shall release Bureau of Bureau's obligation to perform all other obligations to be performed by Bureau hereunder for the term of this Agreement.

5.8. Mutual Indemnification and Hold Harmless. The parties agree to defend, indemnify, hold free and harmless each other, their respective elected or appointed

officials, officers, agents and employees, at the indemnifying party's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the indemnified party, its elected or appointed officials, officers, agents and employees arising out of the performance of the indemnifying party, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the indemnifying party, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the indemnifying party, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the indemnified party, its elected or appointed officials, officers, agents and employees based upon the work performed by the indemnifying party, its employees, and/or authorized subcontractors under this Agreement, whether or not the indemnifying party, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the parties shall not be liable for the defense or indemnification of the other party for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the other party.

5.9. Cooperation. In the event any claim or action is brought against the City relating to Bureau's performance under this Agreement, Bureau shall render any reasonable assistance and cooperation which the City might require.

5.10. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Bureau or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of the City. Bureau agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of the City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of the City and without liability or legal exposure to Bureau. The City shall indemnify and hold harmless Bureau from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Bureau. Bureau shall deliver to the City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by the City or its authorized representative, at no additional cost to the City.

5.11. Public Records Act Disclosure. Bureau has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Bureau, or any of its subcontractors, pursuant to this Agreement and provided to the City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Bureau informs the City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

5.12. Conflict of Interest. Bureau and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Bureau's performance under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Bureau and its officers, employees, associates and subcontractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Bureau is not currently performing work that would require Bureau or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

5.13. Prohibited Employment. Bureau will not employ any regular employee of the City while this Agreement is in effect.

5.14. Order of Precedence. In the event of an inconsistency in this Agreement and any attached exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

5.15. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

5.16. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of the City and Bureau and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

5.17. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

5.18. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

5.19. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

5.20. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

5.21. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

5.22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

5.23. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

[Signatures on the following page]

CITY OF COSTA MESA,
A municipal corporation

[Mayor or Chief Executive Officer]

BUREAU
A nonprofit corporation

Signature

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney