



BOARD COMMITTEE TRANSMITTAL

July 23, 2012

To: Members of the Board of Directors
From: Wendy Knowles, ^{WK} Clerk of the Board
Subject: Project S Bus and Station Van Extension - 2012 Call for Projects Programming Recommendations

Transit Committee Meeting of July 12, 2012

Present: Directors Dalton, Galloway, Glaab, Herzog, Nguyen, and Winterbottom
Absent: Director Pulido

Committee Vote

This item was passed by the Members present.

Director Winterbottom was not present to vote on this item.

Committee Recommendations

- A. Approve the programming recommendations for Project S funding, in an amount not-to-exceed \$732,613, to fund four projects.
- B. Authorize the Chief Executive Officer to execute Cooperative Agreement No. C-2-1667 between the Orange County Transportation Authority and the City of Lake Forest to define each party's roles and responsibilities for Project S station van extensions to Metrolink.
- C. Authorize the Chief Executive Officer to execute Cooperative Agreement No. C-2-1668 between the Orange County Transportation Authority and the City of Anaheim to define each party's roles and responsibilities for three Project S station bus extensions to Metrolink.
- D. Authorize staff to amend the Federal Transportation Improvement Program and execute any necessary agreements.



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project S Bus and Station Van Extension - 2012 Call for
Projects Programming Recommendations**

Staff Report



July 12, 2012

To: Transit Committee

From: Will Kempton, Chief Executive Officer

A handwritten signature in black ink that reads "Will Kempton" with a long horizontal line extending to the right.

Subject: Project S Bus and Station Van Extension - 2012 Call for Projects Programming Recommendations

Overview

The Orange County Transportation Authority issued the 2012 Measure M2 Project S call for bus and Metrolink station van extension projects in February 2012. Applications have been received and scored consistent with Orange County Transportation Authority Board of Directors-approved guidelines. All projects are being recommended for funding and are presented for review and approval.

Recommendations

- A. Approve the programming recommendations for Project S funding, in an amount not-to-exceed \$732,613, to fund four projects.
- B. Authorize the Chief Executive Officer to execute Cooperative Agreement No. C-2-1667 between the Orange County Transportation Authority and the City of Lake Forest to define each party's roles and responsibilities for Project S station van extensions to Metrolink.
- C. Authorize the Chief Executive Officer to execute Cooperative Agreement No. C-2-1668 between the Orange County Transportation Authority and the City of Anaheim to define each party's roles and responsibilities for three Project S station bus extensions to Metrolink.
- D. Authorize staff to amend the Federal Transportation Improvement Program and execute any necessary agreements.

Background

Measure M2 (M2) includes the Project S - Transit Extensions to Metrolink Program which will expand transit service to 11 rail stations. This is a competitive capital program and provides funding for bus leases/purchases, bus stop improvements, maintenance facilities for new service, and station van leases for the purposes of providing expanded service to and from Metrolink rail stations. Previously, the Orange County Transportation Authority (OCTA) Board of Directors (Board) awarded grants for preliminary engineering for two fixed guideway projects.

On December 12, 2011, the Board approved the Project S bus and station van extension guidelines and directed staff to issue letters of interest. Request for letters of interest were sent out to all local agencies. Eight responses were received and presented to the Executive Committee for information. All local agencies, regardless of whether an agency submitted a letter of interest, could participate in the program consistent with approved guidelines.

On February 27, 2012, the Board authorized staff to issue a call for projects making available up to \$10 million in Project S funding. In addition to the capital cost, an operating reserve would be available for cost-effective projects. OCTA would reserve up to of \$1 million per year in Project S revenue for operations and maintenance (O&M) distributed on a pro-rata basis. The operating reserve is subject to minimum performance requirements, including a minimum standard of ten boardings per revenue vehicle hour for bus service, and 60 percent minimum occupancy for station vans. OCTA would reimburse awarded agencies O&M on a pro-rata basis, but not to exceed \$6 per boarding, not to exceed 90 percent of net O&M costs (after deducting for fares), and no more than \$150,000 per agency or project, whichever is less. In addition, the agreement with local agencies will include provisions that ensure any newly generated Section 5307 funds will be credited to OCTA.

Discussion

On April 26, 2011, two local agencies submitted a total of four applications requesting funds for three station van routes and one bus route. Applications were reviewed for eligibility, consistency and adherence to the guidelines, and program objectives, and are summarized in Attachment A. The local agencies are required to provide a ten percent local match. All projects are being recommended for funding in an amount up to \$732,615, including a ten percent contingency to allow for future cost increases with the vanpool lease providers and changes in van size. This amount includes all capital cost and eligible O&M for up to five years. Vanpool services are subject to competitive bidding by the end user and may actually be lower than, but will not exceed, the

recommended grant amount. O&M is subject to minimum performance standards and subject to annual audit.

The City of Anaheim submitted a proposal for the Anaheim Transportation Network to operate two buses serving seven Metrolink trains daily (four trains in the morning and three trains in the afternoon) carrying passengers from the Anaheim Canyon Station to La Palma Avenue/State College Boulevard, Anaheim Civic Center, Vermont Avenue/Melrose Street (adjacent to the city maintenance facility and L-3 Electronics), Ball Road/East Street, Harbor Boulevard/Ball Road, and the Disney East Esplanade on Harbor Boulevard serving the Anaheim Resort. This new rail feeder service facilitates a mode shift from autos to bus, providing access to downtown Anaheim from the Inland Empire Orange County Line. The grant request is for \$202,000 in capital and \$242,888 in operating reserve for a four-year period. The City of Anaheim proposed 11 percent capital match and the required operating match. Ridership is expected to be 140 boardings per day.

The City of Lake Forest submitted three proposals to fund three station van projects carrying passengers from the Irvine Station to three major employers, namely Oakley, Inc., Panasonic Avionics Corporation, and Invensys. Distances between the station to employment centers range between four to seven miles and take between 12 and 20 minutes. The request for funding totals \$284,095 for a five-year operating period, and includes a ten percent contingency for changes in lease provider rates and changes in van size. The employers agreed to provide the match requirement. In addition, the City of Lake Forest has indicated that Panasonic Avionics Corporation has shown an interest in a fixed-route bus service and may consider submitting an application under a future call.

Staff is recommending capital funding for the City of Anaheim and O&M funding for the period requested for all projects. O&M funding is subject to annual audit for compliance with the minimum performance requirements, including monthly reporting of ridership. Participation in the operating reserve is limited to the useful life of the capital purchase with Project S funds.

Staff will return next year with a status of the projects to determine the level of interest and viability of a future calls. Vanpool services are dependent on ridership. If ridership increases, employers will be allowed to upgrade to a larger van.

Fiscal Impact

This project was approved in OCTA's Fiscal Year 2012-13 Budget, Planning Division, Account 0017-7831-TS001-TH5, and is funded with M2 funds.

Summary

Proposed programming recommendations for projects in the Project S Program have been developed by staff. Funding for four projects up to \$732,613 in Measure M2 funds is being recommended. Staff is seeking Board of Directors approval for the programming recommendations presented.

Attachments

- A. Project S Application Summary
- B. Draft Cooperative Agreement No. C-2-1667 Between Orange County Transportation Authority and City of Lake Forest for Project S Station Van Extensions to Metrolink
- C. Draft Cooperative Agreement No. C-2-1668 Between Orange County Transportation Authority and City of Anaheim for Project S Station Bus Extension to Metrolink

Prepared by:



Abbe A. McClenahan
Manager, Measure M2, Local Programs
(714) 560-5673

Approved by:



Kia Mortazavi
Executive Director, Planning
(714) 560-5741



Virginia Abadessa
Director, Contracts Administration and
Materials Management
(714) 560-5623



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project S Bus and Station Van Extension - 2012 Call for
Projects Programming Recommendations**

Attachment A

Project S Application Summary									
Local Agency	Score	Description	\$ Capital Requested	O&M FY 2012-13	O&M FY 2013-14	O&M FY 2013-14	O&M FY 2014-15	O&M FY 2014-15	Cumulative Total ³
Anaheim ¹	71	1-30 psr bus purchase, misc equipment + Operating reserve Anaheim Canyon Station to various locations via ATN	\$202,000	\$0	\$60,722	\$60,722	\$60,722	\$60,722	\$444,888
Lake Forest ²	67	1 - 10 psr van Irvine Station to Oakley		\$12,093	\$12,093	\$12,093	\$12,093	\$12,093	\$60,465
Lake Forest ²	69	1 - 7 psr van 2 - 10 psr van Irvine Station to Panasonic		\$34,819	\$34,819	\$34,819	\$34,819	\$34,819	\$174,095
Lake Forest ²	69	1 - 7 psr van Irvine Station to Invensys		\$10,633	\$10,633	\$10,633	\$10,633	\$10,633	\$53,165
Total funding for five years subject to annual audit and monthly ridership.									\$732,613

1. Assume ridership less current ATN ridership of 64 boardings per day for purposes of scoring project
2. Scoring based on 10% match. Includes contingency for changes in lease provider rates and changes in van sizes
3. Total includes O&M cost up to 90%. Any newly generated federal Section 5307 funds will be credited to OCTA

ATN - Anaheim Transit Network
O&M - Operations and maintenance
psr - Passenger



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project S Bus and Station Van Extension - 2012 Call for
Projects Programming Recommendations**

Attachment B

DRAFT COOPERATIVE AGREEMENT NO. C-2-1667

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF LAKE FOREST

FOR

PROJECT S STATION VAN EXTENSIONS TO METROLINK

THIS AGREEMENT, is effective this _day of _____, 2012, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and the City of Lake Forest, 25550 Commercentre Drive, Suite 100, Lake Forest, California 92630, a municipal corporation duly organized and existing under the constitution and laws of the State of California (hereinafter referred to as "CITY") (mutually referred to herein as "PARTIES" or each individually as a "PARTY").

RECITALS:

WHEREAS, AUTHORITY and CITY desire to enter into a Cooperative Agreement to define the roles and responsibilities related to funding between AUTHORITY and CITY for the van pool services from Irvine Station (hereinafter referred to as "PROJECT") as defined by the project description provided by CITY in its application for the **Measure M2, Project S Call for Projects**, incorporated herein by reference; and

WHEREAS, AUTHORITY's Board of Directors approved the PROJECT S Bus and Station Van Guidelines and subsequent projects funding on _____; and

WHEREAS, AUTHORITY and CITY agree that M2 funding is subject to CITY fulfilling M2 eligibility requirements; and

WHEREAS, CITY in cooperation with employer(s) have requested van pool services from Irvine Station to employment centers; and

1 **WHEREAS**, AUTHORITY has agreed to provide PROJECT funding in the amount not-to-
2 exceed Two Hundred Eighty-Four Thousand and Ninety-Five Dollars (\$284,095) (hereinafter referred
3 to as "Funding Amount") for PROJECT for up to five years; and

4 **WHEREAS**, AUTHORITY has agreed to coordinate access to van lease provider(s); and

5 **WHEREAS**, CITY has agreed to provide ten percent required local match in an amount not to
6 exceed Thirty One Thousand Nine Hundred and Sixty Five Dollars (\$31,965) (hereinafter referred to as
7 "Matching Amount") for up to five years; and

8 **WHEREAS**, Funding and Matching Amounts may be adjusted either up or down on a monthly
9 basis depending on van size required to support ridership, but not to exceed a total amount of Two
10 Hundred Eighty-Four Thousand and Ninety-Five Dollars (\$284,095) and Thirty One Thousand Nine
11 Hundred and Sixty Five Dollars (\$31,965), respectively for up to a five year period in accordance with
12 Exhibit A, Funding Schedule; and

13 **WHEREAS**, this Cooperative Agreement defines the specific terms, conditions, roles and
14 funding responsibilities between the AUTHORITY and CITY for station van PROJECT(s); and

15 **WHEREAS**, this represents a funding agreement between OCTA and CITY; and Employer(s)
16 will be required to enter into separate agreement directly with the service provider(s) for use of van
17 services.

18 **WHEREAS**, the AUTHORITY' Board of Directors approve this Cooperative Agreement on
19 July 23, 2012.

20 **WHEREAS**, CITY's Council approved this Cooperative Agreement on this _____day of
21 _____ 2012; and

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

24 **ARTICLE 1. COMPLETE AGREEMENT**

25 A. This Agreement, including any attachments incorporated herein and made applicable
26 by reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of
this agreement between PARTIES and it supersedes all prior representations, understandings, and

1 communications. The invalidity in whole or in part of any term or condition of this Agreement shall
2 not affect the validity of other term(s) or conditions(s) of this Agreement. The above referenced
3 Recitals are true and correct and are incorporated by reference herein.

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

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

18 **ARTICLE 2. SCOPE OF AGREEMENT**

19 This Agreement specifies the terms and conditions, roles and responsibilities of both
20 AUTHORITY and CITY as they pertain to the subjects and PROJECT(s) addressed herein. Both
21 AUTHORITY and CITY agree that each will cooperate and coordinate with the other in all activities
22 covered by this Agreement and any other supplemental agreements, including Letter Agreements,
23 which may be required to facilitate purposes thereof.

24 **ARTICLE 3. RESPONSIBILITES OF AUTHORITY**

25 AUTHORITY agrees to the following responsibilities for PROJECT:

26 A. To coordinate access to van lease providers.

1 B. To provide PROJECT funding in the amount not-to-exceed Two Hundred Eighty-Four
2 Thousand and Ninety Five Dollars (\$284,095) (hereinafter referred to as "Funding Amount") for
3 PROJECT for up to five years

4 C. To bill CITY monthly for Matching Amount.

5 D. All services will be provided in accordance with the Board approved Project S guidelines
6 and may be discontinued in the event that the minimum performance standards are not met.

7 E. Invoices for Matching Amounts on PROJECTS shall be submitted to CITY on a monthly
8 basis in accordance with Exhibit A.

9 **ARTICLE 4. RESPONSIBILITIES OF CITY**

10 CITY agrees to the following responsibilities for PROJECTS:

11 A. To provide eligible local Matching Amounts at a minimum amount of 10% of PROJECT
12 cost.

13 B. CITY shall enter into MOU with employer(s) to obtain commitment for participation in the
14 program.

15 C. CITY is not liable for Matching Amounts in the event the minimum performance
16 standards are not met and the services are therefore cancelled.

17 D. Matching Amounts for all work performed on PROJECTS shall be submitted by CITY on
18 a monthly basis.

19 **ARTICLE 5. DELEGATED AUTHORITY**

20 The actions required to be taken by CITY in the implementation of this Agreement are
21 delegated to its Director of Public Works, or his/her designee, and the actions required to be taken by
22 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive
23 Officer, or designee..

24 **ARTICLE 6. AUDIT AND INSPECTION**

25 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
26 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts,

1 and other data and records of CITY for a period of four (4) years after final payment, or completion of
2 audit by the AUTHORITY, or after final payment of debt service where local fair share revenues were
3 pledged, whichever is longer. For purposes of audit, the date of completion of this Agreement shall be
4 the date of AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this
5 Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts. The
6 above provision with respect to audits shall extend to and/or be included in contracts with CITY's
7 contractor(s).

8 **ARTICLE 7. INDEMNIFICATION**

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

15 B. AUTHORITY shall indemnify, defend and hold harmless both CITY, its officers,
16 directors, employees and agents from and against any and all claims (including attorney's fees and
17 reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including
18 death, worker's compensation subrogation claims, damage to or loss of use of property alleged to be
19 caused by the negligent acts, omissions or willful misconduct by either AUTHORITY, its officers,
20 directors, employees or agents in connection with or arising out of the performance of this Agreement.

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

23 **ARTICLE 8. ADDITIONAL PROVISIONS:**

24 PARTIES agree to the following mutual responsibilities:

25 A. Term of Agreement: This Agreement shall continue in full force and effect on an annual
26 basis subject to meeting minimum performance standards of ridership or July 31, 2017, whichever is
later. This Agreement may only be extended upon mutual agreement by both parties.

1 B. Termination: This Agreement may be terminated by either party after giving thirty (30)
2 calendar days written notice. This Agreement shall not be terminated without mutual agreement of all
3 parties.

4 C. Amendments: This Agreement may be amended in writing at any time by the mutual
5 consent of all PARTIES. No amendment shall have any force or effect unless executed in writing by all
6 PARTIES.

7 D. PARTIES shall comply with all applicable federal, state, and local laws, statues,
8 ordinances and regulations of any governmental authority having jurisdiction over the PROJECT.

9 E. Legal Authority: PARTIES hereto consent that they are authorized to execute this
10 Agreement on behalf of said parties and that, by so executing this agreement, the parties hereto are
11 formally bound to the provisions of this Agreement.

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

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

19 H. Force Majeure: Each of the PARTIES shall be excused from performing its obligations
20 under this Agreement during the time and to the extent that it is prevented from performing by an
21 unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of
22 God; commandeering of material, products, plants or facilities by the federal, state or local government;
23 national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of
24 such cause is presented to the other party, and provided further that such nonperformance is
25 unforeseeable, beyond the control and is not due to the fault or negligence of the PARTY not
26 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 any party without the prior written consent of the other parties in their 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. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to authorize or require any party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.

K. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

L. 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.

M. Notices: Any notices, requests, or demands made between the parties pursuant to this Agreement are to be directed as follows:

To CITY:	To AUTHORITY:
City of Lake Forest	Orange County Transportation Authority
	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: XXXXXXXX, Public Works Director Tel: E-mail: Cc:	Attention: Meena Katakia Manager, Capital Projects Tel: 714-560-5694 E-mail: mkatakia@octa.net Cc: Louis Zhao, Associate Transportation Funding Analyst

N. Successors and Assigns: The provisions of this Agreement shall bind and inure to the benefit of each of the PARTIES hereto, and all successors or assigns of the PARTIES hereto.

This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-2-1667 to be executed on the date first above written.

CITY OF LAKE FOREST

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

By: _____

By: _____

Mayor

Will Kempton
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM

By: _____

By: _____

City Clerk

Kennard R. Smart, Jr.
General Counsel

APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

By: _____

By: _____

City Attorney

Kia Mortazavi
Executive Director, Planning

Dated: _____

Dated: _____

Project S Funding Schedule							
Funding Agency	Description	O&M FY 2012-13	O&M FY 2013-14	O&M FY 2014-15	O&M FY 2015-16	O&M FY 2016-17	Cumulative Total
OCTA	1 - 10 psr van Irvine Station to Oakley	\$12,093	\$12,093	\$12,093	\$12,093	\$12,093	\$60,465
Lake Forest		\$1,344	\$1,344	\$1,344	\$1,344	\$1,344	\$6,720
OCTA	1 - 7 psr van 2 - 10 psr van Irvine Station to Panasonic	\$34,093	\$34,093	\$34,093	\$34,093	\$34,093	\$170,465
Lake Forest		\$1,181	\$1,181	\$1,181	\$1,181	\$1,181	\$5,905
OCTA	1 - 7 psr van Irvine Station to Invensys	\$10,633	\$10,633	\$10,633	\$10,633	\$10,633	\$53,165
Lake Forest		\$3,868	\$3,868	\$3,868	\$3,868	\$3,868	\$19,340
Total funding for five years subject to annual audit and minimum monthly ridership. Includes 10 percent contingency for changes in lease provider rates and changes in van sizes.							\$316,060

OCTA - Orange County Transportation Authority
O&M - Operating and maintenance
psr - Passenger



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project S Bus and Station Van Extension - 2012 Call for
Projects Programming Recommendations**

Attachment C

DRAFT COOPERATIVE AGREEMENT NO. C-2-1668

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF ANAHEIM

FOR

PROJECT S STATION BUS EXTENSION TO METROLINK

THIS AGREEMENT, is effective this _day of _____, 2012, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and the City of Anaheim, 200 South Anaheim Boulevard, Suite 276, Anaheim, CA 92805, a municipal corporation duly organized and existing under the constitution and laws of the State of California (hereinafter referred to as "CITY") (mutually referred to herein as "PARTIES" or each individually as a "PARTY").

RECITALS:

WHEREAS, AUTHORITY and CITY desire to enter into a Cooperative Agreement to define the roles and responsibilities related to funding between AUTHORITY and CITY for the purchase of a bus and bus service from Anaheim Canyon Station (hereinafter referred to as "PROJECT") as defined by the project description provided by CITY in its application for the **Measure M2, Project S Call for Projects**, incorporated herein by reference; and

WHEREAS, AUTHORITY's Board of Directors approved the Project S Bus and Station Van Guidelines and subsequent project funding on _____; and

WHEREAS, AUTHORITY and CITY agree that M2 funding is subject to CITY fulfilling M2 eligibility requirements; and

/

/

1 **WHEREAS**, CITY in cooperation with the Anaheim Transportation Network have requested
2 purchase of a bus and bus service from Anaheim Canyon Station to various employment centers in
3 accordance with application submittal dated April 25, 2012; and

4 **WHEREAS**, bus service is fixed-route, open to the public, and fully accessible for persons with
5 disabilities; and

6 **WHEREAS**, CITY or CITY's designee will submit National Transit Database reporting on an
7 annual basis; and

8 **WHEREAS**, AUTHORITY has agreed to provide Project S funding in the amount not-to-exceed
9 Four Hundred Forty-Four Thousand Eight Hundred Eighty Eight Dollars (\$444,888) (hereinafter referred
10 to as "FUNDING AMOUNT") for one bus purchase and up to four years of operating reserve subject to
11 annual audit; and

12 **WHEREAS**, CITY has agreed to provide ten percent required capital local match in an amount
13 of Twenty Thousand Two Hundred Forty Dollars (\$20,240) and an operating match up to ten percent
14 (hereinafter referred to as Matching Amount) for up to four years in accordance with Exhibit A, entitled
15 "Funding Schedule"; and

16 **WHEREAS**, this Cooperative Agreement defines the specific terms, conditions, roles and
17 funding responsibilities between the AUTHORITY and CITY for PROJECT(s); and

18 **WHEREAS**, this represents a funding agreement between OCTA and CITY; and

19 **WHEREAS**, CITY will contract directly with Anaheim Transportation Network to operate bus
20 service; and

21 **WHEREAS**, the AUTHORITY's Board of Directors approved this Cooperative Agreement on
22 July 23, 2012.

23 **WHEREAS**, CITY's Council approved this Cooperative Agreement on this _____day of
24 _____ 2012; and

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
4 by reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of
5 this agreement between PARTIES and it supersedes all prior representations, understandings, and
6 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 conditions(s) of this Agreement. The above referenced
8 Recitals are true and correct and are incorporated by reference herein.

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

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

23 **ARTICLE 2. SCOPE OF AGREEMENT**

24 This Agreement specifies the terms and conditions, roles and responsibilities of both
25 AUTHORITY and CITY as they pertain to the subjects and PROJECT(s) addressed herein. Both
26 AUTHORITY and CITY agree that each will cooperate and coordinate with the other in all activities

1 covered by this Agreement and any other supplemental agreements, including Letter Agreements,
2 which may be required to facilitate purposes thereof.

3 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

4 AUTHORITY agrees to the following responsibilities for PROJECT:

5 A. To pay CITY 90% capital cost for the purchase of one-30 passenger bus in the amount
6 of Two Hundred Two Thousand Dollars (\$202,000) in accordance with Exhibit A.

7 B. To pay CITY annual operating costs in the not-to-exceed amount of Two Hundred Forty
8 Two Thousand and Eight Hundred Eighty-Eight Dollars (\$242,888) for the four year period between
9 fiscal year 2013-14 and 2016-17 in accordance with Exhibit A.

10 C. Funding will be provided in accordance with the Board approved Project S guidelines
11 and may be discontinued at the discretion of AUTHORITY in the event that the minimum performance
12 standards are not met.

13 D. AUTHORITY is the paratransit provider for this service.

14 **ARTICLE 4. RESPONSIBILITIES OF CITY**

15 CITY agrees to the following responsibilities for PROJECT:

16 A. To provide eligible local Matching Amounts in the amount of 10% of PROJECT capital
17 cost and required O&M cost in accordance with Exhibit A.

18 B. CITY shall enter into MOU with Anaheim Transportation Network to obtain commitment
19 for participation in the program.

20 C. CITY or CITY's operator shall provide to AUTHORITY all system data reporting
21 information necessary to comply with National Transit Database reporting requirements by July 31 of
22 each year for the prior fiscal year July 1 through June 30.

23 D. City shall invoice OCTA for eligible capital cost and Operation and Maintenance (O&M)
24 cost on a monthly basis in accordance with Exhibit A, Funding Schedule. Invoicing shall be on a
25 reimbursement basis and shall be requested on official letterhead, signed by the designated authority.
26

1 E. CITY shall provide on or before July 31 of each year fiscal year-end report to
2 AUTHORITY. The fiscal year end report shall include actual expenses versus budgeted expenses,
3 including revenue, expenditures, vehicle service hours, vehicle service miles, passenger boarding's,
4 and farebox recovery ratio.

5 E. CITY shall provide AUTHORITY ridership reporting on a monthly basis in a format approved by
6 the AUTHORITY.

7 F. CITY and or their contractor shall meet applicable FTA requirements.

8 **ARTICLE 5. DELEGATED AUTHORITY**

9 The actions required to be taken by CITY in the implementation of this Agreement are
10 delegated to its Director of Public Works, or his/her designee, and the actions required to be taken by
11 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive
12 Officer, or designee.

13 **ARTICLE 6. AUDIT AND INSPECTION**

14 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
15 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
16 representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts,
17 and other data and records of CITY for a period of four (4) years after final payment, or completion of
18 audit by the AUTHORITY, or after final payment of debt service where local fair share revenues were
19 pledged, whichever is longer. For purposes of audit, the date of completion of this Agreement shall be
20 the date of AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this
21 Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts. The
22 above provision with respect to audits shall extend to and/or be included in contracts with CITY's
23 contractor(s).

24 **ARTICLE 7. INDEMNIFICATION**

25 A. CITY shall each indemnify, defend and hold harmless AUTHORITY, its officers,
26 directors, employees and agents from and against any and all claims (including attorney's fees and

1 reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including
2 death, worker's compensation subrogation claims, damage to or loss of use of property alleged to be
3 caused by the negligent acts, omissions or willful misconduct by either CITY, its officers, directors,
4 employees or agents in connection with or arising out of the performance of this Agreement.

5 B. AUTHORITY shall indemnify, defend and hold harmless both CITY, its officers,
6 directors, employees and agents from and against any and all claims (including attorney's fees and
7 reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including
8 death, worker's compensation subrogation claims, damage to or loss of use of property alleged to be
9 caused by the negligent acts, omissions or willful misconduct by either AUTHORITY, its officers,
10 directors, employees or agents in connection with or arising out of the performance of this Agreement.

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

13 **ARTICLE 8. ADDITIONAL PROVISIONS:**

14 PARTIES agree to the following mutual responsibilities:

15 A. Term of Agreement: This Agreement shall continue in full force and effect on an annual
16 basis subject to meeting minimum performance standards of ridership through July 31, 2017 and
17 subject to annual audit. This Agreement may only be extended upon mutual agreement by both
18 parties.

19 B. Termination: This Agreement may be terminated by either party after giving thirty (30)
20 calendar days written notice. This Agreement shall not be terminated without mutual agreement of all
21 parties.

22 C. Amendments: This Agreement may be amended in writing at any time by the mutual
23 consent of all PARTIES. No amendment shall have any force or effect unless executed in writing by all
24 PARTIES.

25 D. PARTIES shall comply with all applicable federal, state, and local laws, statues,
26 ordinances and regulations of any governmental authority having jurisdiction over the PROJECT.

1 E. Legal Authority: PARTIES hereto consent that they are authorized to execute this
2 Agreement on behalf of said parties and that, by so executing this agreement, the parties hereto are
3 formally bound to the provisions of this Agreement.

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

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

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

19 I. Assignment: Neither this Agreement, nor any of the PARTIES' rights, obligations,
20 duties, or authority hereunder may be assigned in whole or in part by any party without the prior written
21 consent of the other parties in their sole and absolute discretion. Any such attempt of assignment shall
22 be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent
23 to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

24 J. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to
25 authorize or require any party to issue bonds, notes or other evidences of indebtedness under the
26 terms, in amounts, or for purposes other than as authorized by local, state or federal law.

K. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

L. 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.

M. Notices: Any notices, requests, or demands made between the parties pursuant to this Agreement are to be directed as follows:

To CITY:	To AUTHORITY:
City of Anaheim	Orange County Transportation Authority
200S. Anaheim Blvd. Suite 276 Anaheim, CA 92805	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Natalie Meeks Public Works Director Tel: (714) 765-5176 E-mail:	Attention: Meena Katakia Manager, Capital Projects Tel: 714-560-5694 E-mail: mkatakia@octa.net Cc: Louis Zhao, Associate Transportation Funding Analyst

N. Successors and Assigns: The provisions of this Agreement shall bind and inure to the benefit of each of the PARTIES hereto, and all successors or assigns of the PARTIES hereto.

This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-2-1668 to be executed on the date first above written.

CITY OF ANAHEIM

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

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By: _____
Tom Tait, Mayor

By: _____
Will Kempton
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM

By: _____
Linda N. Andal
City Clerk

By: _____
Kennard R. Smart, Jr.
General Counsel

APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

By: _____
Cristina Talley
City Attorney

By: _____
Kia Mortazavi
Executive Director, Planning

Dated: _____

Dated: _____

Project S Funding Schedule							
Funding Agency	Description	Capital FY 2012-13	O&M FY 2013-14	O&M FY 2014-15	O&M FY 2015-16	O&M FY 2016-17	Cumulative Total ¹
OCTA	One 30 passenger bus purchase and 4 years operating reserve	\$202,000	\$60,722	\$60,722	\$60,722	\$60,722	\$444,888
Anahiem		\$20,240	\$75,600	\$75,600	\$30,600	\$30,600	\$232,640
Total funding for five years subject to annual audit and minimum monthly ridership:							\$677,528

1. Any newly generated federal Section 5307 funds will be credited to OCTA

OCTA - Orange County Transportation Authority
O&M - Operations and maintenance

