

1 **COOPERATIVE AGREEMENT C-1-2475**

2 **BETWEEN**

3 **THE ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 **THE CITY OF HUNTINGTON BEACH**

6 **FOR**

7 **SENIOR MOBILITY PROGRAM**

8 **THIS AGREEMENT** is made and entered into this 27<sup>TH</sup> day of June, 2011  
9 by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,  
10 Orange, California 92863-1584, a public corporation of the state of California, (hereinafter referred to as  
11 "AUTHORITY"), and the City of Huntington Beach, 1718 Orange Avenue, Huntington Beach, California  
12 92648 (hereinafter referred to as "CITY"). Herein, AUTHORITY and CITY are sometimes individually  
13 referred to as the "PARTY" and collectively as the "PARTIES."

14 **RECITALS**

15 **WHEREAS**, CITY is desirous of obtaining transportation services for seniors of the City of  
16 Huntington Beach; and

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

19 **WHEREAS**, this Cooperative Agreement defines the roles and responsibilities of AUTHORITY  
20 and CITY in executing a Senior Mobility Program for senior transportation; and

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

23 **WHEREAS**, AUTHORITY's Board of Directors approved this Cooperative Agreement on  
24 February 14, 2011;

25 **NOW, THEREFORE**, It is mutually understood and agreed by AUTHORITY and CITY as  
26 follows:

**ARTICLE 1. COMPLETE AGREEMENT**

A. This Agreement, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of the 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).

B. AUTHORITY's failure to insist in any one or more instances upon 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.

**ARTICLE 2. RESPONSIBILITIES OF AUTHORITY**

A. AUTHORITY agrees to provide funds per the following guidelines:

1. Services provided under the Senior Mobility Program are available to individuals 60 years of age and older.

2. Funds for the program are identified as 1% of Renewed Measure M (M2) net sales tax revenue and will be allocated to all local jurisdictions based upon the participating entity's respective percentage of the senior population for 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. In the event that the amount of M2 funding provided for this program is less than the amount allocated for this program in fiscal year (FY) 2010-11 as illustrated in Exhibit B, "Senior Mobility

1 Program Allocation," AUTHORITY will allocate Transportation Development Act (TDA) Article 4.5 funds  
2 to CITY in an amount no greater than FY 2010-11 funding levels less M2 SMP revenues for up to three  
3 (3) years. Disbursement of TDA funds will occur with the last bi-monthly distribution of M2 funds during  
4 the fiscal year.

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

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

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

16 **ARTICLE 3. RESPONSIBILITIES OF CITY**

17 A. CITY agrees that all funds received from AUTHORITY as specified in Article 2A  
18 above will be used exclusively for providing accessible senior transportation services that do not  
19 duplicate AUTHORITY's services as specified in Exhibit A entitled "Scope of Work."

20 B. CITY must satisfy all M2 eligibility criteria in order to receive their formula allocation for  
21 this program.

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

25 D. In the event the time limits for use of Net Revenues are not satisfied, any retained Net  
26 Revenues that were allocated to an Eligible Jurisdiction and interest earned thereon shall be returned to

1 AUTHORITY and these Net Revenues and interest earned thereon shall be available for allocation to  
2 any project within the same source program at the discretion of AUTHORITY.

3 E. CITY agrees to match twenty percent (20%) of the total annual formula allocation.  
4 Local match may be made up of cash-subsidies, fare revenues, or in-kind contributions.

5 F. CITY may contract with a third-party service provider to provide senior transportation  
6 services provided that:

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

9 G. CITY shall procure and maintain insurance coverage during the entire term of this  
10 Agreement. Coverage shall be full coverage or subject to self-insurance provisions. CITY shall  
11 provide the following insurance coverage:

12 1. Commercial General Liability, to include Products/Completed Operations,  
13 Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum limit of  
14 \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

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

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

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

21 5. Professional Liability with minimum limits of \$1,000,000.00 per claim.

22 H. Proof of such coverage, in the form of an insurance company issued policy  
23 endorsement and a broker-issued insurance certificate, must be received by AUTHORITY prior to  
24 commencement of any work. Proof of insurance coverage must be received by AUTHORITY within ten  
25 (10) calendar days from the effective date of this Agreement with AUTHORITY, its officers, directors,  
26 employees and agents designated as additional insured on the general and automobile liability. Such

1 Insurance shall be primary and non-contributive to any insurance or self-insurance maintained by  
2 AUTHORITY.

3 I. CITY shall include on the face of the Certificate of Insurance the Cooperative Agreement  
4 Number C-1-2475; and, the Senior Contract Administrator's Name, Pla Veesapen.

5 J. CITY agrees to provide AUTHORITY with monthly summary reports of CITY's Senior  
6 Mobility Program. CITY shall submit monthly summary report within fifteen (15) calendar days as  
7 specified in Exhibit C "Senior Mobility Program Monthly Reporting Form," included in this  
8 Agreement, which is incorporated into and made part of this Agreement.

9 K. CITY shall adopt an annual Expenditure Report to account for Net Revenues and  
10 funds expended by the Eligible Jurisdiction, which satisfy the Maintenance of Effort requirements.  
11 The Expenditure Report shall be submitted by the end of six (6) months following the end of the  
12 jurisdiction's fiscal year and include the following:

13 1. All Net Revenue fund balances and interest earned.

14 2. Expenditures identified by type (i.e. capital, operations, administration, etc.) and  
15 program or project.

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

21 **ARTICLE 4. TERM OF AGREEMENT**

22 This Agreement shall commence on July 1, 2011 and shall continue in full force and effect  
23 through June 30, 2016, unless earlier terminated or extended as provided in this Agreement.  
24 AUTHORITY, at its sole discretion, retains the right to extend this Agreement through June 30, 2021.

25 /

26 /

**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:

To CITY:

City of Huntington Beach

1718 Orange Avenue

Huntington Beach, California 92648

ATTENTION: Randy Pesquiera

(714) 536 - 5543

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, California 92863-1584

ATTENTION: Pia Veasapen

(714) 560 - 5619

**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.

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

CITY shall provide AUTHORITY, or other agents of AUTHORITY, such access to CITY's accounting books, 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 four (4) years from the date of final payment by CITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also

1 extend to all first-tier subcontractors. CITY shall permit any of the foregoing parties to reproduce  
2 documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

3 **ARTICLE 9. TERMINATION**

4 AUTHORITY or CITY may, for its own convenience, terminate this Agreement at any time in  
5 whole or in part by giving the other PARTY written notice thereof of not less than ninety (90) days in  
6 advance of the specified date of termination.

7 **ARTICLE 10. INDEMNIFICATION**

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

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

16 **ARTICLE 11. ALCOHOL AND DRUG POLICY**

17 A. CITY agrees to establish and implement an alcohol and drug program that complies with  
18 41 U.S.C. sections 701-707, (the Drug Free Workplace Act of 1988), which is attached to this  
19 Agreement as Exhibit D. CITY agrees to produce any documentation necessary to establish its  
20 compliance with sections 701-707.

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

23 **ARTICLE 11. CONFLICT OF INTEREST**

24 CITY agrees to avoid organizational conflicts of interest. An organizational conflict of interest  
25 means that due to other activities, relationships or contracts, CITY is unable, or potentially unable to  
26 render impartial assistance or advice to AUTHORITY; CITY's objectivity in performing the work

1 identified in the Scope of Work is or might be otherwise impaired; or CITY has an unfair competitive  
2 advantage. CITY is obligated to fully disclose to AUTHORITY in writing Conflict of Interest issues as  
3 soon as they are known to CITY. All disclosures must be submitted in writing to AUTHORITY  
4 pursuant to the Article 5. Notices provision herein. This disclosure requirement is for the entire term  
5 of this Agreement.

6 **ARTICLE 12. CODE OF CONDUCT**

7 CITY agrees to comply with the AUTHORITY's Code of Conduct as it relates to Third-Party  
8 contracts, which is hereby referenced and by this reference is incorporated herein. CITY agrees to  
9 include these requirements in all of its subcontracts.

10 **ARTICLE 13. FORCE MAJEURE**

11 Either PARTY shall be excused from performing its obligations under this Agreement during  
12 the time and extent that it is prevented from performing by a cause beyond its control, including, but  
13 not limited to: any incidence of fire, flood; acts of God; commandeering of material products, plants  
14 or facilities by the federal state or local government; national fuel shortage; or a material act of  
15 omission by the other PARTY; when satisfactory evidence of such cause is presented to the other  
16 PARTY, and provided further that such nonperformance is unforeseeable, beyond the control and is  
17 not due to the fault or negligence of the PARTY not performing.

18 /

19 /

20 /

21 /

22 /

23 /

24 /

25 /

26 /



1 Upon execution by both PARTIES, this Cooperative Agreement shall be made effective on  
2 July 1, 2011.

3 IN WITNESS WHEREOF, the PARTIES hereto have caused this Cooperative Agreement No.  
4 C-1-2475 to be executed on the date first above written.

5 CITY OF HUNTINGTON BEACH

ORANGE COUNTY TRANSPORTATION AUTHORITY

6 By [Signature]  
7 Joe Cardillo  
Mayor

By [Signature]  
Will Kempton  
Chief Executive Officer

8  
9 ATTEST:

APPROVED AS TO FORM:

10 By [Signature]  
11 Joan Flynn  
City Clerk

By [Signature]  
Kennard R. Smart, Jr.  
General Counsel

12  
13 APPROVED AS TO FORM:

APPROVED:

14 By [Signature]  
15 Jennifer McGrath  
City Attorney

By [Signature]  
Beth McCormick  
General Manager, Transit

81071  
-Distributed:  
Accounting  
CMM  
FPA  
PM  
Vendor  
CA

1 AMENDMENT NO. 1 TO COOPERATIVE AGREEMENT NO. C-1-2475

2 BETWEEN

3 ORANGE COUNTY TRANSPORTATION AUTHORITY

4 AND

5 CITY OF HUNTINGTON BEACH

6 FOR

7 SENIOR MOBILITY PROGRAM

8 THIS AMENDMENT NO. 1 is made and entered into this 28<sup>th</sup> day of July, 2016 by and  
9 between the Orange County Transportation Authority, a public corporation of the State of California  
10 (hereinafter referred to as "AUTHORITY"), and the City of Huntington Beach (hereinafter referred to as  
11 "CITY").

12 RECITALS

13 WHEREAS, by Agreement No. C-1-2475 dated June 27, 2011, AUTHORITY and CITY are  
14 entered into a contract to provide the Senior Mobility Program (SMP) concerning senior transportation  
15 services; and

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

18 WHEREAS, AUTHORITY and CITY agree to comply with the M2 Project U SMP Funding and  
19 Policy Guidelines ("Guidelines"); and

20 WHEREAS, AUTHORITY and CITY agree to extend the term of the Agreement through  
21 June 30, 2021;

22 NOW, THEREFORE, It is mutually understood and agreed by AUTHORITY and CITY that  
23 Amendment No. 1 to Cooperative Agreement No. C-1-2475 is hereby amended in the following  
24 particulars only:

25 1. Amend ARTICLES 2 and 3: to delete in their entirety and replace with Attachment 1 to  
26 this Amendment.

AMENDMENT NO. 1 TO  
AGREEMENT NO. C-1-2475

2. Amend ARTICLE 4. TERM OF AGREEMENT: Page 5 of 9, line 23, to delete "June 30, 2016" as the expiration date of the Agreement, and in lieu thereof insert "June 30, 2021."

3. Amend ARTICLE 8. AUDIT AND INSPECTION OF RECORDS: Page 6 of 9, line 25 to delete "four (4) years" as the period for audit and inspection record, and in lieu thereof insert "five (5) years".

The balance of said Agreement remains unchanged.

Upon execution by both parties, this Amendment No. 1 to Cooperative Agreement No. C-1-2475 shall be made effective on July 1, 2016.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to Cooperative Agreement No. C-1-2475 to be executed on the date first above written.

CITY OF HUNTINGTON BEACH

ORANGE COUNTY TRANSPORTATION AUTHORITY

By


  
Jim Katapodis  
Mayor

By

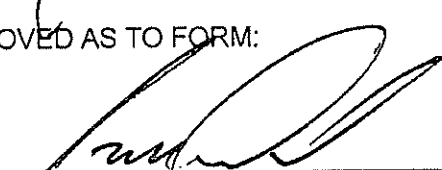
  
Darrell Johnson  
Chief Executive Officer

APPROVED AS TO FORM:

By

  
Robin Estanislau  
City Clerk

By

  
James M. Donich  
General Counsel

APPROVED:

By

  
Michael Gates  
City Attorney

DKO 6/28/16

By

  
Beth McCormick  
General Manager, Transit

1                   **ARTICLE 2. RESPONSIBILITIES OF AUTHORITY**

2           A.       AUTHORITY agrees to provide funds per the following:

3                   1.       Services provided under the Senior Mobility Program are available to individuals  
4                   60 years of age and older.

5                   2.       Funds for the program are identified as one percent (1%) of Renewed  
6                   Measure M (M2) net sales tax revenue and will be allocated to all local jurisdictions based upon the  
7                   participating entity's respective percentage of the senior population of the entire county.

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

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

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

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

19           D.       AUTHORITY may provide, at AUTHORITY's sole discretion, a refurbished surplus  
20           paratransit vehicle, at no cost to CITY and no further responsibility to AUTHORITY after vehicle  
21           donation. CITY may purchase additional vehicle(s) in excess of their vehicle allocation, based on  
22           availability, at a cost equivalent to the refurbishment costs incurred by AUTHORITY.

23                   **ARTICLE 3. RESPONSIBILITIES OF CITY**

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

1 B. CITY will ensure the Service Plan is adopted by their governing board in accordance  
2 with Section 7.0 of the SMP Funding and Policy Guidelines.

3 C. CITY must satisfy all M2 eligibility criteria as specified in Orange County Transportation  
4 Authority Ordinance No. 3 Requirements for Eligible Jurisdictions in order to receive their formula  
5 allocation for this program.

6 D. CITY agrees to comply with all provisions of the SMP Guidelines included as Exhibit B.

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

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

14 G. CITY agrees to match a minimum of twenty percent (20%) of the total annual program  
15 expenditures. Local match may be made up of cash-subsidies, fare revenues, donations, or in-kind  
16 contributions, such as salaries and benefits for the CITY employees who perform work on the  
17 program.

18 H. CITY may contract with a third-party service provider to provide senior transportation  
19 services provided that:

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

22 I. CITY shall procure and maintain insurance coverage during the entire term of this  
23 Agreement. Coverage shall be full coverage or subject to self-insurance provisions. CITY shall  
24 provide the following insurance coverage:

25 /

26 /

1           1. Commercial General Liability, to include Products/Completed Operations,  
2 Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum limit of  
3 \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

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

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

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

9           J. Proof of such coverage, in the form of an insurance company issued policy  
10 endorsement and a broker-issued insurance certificate, must be received by AUTHORITY prior to  
11 commencement of any work. Proof of insurance coverage must be received by AUTHORITY within ten  
12 (10) calendar days from the effective date of this Agreement with AUTHORITY, its officers, directors,  
13 employees and agents designated as additional insured on the general and automobile liability. Such  
14 insurance shall be primary and non-contributive to any insurance or self-insurance maintained by  
15 AUTHORITY.

16           K. CITY shall include on the face of the Certificate of Insurance the Cooperative Agreement  
17 Number C-1-2475; and, the Senior Contract Administrator's Name, Sue Ding.

18           L. CITY agrees to provide AUTHORITY with monthly summary reports of CITY's Senior  
19 Mobility Program. CITY shall submit monthly summary report by the end of the following month as  
20 specified in Exhibit C "Senior Mobility Program Monthly Reporting Form," included in this  
21 Agreement, which is incorporated into and made part of this Agreement.

22           M. CITY shall adopt an annual Expenditure Report to account for Net Revenues and  
23 funds expended by the Eligible Jurisdiction, which satisfy the Maintenance of Effort requirements.  
24 The Expenditure Report shall be submitted by the end of six (6) months following the end of the  
25 jurisdiction's fiscal year and include the following:

26 /

1. All Net Revenue fund balances and interest earned.

2. Expenditures identified by type (i.e. capital, operations, administration, etc.) and program or project.

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

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/