

1 **COOPERATIVE AGREEMENT NO. C-X-XXXX**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 **THE CITY OF** Click or tap here to enter text.

6 **FOR**

7 **SENIOR MOBILITY PROGRAM**

8  
9 **THIS COOPERATIVE AGREEMENT** ("Agreement"), is effective this \_\_\_\_\_ day of  
10 \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between the Orange County Transportation  
11 Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation  
12 of the State of California (herein referred to as "AUTHORITY") and the City of Click or tap here to enter  
13 text., Click or tap here to enter text. (hereinafter referred to as "CITY") each individually known as "PARTY"  
14 and collectively known as "PARTIES".

15 **RECITALS:**

16 **WHEREAS**, CITY is desirous of obtaining transportation services for seniors of CITY; and

17 **WHEREAS**, AUTHORITY and CITY agree to enter into the Senior Mobility Program (SMP)  
18 concerning senior transportation services; and

19 **WHEREAS**, this Agreement defines the roles and responsibilities of AUTHORITY and CITY in  
20 executing an SMP for senior transportation; and

21 **WHEREAS**, AUTHORITY and CITY agree to comply with all relevant elements of Orange County  
22 Local Transportation Authority Ordinance No. 3; and

23 **WHEREAS**, AUTHORITY and CITY agree to comply with all elements of the SMP Project U  
24 Funding and Policy Guidelines (SMP Guidelines); and

25 **WHEREAS**, AUTHORITY's Board of Directors approved this Agreement on  
26 \_\_\_\_\_, 2021;

1           **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CITY as follows:

2           **ARTICLE 1.   COMPLETE AGREEMENT**

3           A. This Agreement, including any attachments incorporated herein and made applicable by  
4 reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of this  
5 Agreement between AUTHORITY and CITY and it supersedes all prior representations, understandings,  
6 and communications. The invalidity in whole or in part of any term or condition of this Agreement shall  
7 not affect the validity of other term(s) or condition(s) of this Agreement. The above referenced Recitals  
8 are true and correct and are incorporated by reference herein.

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

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

23           **ARTICLE 2.   RESPONSIBILITIES OF AUTHORITY**

24           A. AUTHORITY agrees to provide funds per the SMP Guidelines:

25                   1. Services provided under the SMP are available to individuals sixty (60) years of  
26 age and older.

2. Funds for the program are identified as one percent (1%) of Renewed Measure M (M2), also called OC GO, net sales tax revenue (Net Revenue) and will be allocated to all local jurisdictions based upon the participating entity's respective percentage of the senior population of the entire County.

3. Senior population will be determined by using the most current official decennial Census information provided by the U.S. Census Bureau.

4. All active participants will receive their portion of funding on a bi-monthly basis.

B. AUTHORITY agrees that Net Revenues allocated shall be expended within three (3) years of receipt. AUTHORITY may grant an extension to the three (3)-year limit, but extensions shall not be granted beyond a total of five (5) years from the date of the initial funding allocation.

C. In the event the time limits for use of Net Revenues are not satisfied, then any retained Net Revenues that were allocated to an Eligible Jurisdiction and interest earned thereon shall be returned to AUTHORITY and these Net Revenues and interest earned thereon shall be available for allocation to any project within the same source program at the discretion of AUTHORITY.

D. AUTHORITY may provide, at AUTHORITY's sole discretion, a refurbished surplus paratransit vehicle, at no cost to CITY and no further responsibility to AUTHORITY after vehicle donation. CITY may purchase additional vehicle(s) in excess of their vehicle allocation at a cost of Five Thousand Dollars (\$5,000) per vehicle, subject to vehicle availability.

**ARTICLE 3. RESPONSIBILITIES OF CITY**

A. CITY must satisfy all M2 eligibility criteria, as specified in the Orange County Local Transportation Authority Ordinance No. 3, Attachment B, Section III, in order to receive their formula allocation for the SMP.

B. CITY agrees that all funds received from AUTHORITY as specified in Article 2A above will be used exclusively for providing accessible senior transportation services as specified in Exhibit A, entitled "Senior Mobility Program Agency Service Plan."

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1 C. CITY agrees to comply with all elements of the SMP Guidelines as specified in  
2 Exhibit A, Attachment 1.

3 D. CITY agrees that Net Revenues allocated shall be expended within three (3) years of  
4 receipt. AUTHORITY may grant an extension to the three (3)-year limit, but extensions shall not be  
5 granted beyond a total of five (5) years from the date of the initial funding allocation.

6 E. In the event the time limits for use of Net Revenues are not satisfied, any retained Net  
7 Revenues that were allocated to CITY and interest earned thereon shall be returned to AUTHORITY and  
8 these Net Revenues and interest earned thereon shall be available for allocation to any project within the  
9 same source program at the discretion of AUTHORITY.

10 F. CITY agrees to match twenty percent (20%) of the total annual program expenditures.  
11 Local match may be made up of cash-subsidies, fare revenues, or in-kind contributions.

12 G. CITY may contract with a third-party service provider to provide senior transportation  
13 services provided that:

- 14 1. Contractor is selected using a competitive procurement process; and
- 15 2. Wheelchair accessible vehicles are available and used when requested.

16 H. CITY shall procure and maintain insurance coverage during the entire term of this  
17 Agreement. Proof of coverage may include commercial insurance, permissible self-insurance or  
18 coverage as provided through a joint powers pool, subject to AUTHORITY review and acceptance.  
19 CITY shall provide the following insurance coverage:

20 1. Commercial General Liability, to include Products/Completed Operations, Independent  
21 Contractors', Contractual Liability, and Personal Injury Liability with a minimum limit of \$1,000,000 per  
22 occurrence and \$2,000,000 general aggregate;

23 2. Automobile Liability Insurance to include owned, hired and non-owned autos with a  
24 combined single limit of \$1,000,000 each accident;

25 3. Workers' Compensation with limits as required by the State of California including a  
26 waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents; and

1                   4. Employers' Liability with minimum limits of \$1,000,000 per accident, \$1,000,000 policy  
2 limit-disease, and \$1,000,000 policy limit employee-disease.

3                   I. Proof of such coverage, in the form of an insurance company issued policy endorsement  
4 and a broker-issued insurance certificate, must be received by AUTHORITY prior to commencement of  
5 any work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days  
6 from the effective date of this Agreement with AUTHORITY, its officers, directors, employees and agents  
7 designated as additional insured on the general and automobile liability. Such insurance shall be primary  
8 and non-contributive to any insurance or self-insurance maintained by AUTHORITY. CITY shall also  
9 include in each subcontract the stipulation that subcontractor shall maintain coverage in the amounts  
10 required as provided in this Agreement. Subcontractors will be required to include AUTHORITY and other  
11 project stakeholders as (an) additional insured(s) on the commercial general liability, auto, and excess  
12 liability policies.

13                  J. CITY shall include on the face of the Certificate of Insurance the Cooperative Agreement  
14 Number C-X-XXXX; and, the Associate Contract Administrator's Name, Luis Martinez.

15                  M. In the event CITY obtains a retired AUTHORITY vehicle for SMP services, CITY agrees  
16 to transfer vehicle title and registration within fourteen (14) calendar days from taking possession of the  
17 vehicle. CITY also agrees to provide documentation to AUTHORITY confirming transfer of vehicle title  
18 and registration from AUTHORITY to CITY within thirty (30) calendar days from  
19 taking possession of the vehicle.

20                   **ARTICLE 4. TERM OF AGREEMENT**

21                  A. This Agreement shall commence July 1, 2021 and shall continue in full force and effect  
22 through June 30, 2026 (Initial Term), unless earlier terminated or extended as provided in this Agreement.

23                  B. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an  
24 additional five (5) years, commencing July 1, 2026, and continuing through June 30, 2031 (Option Term),  
25 and thereupon require CITY to continue to provide services, and otherwise perform, in accordance with  
26 Exhibit A.

C. AUTHORITY's election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for AUTHORITY's convenience or CITY's default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extending from commencement through June 30, 2031, which period encompasses the Initial Term and Option Term.

#### **ARTICLE 5. NOTICES**

All notices pertaining to this Agreement and any communications from the PARTIES may be made by delivery of said notices in person or by depositing said notices in the U.S. Mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

<b>To CITY:</b>	<b>To AUTHORITY:</b>
City of Click or tap here to enter text.	Orange County Transportation Authority
Click or tap here to enter text.	550 South Main Street
Click or tap here to enter text.	P. O. Box 14184
Click or tap here to enter text.	Orange, CA 92863-1584
Attention: Name: Click or tap here to enter text. Title: Click or tap here to enter text. Tel: Click or tap here to enter text.  <i>Email: Click or tap here to enter text.</i>	Attention: Luis Martinez Associate Contract Administrator Tel: (714) 560-5767  <i>E-mail: <a href="mailto:lmartinez1@octa.net">lmartinez1@octa.net</a></i>

#### **ARTICLE 6. FEDERAL, STATE AND LOCAL LAWS**

AUTHORITY and CITY agree that in performance of their obligations under this Agreement, they shall comply with all applicable federal, California state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

#### **ARTICLE 7. ORDER OF PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:  
 (1) the provisions of this Agreement, including all exhibits; (2) all other documents, if any, cited herein or incorporated by reference.

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**ARTICLE 8. AUDIT AND INSPECTION OF RECORDS**

CITY shall provide AUTHORITY, or other agents of AUTHORITY, such access to CITY's accounting books, program records, payroll documents and facilities as AUTHORITY deems necessary. CITY shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CITY's performance hereunder and for a period of five (5) years from the date of final payment by CITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors. CITY shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

**ARTICLE 9. TERMINATION**

AUTHORITY or CITY may, for its own convenience, terminate this Agreement at any time in whole or in part by giving the other PARTY written notice thereof of not less than thirty (30) days in advance of the specified date of termination.

**ARTICLE 10. INDEMNIFICATION**

A. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by CITY, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement .

B. CITY shall maintain adequate levels of Insurance, or self-insurance to assure full indemnification of AUTHORITY.

C. As a funding source, AUTHORITY shall not be liable for any claims or losses arising from CITY as a result of using the fund.

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**ARTICLE 11. ALCOHOL AND DRUG POLICY**

A. CITY agrees to establish and implement an alcohol and drug program that complies with 41 U.S.C. sections 701-707, (the Drug Free Workplace Act of 1988), which is attached to this Agreement as Exhibit B. CITY agrees to produce any documentation necessary to establish its compliance with sections 701-707.

B. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

**ARTICLE 12. FORCE MAJEURE**

Either PARTY shall be excused from performing its obligations under this Agreement during the time and extent that it is prevented from performing by a 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 the federal state or local government; national fuel shortage; or a material act of omission by the other PARTY; when satisfactory evidence of such cause is presented to the other PARTY, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the PARTY not performing.

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**IN WITNESS WHEREOF**, the PARTIES hereto have caused this Agreement No. C-X-XXXX to be executed as of the date of the last signature below.

**CITY OF** Click or tap here to enter text.

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

Click or tap here to enter text.

Click or tap here to enter text.

By: \_\_\_\_\_

Darrell E. Johnson

Chief Executive Officer

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Click or tap here to enter text.

Click or tap here to enter text.

By: \_\_\_\_\_

James M. Donich

General Counsel

**APPROVED AS TO FORM**

**APPROVAL RECOMMENDED:**

By: \_\_\_\_\_

Click or tap here to enter text.

Click or tap here to enter text.

By: \_\_\_\_\_

Beth McCormick

Executive Director, Operations

**APPROVAL RECOMMENDED:**

By: \_\_\_\_\_

Jennifer L. Bergener

Chief Operating Officer, Operations/

Deputy Chief Executive Officer