



January 18, 2018

City of Grand Junction  
250 N 5<sup>th</sup> Street  
Grand Junction, CO 81501  
Attn: Rick Dorris, PE, CFM

RE: Reimbursement Agreement – North Ave Improvements

Dear Mr. Dorris,

This letter is to request the reimbursement of \$78,862.99 as agreed to by the City of Grand Junction and O'Reilly Auto Enterprises, LLC after completion of CDOT Improvement on North Ave. Attached is a copy of the executed Reimbursement Agreement for your reference. The As-Builts mentioned in Paragraph 2 have been submitted by Tim Uhrick on Friday, January 12<sup>th</sup> via email.

Please send the reimbursement to the following location for proper processing:

O'Reilly Auto Parts  
Real Estate Department  
233 S Paterson Ave  
Springfield, MO 65802  
Attn: Catherine Kraus

Should you need any further documentation or have any questions, please let me know. Thank you for your time and attention to this matter.

Have a great day,

Catherine Kraus  
RE Development Administration Supervisor

P.O. Box 1156 · Springfield, MO 65801  
Phone (417) 862-3333 · [www.oreillyauto.com](http://www.oreillyauto.com)

## REIMBURSEMENT AGREEMENT

This AGREEMENT is made and entered into effective March 1, 2017 by and between the City of Grand Junction (City) and O'Reilly Auto Enterprises, LLC (Developer), a Delaware Limited Liability Company.

### RECITALS

Developer has received approval to develop certain property known as O'Reilly Auto Parts (hereinafter referred to as "the Development") located at 2844 ½ North Avenue in the City of Grand Junction, Mesa County, Colorado. The Development necessitates construction of a right turn lane on North Avenue which is a Minor Arterial street and a state highway within the jurisdiction of the Colorado Department of Transportation (CDOT).

City and Developer have agreed that the Developer will construct certain North Avenue improvements (hereinafter referred to as the Reimbursable Improvements), and that the City will reimburse the Developer for the cost of construction of the Reimbursable Improvements, as set forth in this Agreement.

NOW THEREFORE for and in consideration of the promises contained herein, the Parties mutually covenant and agree as follows:

1. Developer agrees to construct surface and subsurface street improvements as set forth in the plans titled "DEPARTMENT OF TRANSPORTATION STATE OF COLORADO, CDOT ACCESS PERMIT NO. 316005, O'REILLY AUTOMOTIVE STATE HIGHWAY NO. 006B MESA COUNTY, sealed and signed September 23, 2016 (hereinafter referred to as the Plans), which are attached hereto as Exhibit A and incorporated herein as if fully set forth.

Improvements will be constructed in accordance with City and CDOT controls, dimensions, designs, specifications and standards (hereinafter collectively referred to as City and CDOT Standards). In the event that there is a conflict between a City standard and a CDOT standard, the more stringent standard shall apply.

2. The cost of the Reimbursable Improvements is \$75,862.99.

As-built drawings	<u>\$ 3,000.00</u>
Total Reimbursable Amount	\$78,862.99

3. **Payment.** City will reimburse the Developer the total amount of the estimated costs stated in paragraph 2 above. Overages, contingencies and changes are not allowed and will not be compensated by the City. The Parties further stipulate and agree that the City shall make payment to the Developer in the full amount stated in paragraph 2 within 30 days of receipt of CDOT's written acceptance of the Improvements. Conformance of the Improvements with City and CDOT Standards and submission of an IRS form 1099 are pre-requisites to full payment by the City.

5. **Inspection and rejection of work.** The City and CDOT reserve the right to inspect any and all Reimbursable Improvements, to require certifications of the work, and to otherwise take reasonable or necessary actions to ensure that the work and the Reimbursable Improvements are

in conformance with City and CDOT Standards. The City and/or CDOT have the right to reject non-conforming or substandard work / Improvements at any time up to thirty (30) days following initial acceptance.

6. **Final acceptance of work.** Final acceptance of the Reimbursable Improvements shall occur only upon (a) express final acceptance by the CDOT in writing or (b) after a lapse of thirty (30) days following initial acceptance without rejection of some or all of the Improvements by the City or CDOT.

7. **Construction bond.** Developer shall not be required to provide a bond or other financial guarantee for the construction of the Reimbursable Improvements. Conformance with City and CDOT Standards is a prerequisite and a condition precedent to the initial acceptance of the Reimbursable Improvements.

8. The cost of repair or replacement of substandard work, if not promptly performed by the Developer, may be offset against the amounts owing hereunder.

9. Developer shall be wholly responsible for completion of the Reimbursable Improvements to City and CDOT Standards and shall bear the risk of loss relating to the Reimbursable Improvements and its failure to complete the Reimbursable Improvements hereunder.

10. **Insurance.** Developer shall procure and maintain in effect at all times the minimum insurance coverages required by CDOT.

11. **Indemnification.** Developer shall indemnify and hold harmless the City and CDOT, its officer and employees from and against all liability, claims, demands and expenses, including court costs and attorneys' fees, relating to any injury, loss or damage of any nature whatsoever, which arise out of or are in any manner related to work performed by the Developer under this Agreement; however these obligations shall not extend to any injury, loss or damage which is caused by the act, omission or other fault of the City or CDOT

12. **Independent contractor status.** Developer and any persons employed by or contracted with the Developer for the performance of work hereunder shall be independent contractors and not employees of the City or CDOT. Developer and any persons employed by or contracted with the Developer are not entitled to City or CDOT workers' compensation or unemployment insurance benefits.

13. **Taxes.** Developer shall be responsible for all federal and state income tax on any moneys earned or paid for work performed under this Agreement.

14. **Warranties.** The Developer shall warrant the Reimbursable Improvements for a period of two years from the date of final acceptance by CDOT in accordance with CDOT requirements, and shall provide such guarantee as required by CDOT to secure the warranty obligations. The warranty provisions and requirements of CDOT applicable as of the date of this Agreement are incorporated herein as if fully set forth.

Developer shall provide by contract with material men, vendors, suppliers, installers and/or other contractors that all warranties concerning or relating to the equipment, material and labor provided in relation to the Improvements transfer to CDOT and are effective for a minimum of two years from the date of final acceptance by CDOT. Developer shall transfer and assign any and all warranties relating to the Improvements to CDOT at no cost immediately upon completion of the Reimbursable Work.

15. **Whole agreement.** This Agreement incorporates all prior discussions and agreements of the Parties and may not be amended except in writing duly executed by the Parties.

16. **Term.** The Reimbursable Improvements under this Agreement will be completed by the Developer. The City and CDOT will inspect the completed work within 30 days of written request by the Developer.

17. **Non-assignment.** This Agreement is binding upon and inures only to the benefit of the Parties hereto. Developer shall not assign or delegate this Agreement or any portion thereof or any monies due hereunder without the City's prior written consent.

18. **Arbitration agreement.** Any dispute hereunder shall be resolved by submission to binding arbitration pursuant to C.R.S. §13-22-201 *et seq.*

19. **Material provisions.** Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

20. **Records.** The City and CDOT shall receive originals of all documents, papers, and records of the Developer that are related to and/or prepared as a result of the performance of the work hereunder or as required by this Agreement. Furthermore, for the purpose of making audit, examination, excerpts and transcriptions, the City shall have the right to inspect the Developer's books, records and any and all instruments of service relating in any way to the Reimbursable Improvements.

21. **No consequential damages.** In no event shall the City or CDOT be liable to the Developer for direct or consequential damages, including but not limited loss of advantage.

22. **Legal compliance.** Developer shall be solely responsible for compliance with all applicable City, state and federal laws, including the resolutions, rules and regulations of the City and CDOT, and for payment of all applicable taxes and obtaining and keeping in force and effect all applicable licenses, permits and approvals. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Developer will ensure that applicants and employees are treated without regard to their race, color, religion, age, sex, disability or national origin, in all actions taken by Developer which shall include but not be limited to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay, other compensation, training, selection and apprenticeship. Developer shall post in conspicuously visible places notice of Equal Opportunity Laws. Developer shall comply with the Americans with Disabilities

Act of 1990 (ADA) and all other related federal, state or local laws and regulations. The City may request a signed certificate stating compliance with the ADA during the term of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement:

CITY OF GRAND JUNCTION

DEVELOPER, O'REILLY AUTO  
ENTERPRISES, LLC

By: 

By: 

Printed name: GREG CATON

Printed name: Scott Kraus

Title: CITY MANAGER

Title: SR VP REAL ESTATE

Date: 3/1/2017

Date: 2/6/17