

1                                   **COOPERATIVE AGREEMENT NO. C-8-1882**  
2                                   **BETWEEN**  
3                                   **ORANGE COUNTY TRANSPORTATION AUTHORITY**  
4                                   **AND**  
5                                   **CITY OF HUNTINGTON BEACH**

6           **THIS AGREEMENT**, is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and  
7 between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange,  
8 California 92863-1584, a public corporation of the State of California (herein referred to as "AUTHORITY")  
9 and the City of Huntington Beach, 18041 Goldenwest Street, Huntington Beach, California 92648  
10 (hereinafter referred to as "CITY") each individually known as "Party" and collectively known as the  
11 "Parties".

12                                   **RECITALS:**

13           **WHEREAS**, the Orange County Enhanced Mobility for Seniors and Disabled (EMSD) Grant  
14 Program offers grant opportunities to non-profit organizations and local public agencies to help meet the  
15 special transportation needs of seniors and individuals with disabilities; and

16           **WHEREAS**, the Orange County EMSD Grant Program replaces the Federal Transit  
17 Administration's Section 5310 Program by providing local funding support, in lieu of federal funding, to  
18 relieve applicants of stringent federal requirements and reduce the risk of non-compliance for both the  
19 AUTHORITY and its grantees; and

20           **WHEREAS**, CITY wishes to purchase Americans with Disabilities Act (ADA) accessible vehicles  
21 and/or other eligible equipment such as computer hardware and software, and/or to enhance the  
22 transportation options currently available to seniors and persons with disabilities by operating transporting  
23 services beyond that required by the ADA, providing mobility management, and/or offering driver and  
24 travel training ("PROJECT"); and

25           **WHEREAS**, this Cooperative Agreement defines the roles and responsibilities of AUTHORITY  
26 and CITY in executing a transportation program for seniors and persons with disabilities;

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

**ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

**ARTICLE 2. SCOPE OF AGREEMENT**

This Agreement specifies the roles and responsibilities of the Parties as they pertain to the subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any other supplemental

agreements that may be required to facilitate purposes thereof.

**ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

A. AUTHORITY agrees to award EMSD funds in an amount not to exceed Two Hundred Fifty Three Thousand Dollars (\$253,000.00) ("Funding Amount") to CITY subject to the terms and conditions of this Agreement.

B. Payments to CITY shall be processed by AUTHORITY within a reasonable time period, but in no event more than sixty (60) calendar days after receipt of the Reimbursement Invoice from CITY.

**ARTICLE 4. RESPONSIBILITIES OF CITY**

A. CITY agrees that all funds received from AUTHORITY as specified in Article 3A above shall be used exclusively for purchasing the capital assets and/or providing the services as set forth in Exhibit A, entitled "Scope of Work," included in this Agreement, which is incorporated into and made part of this Agreement.

B. CITY agrees to a twenty percent (20%) match of allowable capital project costs. Local, non-federal match may be made up of cash-subsidies, fare revenues, or in-kind contributions.

C. CITY agrees to a fifty percent (50%) match of allowable operating project costs. Local non-federal match may be made up of cash-subsidies, fare revenues, or in-kind contributions.

D. CITY agrees to provide AUTHORITY with quarterly summary reports of the CITY's PROJECT. CITY shall submit quarterly summary reports within ten (10) business days after the end of each quarter.

E. CITY may contract with a third-party service provider to provide transportation services provided that:

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

F. Invoices pertaining to vehicles shall be submitted with confirmed completion of requirements for each vehicle and deliverable as applicable. The vehicle dealer (DEALER) shall issue three (3) invoices for each vehicle delivered. The first invoice shall be issued to the AUTHORITY after the delivery of a

complete and fully functional vehicle to the CITY in an amount equal to sixty-five percent (65%) of the total vehicle price. A second invoice shall be issued at the same time to the CITY in an amount equal to twenty percent (20%) of the total vehicle price. A fully functional vehicle will be determined after the successful completion of all required repairs and corrections of any defects reported to the DEALER during the vehicle inspection phase performed by the CITY. The third invoice for an amount equal to fifteen percent (15%) of the total vehicle price shall be issued to the AUTHORITY upon final vehicle acceptance which includes successful delivery and CITY's acceptance of all technical and contractual requirements/deliverables, i.e. updated manuals, schematics, including 40 continuous hours of fail free service, corrections of all noted deficiencies, repairs and resolutions of any and all noted discrepancies arisen from deployment of each vehicle in service, warranty registrations, correction of all fleet defects, delivery of any pending certifications required by the Americans with Disabilities Act, Federal Motor Vehicle Safety Standards, Department of Transportation, vehicle licensing and registration, laws and/or any other terms from the signed Agreement.

G. Invoices shall be submitted by CITY and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. CITY may also submit invoices electronically to AUTHORITY's Accounts Payable Department at [vendorinvoices@octa.net](mailto:vendorinvoices@octa.net). Each invoice shall include the following information:

1. Agreement No. C-8-1882;
2. Specify which payment is being requested;
3. Any other information as agreed or requested by AUTHORITY to substantiate the validity of an invoice.

H. CITY shall procure and maintain insurance coverage during the entire term of this Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. CITY shall provide the following insurance coverage:

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1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability, and Property Damage with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate;

2. Automobile Liability Insurance to include owned, hired and non-owned autos with a combined single limit of \$1,000,000.00 each accident;

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

4. Employers' Liability with minimum limits of \$1,000,000.00.

I. Proof of such coverage, in the form of a certificate of insurance, with the AUTHORITY, its officers, directors, employees and agents, designated as additional insureds as required by contract. In addition, provide an insurance policy blanket additional insured endorsement. Both documents must be received by AUTHORITY prior to commencement of any work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement. Such insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.

J. CITY shall include on the face of the Certificate of Insurance the Cooperative Agreement Number C-8-1882; and, the Contract Administrator's Name, Sue Ding.

K. CITY shall also include in each subcontract the stipulation that CITY's third-party provider shall maintain insurance coverage in the amounts required from CITY as provided in this Agreement.

L. CITY shall be required to immediately notify AUTHORITY of any modifications or cancellation of any required insurance policies.

#### **ARTICLE 5. DELEGATED AUTHORITY**

The actions required to be taken by CITY in the implementation of this Agreement are delegated to its CITY, or designee, and the actions required to be taken by AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or designee.

**ARTICLE 6. MAXIMUM OBLIGATION**

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CITY mutually agree that AUTHORITY's maximum cumulative payment obligation hereunder shall be Two Hundred Fifty Three Thousand Dollars (\$253,000.00), unless agreed to by both Parties and amended by way of written amendment.

**ARTICLE 7. AUDIT AND INSPECTION**

AUTHORITY and CITY shall maintain a complete set of records in accordance with generally accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized representatives of AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and other data and records of CITY for a period of four (4) years after final payment, or until any on-going audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of CITY's payment of AUTHORITY's final billing (so noted on the invoice) under this Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above provision with respect to audits shall extend to and/or be included in contracts with CITY's contractor.

**ARTICLE 8. INDEMNIFICATION**

A. To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and expense with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect, and hold harmless AUTHORITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (CITY's employees included), for damage to property, including property owned by AUTHORITY, or from any violation of any federal, state, or local law or ordinance, by the negligent acts, omissions or willful misconduct of CITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

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B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole cost and expense with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold harmless CITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (AUTHORITY's employees included), for damage to property, including property owned by CITY, or from any violation of any federal, state, or local law or ordinance, by the negligent acts, omissions or willful misconduct of AUTHORITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

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

#### **ARTICLE 9. ADDITIONAL PROVISIONS**

A. Term of Agreement: This Agreement shall be effective on October 1, 2018, and shall continue in full force and effective through September 30, 2020.

B. Termination: In the event either Party defaults in the performance of their obligations under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party.

C. Termination for Convenience: Either Party may terminate this Agreement for its convenience by providing thirty (30) days' prior written notice of its intent to terminate for convenience to the other Party.

D. AUTHORITY and CITY shall comply with all applicable federal, state, and local laws, statutes, ordinances and regulations of any governmental authority having jurisdiction over the PROJECT.

E. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

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

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

H. Force Majeure: Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable 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 or 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.

I. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent 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.

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:

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**To CITY:**

City of Huntington Beach  
18041 Goldenwest Street  
  
Huntington Beach, CA 92648

Attention: Randy Pesquiera  
Senior Supervisor Human Services  
Tel: (714) 536-5543  
Email: rpesqueira@surfcity-hb.org

**To AUTHORITY:**

Orange County Transportation Authority  
550 South Main Street  
P. O. Box 14184  
Orange, CA 92863-1584

Attention: Sue Ding  
Senior Contracts Administrator  
Tel: (714) 560-5631  
Email: sding@octa.net

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Upon execution by both Parties, this Agreement shall be made effective on October 1, 2018.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement No. C-8-1882 to be executed on the date first written above.

**CITY OF HUNTINGTON BEACH**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Mike Posey  
Mayor

By: \_\_\_\_\_  
Darrell E. Johnson  
Chief Executive Officer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michael E. Gates  
City Attorney

By: \_\_\_\_\_  
  
James M. Donich  
General Counsel

**APPROVED:**

**APPROVED:**

By: \_\_\_\_\_  
Marie Knight  
Director, Community Services

By: \_\_\_\_\_  
Beth McCormick  
General Manager, Transit

By: \_\_\_\_\_  
Jennifer L. Bergener  
Chief Operating Officer, Operations

2                   **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement No. C-8-1882 to be  
3                   executed on the date first written above.

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Darrell E. Johnson  
Chief Executive Officer

By: Michael E. Gates  
Michael E. Gates  
City Attorney

By: James M. Donich  
James M. Donich  
General Counsel

**APPROVED:**

By: Chris Slama  
~~Marie Knight~~ Chris Slama  
Director, Community Services

By: Beth McCormick  
General Manager, Transit

By: Jennifer L. Bergener  
Chief Operating Officer, Operations

**SCOPE OF WORK**

A. City of Huntington Beach Vehicle Replacement

The City of Huntington Beach (City) shall purchase:

- One (1) small bus (Ford or GM) with a seating capacity of eight (8) ambulatory and two (2) wheelchair passengers. Useful Life Benchmark (ULB) is ten (10) years or 150,000 miles.
- Two (2) medium buses (Ford or GM) with a seating capacity of twelve (12) ambulatory and two (2) wheelchair passengers. Useful Life Benchmark (ULB) is ten (10) years or 150,000 miles.

The replacement vehicles will continue the City's service levels within their current transportation programs and serve clients that require the use of a wheelchair lift or ramp. The City's existing small bus needs extensive body work caused by rust while the two (2) medium buses have high mileage. In addition, due to the age of the vehicle, those three (3) vehicles are also incurring higher maintenance costs and could potentially lead to a loss of service. The vehicles requested for replacement will be able to maintain the City's current level of service and increase efficiency due to a reduction in vehicle down time related to major repairs.

The vehicles scheduled for replacement in the table below have met and/or exceeded their ULB. The vehicles shall be disposed of in accordance with Federal requirements. Vehicles being replaced shall be withdrawn from active service and placed into back-up service and/or sold upon replacement vehicle delivery, acceptance, and implementation. The vehicles scheduled for purchase shall meet the Clean Air Act standards (CAA) and the Americans with Disabilities Act (ADA) requirements.

Description	Type	Last 5-digits of VIN	Disposition
2003 Ford E350	Bus	26029	Backup
2009 El Dorado	Bus	08730	Backup
2009 El Dorado	Bus	08811	Backup

B. City of Huntington Beach Software Expansion

The City shall purchase:

- DriverMate software licenses for seventeen (17) vehicles.

The City shall upgrade its Senior Mobility Program (SMP) to include mobile data terminals (MDT) in each of its SMP vehicles and utilize the Trapeze dispatching software. The City shall purchase DriverMate software licenses that will support Trapeze dispatching system. By implementing the MDTs to its fleet, the City will be eliminating the need for aging push-to-talk radios and its global positioning system tracking system; the City estimates this technological change can save approximately \$12,000 a year in service fees. In addition, the improved communication will give the City the ability to identify service issues and allow its dispatchers to respond accordingly. Lastly, the City will be able to route its drivers and reduce wait time for its passengers, thus improve their growing transportation program.

**Performance Measures**

- (a) Serving a minimum of 700 seniors annually with roughly 40 percent (40%) of these clients utilizing a wheelchair or lift in their transportation.
- (b) Providing a minimum of 32,000 rides (measured by one-way passenger trips) annually.
- (c) Purchased vehicles will provide a minimum of twenty (20) hours of service per week per vehicle or in coordination with other agencies.

**Timeline**

Milestone	Estimated Completion	Description
RFPs/IFBs/RFQs Issued		Vehicles will be procured through the CalAct/MBTA Purchasing Cooperative which provides a Federal and California State compliant purchasing solution to purchase ADA compliant vehicles.  Software license will be procured through competitive procurement and/or approved sole-source agreement.
Contract Awards		Award vehicle procurement contract with approved vendor from CalAct/MBTA pre-approved vendor list.  Award software procurement contract.
First Vehicle Delivery		Initial delivery of vehicles, includes a complete inspection and Pre- and Post-delivery audit.

Last Vehicle Delivery		All vehicles delivered and inspected.
First Computer Delivery		Initial delivery/installation of computer software, includes a complete inspection and Pre and Post-delivery audit.
Last Computer Delivery		All computer software licenses delivered/installed and inspected.
Contract Close-out		All work completed, and all vehicles and computer software placed into service.

### Deliverables

- (a) Fully comply with the Scope of Work and the Enhanced Mobility for Seniors and Disabled grant program (including any amendments approved by the Orange County Transportation Authority (OCTA), and in compliance with all applicable grant regulations.
- (b) Submit all required reports and certifications as detailed in this Agreement and as requested by OCTA.