

**COOPERATIVE AGREEMENT NO. C-2-2777**  
**BETWEEN**  
**ORANGE COUNTY TRANSPORTATION AUTHORITY**  
**AND**  
**ANAHEIM TRANSPORTATION NETWORK**  
**FOR**  
**PUBLIC TRANSIT SERVICES**

**THIS AGREEMENT** is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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 Anaheim Transportation Network, 1354 South Anaheim Boulevard, Anaheim, California 92805, a nonprofit public benefit corporation (hereinafter referred to as "NETWORK"). Herein, AUTHORITY and NETWORK are sometimes individually referred to as the "PARTY" and collectively as the "PARTIES."

**RECITALS**

**WHEREAS**, NETWORK was established in 1995 as a nonprofit public benefit corporation to develop and provide clean-fuel shuttle service for the Anaheim Resort and Convention area in an effort to meet air quality and rideshare requirements associated with the planned development; and

**WHEREAS**, in 2002, NETWORK began operating a clean-fuel shuttle service known as the Anaheim Resort Transit Service; and

**WHEREAS**, the NETWORK provides fixed-route service, open to the general public, and fully accessible for persons with disabilities; and

**WHEREAS**, AUTHORITY is the designated grant recipient for Federal Transit Administration (FTA) Section 5307 Urbanized Area Formula Grant funds and FTA 5339 Bus and Bus Facilities Formula Grant funds for Orange County, and will secure equivalent grant funds on behalf of NETWORK; and

**WHEREAS**, NETWORK is an eligible subrecipient to receive FTA Section 5307 Urbanized Area Formula Grant funds and FTA 5339 Bus and Bus Facilities Formula Grant funds; and

**WHEREAS**, AUTHORITY and NETWORK agree to enter into this Cooperative Agreement so AUTHORITY may pass along FTA Section 5307 Urbanized Area Formula Grant funds and FTA Section 5339 Bus and Bus Facilities Formula Grant funds; and

**WHEREAS**, AUTHORITY and NETWORK are legally required to provide a complementary paratransit service (ACCESS) that complies with the Americans with Disabilities Act (ADA) guidelines; and

**WHEREAS**, NETWORK's ACCESS service area is within the confines of AUTHORITY's ACCESS service area; and

**WHEREAS**, NETWORK must be in compliance with the FTA laws, regulations, and guidelines and is held responsible for required sub-recipient reporting documents provided to AUTHORITY;

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

**ARTICLE 1. COMPLETE COOPERATIVE 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 NETWORK 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 NETWORK'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 NETWORK'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. 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 NETWORK 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**

AUTHORITY agrees to the following responsibilities:

A. AUTHORITY shall pay NETWORK a sum to be determined by the AUTHORITY based on information retrieved from the National Transit Database (NTD) reports for modes of services operated by NETWORK, unit values distributed by FTA for the respective Fiscal Year (FY) and based on the annual congressional appropriations. AUTHORITY and NETWORK mutually agree that AUTHORITY's obligation shall vary annually; however, the maximum obligation shall not exceed Five Million Seven Hundred Thirteen Thousand Dollars (\$5,713,000).

B. AUTHORITY shall pay NETWORK the difference remaining after AUTHORITY's administrative expenses and other agreed upon costs are subtracted from the FTA Section 5307 Urbanized Area Formula Grant funds. The annual administrative expenses and FTA Section 5307 Urbanized Area Formula Grant funds are stated below.

1. AUTHORITY shall retain up to ten percent (10%) of the FTA Section 5307 Urbanized Area Formula Grant funds to cover administrative and direct costs associated with applying for grant funds, processing payments, and ensuring compliance with federal requirements. AUTHORITY shall also retain the actual cost to perform periodic desk and on-site reviews utilizing a consultant, not to exceed once every thirty-six (36) months. The retention shall be calculated each year by AUTHORITY based on actual costs to AUTHORITY and adjusted accordingly in the next FY allocation.

2. FTA Section 5307 Urbanized Area Formula Grant funds – Grant funds are determined in the grant year in which funds are allocated and by a formula based on information retrieved from the National Transit Database (NTD) report for modes of services operated by NETWORK, unit values distributed by FTA for the respective Fiscal Year (FY) commencing in Fiscal Year 2022 and continuing through Fiscal Year 2026 and based on the annual congressional appropriations.

. AUTHORITY and NETWORK mutually agree that AUTHORITY's maximum obligation shall not exceed the amount of Five Million Eighty eight Thousand Dollars (\$5,088,000) for FTA Section 5307 Urbanized Area Formula Grant funds.

3. FTA Section 5339 Bus and Bus Facilities Formula Grant funds are determined in the grant year in which funds are allocated and by a formula based on information retrieved from the National Transit Database (NTD) report for modes of services operated by NETWORK, unit values distributed by FTA for the respective Fiscal Year (FY) commencing in the Fiscal Year 2022 and continuing through the Fiscal Year 2026 and based on the annual congressional appropriations. .

AUTHORITY's maximum obligation shall not exceed the amount of Six Hundred Twenty-Five Thousand Dollars (\$625,000) for FTA Section 5339 Bus and Bus Facilities Formula Grant funds.

4. AUTHORITY shall retain up to ten percent (10%) of the FTA Section 5339 Bus and Bus Facilities Grant funds to cover administrative and direct costs associated with applying for grant funds, processing payments, and ensuring compliance with federal requirements. AUTHORITY shall also retain the actual cost to perform periodic desk and on-site reviews utilizing a consultant, not to exceed once every thirty-six (36) months. The retention shall be calculated each year by AUTHORITY based on actual costs to AUTHORITY and adjusted accordingly in the next FY allocation.

C. AUTHORITY shall notify NETWORK when FTA Section 5307 Urbanized Area Formula Grant funds are available following execution of the federal grant. At no time, shall AUTHORITY be responsible for paying NETWORK FTA funding prior to the execution of the federal grant agreement. NETWORK shall provide required invoices, and backup documentation in accordance with the Award Management Procedures identified by FTA in FTA C 5010.E.

AUTHORITY shall process payment for NETWORK within 30 days upon receipt of reimbursement from FTA.

D. At the end of the Fiscal Year, AUTHORITY shall calculate the actual costs of the complementary paratransit services provided in NETWORK's service area and deduct the respective costs from the next Fiscal Year's allocation to NETWORK.

E. Compliance with FTA Subrecipient Monitoring – AUTHORITY shall provide NETWORK with a subrecipient compliance monitoring plan, provide consultation in the development of required FTA documents, policies, and procedures, and send notifications of onsite visits including time, date, and compliance components to be reviewed. The notice shall be sent at least thirty (30) calendar days prior to the on-site visit. A full federal compliance review shall be conducted not more than once every thirty-six (36) months and notice of the visit shall be provided at least forty-five (45) calendar days prior to the on-site visit.

F. Compliance with FTA Subrecipient Reporting – AUTHORITY shall provide NETWORK with the required subrecipient reporting documents and hold NETWORK responsible for the completion, submission, and/or retention of subrecipient documents to ensure compliance with the FTA guidelines.

G. FTA Section 5307 and FTA Section 5339 Grant Application – AUTHORITY agrees to include NETWORK's Program of Projects for each fiscal year commencing in Fiscal Year 2022 and continuing to Fiscal Year 2026 in AUTHORITY's FTA Section 5307 Urbanized Area Formula Grant and 5339 Bus and Bus Facilities Grant application that shall be submitted to the FTA in a timely manner.

H. Federal Transportation Improvement Program – AUTHORITY agrees to include NETWORK's Program of Projects in the Federal Transportation Improvement Program.

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

J. For the purposes of this Agreement, AUTHORITY'S payment obligations, if any, shall survive the expiration of this Agreement.

#### **ARTICLE 4. RESPONSIBILITIES OF NETWORK**

NETWORK agrees to the following responsibilities:

A. National Transit Database Collection and Reporting – NETWORK shall submit, on or before October 31<sup>st</sup> of each year, a fiscal year-end National Transit Database (NTD) report covering the period from July 1st of the previous year through June 30th of the report year as required by the Federal Department of Transportation (DOT) and AUTHORITY. In the event that NETWORK fails to submit the NTD base report in a timely manner, AUTHORITY has the option to withhold the maximum cumulative obligations that are identified in this Cooperative Agreement, for each year in which the NTD base has not been submitted.

B. Program of Projects – NETWORK shall adopt an annual Program of Projects and submit it to AUTHORITY on or before July 1st of each year. Only projects eligible under the FTA Section 5307 Urbanized Area Formula Grant program and FTA Section 5339 Bus and Bus Facilities Grant program may be included in the Program of Projects. NETWORK agrees that if NETWORK cannot develop a Program of Projects that expends all grant funding apportioned, AUTHORITY will provide NETWORK with a list of eligible projects that would be mutually beneficial to NETWORK and AUTHORITY.

C. Compliance with FTA Subrecipient Reporting – NETWORK agrees to provide the following required subrecipient reporting documents to AUTHORITY:

1. Reimbursement Invoice – NETWORK agrees to invoice AUTHORITY for eligible FTA Section 5307 Urbanized Area Formula Grant funds and FTA Section 5339 Bus and Bus Facilities grant funds. NETWORK shall submit reimbursement request to AUTHORITY in accordance with the Award Management Procedures identified by FTA in FTA C 5010.E.
2. Quarterly Progress Report – NETWORK agrees to provide AUTHORITY with quarterly progress reports in accordance with the FTA reporting requirements. This includes quarterly Milestone Progress Reports (MPR) and Federal Financial Reports (FFR). Progress reports shall be provided by NETWORK to AUTHORITY on a quarterly basis on or before the fifteenth of the month following the quarter ending;
3. On-site Visits – NETWORK agrees with performance of onsite visits by AUTHORITY to ensure NETWORK is in compliance with all FTA requirements. Onsite visits by AUTHORITY to NETWORK shall be scheduled in advance. NETWORK shall provide all documentation necessary to AUTHORITY to ensure compliance with all FTA requirements;
4. Annual FTA Compliance Self-Certification – NETWORK agrees to provide AUTHORITY with the FTA Compliance Self Certification Forms on an annual basis on or before the fifteenth of the month following fiscal year ending;
5. NETWORK shall provide AUTHORITY with a copy of NETWORK's annual audit, which includes the Single Audit Report, A-133 and the Management Letter prepared by NETWORK's independent auditor.
6. NETWORK shall provide such other information as requested by AUTHORITY, including information to ensure compliance with federal regulations and as required for the FTA Triennial Review.

D. If NETWORK contracts for consultant services to perform any or all services, then NETWORK shall be responsible for payment to the consultant for services rendered and then seek reimbursement for eligible expenses from AUTHORITY as part of this Agreement. NETWORK shall procure consultant services in compliance with federal requirements and shall be responsible for reviewing the consultant's invoice for accuracy, terms, and completeness.

E. Compliance with Americans with Disabilities Act – NETWORK agrees to certify annually that the transportation system is in full compliance with the Americans with Disabilities Act. The certification must include a complementary paratransit service plan. NETWORK shall contract with AUTHORITY to provide this complementary paratransit service on a per-trip fee basis. The cost will be on a per-trip fee basis for a proportionate share of trips that originate and terminate within three-quarter miles of NETWORK's operating area. The number of complementary paratransit trips billed to NETWORK will be equal to the total number of complementary paratransit trips in NETWORK's operating area times the percentage of NETWORK's revenue vehicle miles traveled as compared to AUTHORITY's revenue vehicle miles traveled in NETWORK's operating area. NETWORK will be billed on an annual basis in October following the close of the fiscal year. NETWORK agrees that the cost of the complementary paratransit service shall be deducted from its annual reimbursement invoice. AUTHORITY shall notify NETWORK of the budgeted cost per trip within two weeks following the adoption of the AUTHORITY's budget.

F. Local Match – NETWORK agrees to provide the local match required by the FTA. The Program of Projects must identify the source of NETWORK's local match.

G. Exchange of Funds – NETWORK shall not make a request to AUTHORITY to exchange federal funds for local funds, nor exchange capital funds for operating assistance; however, AUTHORITY reserves the right to exchange federal funds for local funds. NETWORK agrees to execute all applicable documents necessary to exchange local funds for federal funds as may be required.



H. Timing of National Transit Database Reporting, ACCESS Expenses, and Federal Budget – NETWORK recognizes that there is at least a two (2) year delay when NTD reporting is submitted before the corresponding FTA Section 5307 Urbanized Area Formula Grant funds can be allocated. NETWORK also recognizes that FTA Section 5307 Urbanized Area Formula Grant funds and FTA Section 5339 Bus and Bus Facilities Formula Grant funds are not available until such time that the federal budget is adopted, FTA publishes apportionments, and AUTHORITY has executed a grant agreement with FTA. FTA may issue exceptions to the NTD reporting and allocations accordingly. AUTHORITY and NETWORK shall follow directives issued by FTA for NTD reporting and calculation of annual allocations accordingly.

I. Maintenance Record Reporting – NETWORK shall provide AUTHORITY with a report disclosing any federalized capital assets and records pertaining to its vehicle maintenance data. NETWORK shall submit report to AUTHORITY on an annual basis no later than sixty (60) days following the close of the fiscal year.

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

**ARTICLE 5. REQUEST FOR REIMBURSEMENT:**

A. NETWORK shall prepare and submit to AUTHORITY an invoice as specified in the subrecipient section Article 4, Paragraph C, Section 1, entitled "Reimbursement Invoice," included in this Agreement. NETWORK's Reimbursement Invoice shall include allowable project costs incurred and paid for by NETWORK consistent with the Project's Scope of Work and Activity Line Items (ALI) identified in the FTA grant application. The Reimbursement Invoice submitted by NETWORK shall be signed by an authorized agent who can duly certify the accuracy of the

included information. Advance payments by AUTHORITY are not allowed.

B. Each Reimbursement Invoice will report the total of Project expenditures and will specify the percent and amount of Federal Funds to be reimbursed. The Reimbursement Invoice shall be accompanied by a detailed invoice describing all invoiced work completed and supporting documentation.

C. If applicable, the first Reimbursement Invoice shall also be accompanied by a report describing any tasks specified in the Scope of Work document which were accomplished prior to the effective date of this Agreement, which costs could be credited toward the required Local Match provided that AUTHORITY has provided prior written approval for such expenditures to NETWORK.

D. Eligible Project costs are described in the Federal Grant and in the FTA guidelines.

E. The Reimbursement Invoice must be submitted on NETWORK's letterhead.

F. NETWORK should consult with AUTHORITY's Project Manager for questions regarding non-reimbursable expenses.

G. Total payments shall not exceed Five Million, Seven Hundred Thirteen Thousand Dollars(\$5,713,000).

H. If any amounts requested by NETWORK are disallowed or not reimbursed by the FTA for any reason, NETWORK may submit other eligible expenses for reimbursement to AUTHORITY in accordance with the ALIs identified in the FTA grant application. All payments made by AUTHORITY hereunder are subject to the audit provisions contained herein and within the Federal Grant.

I. NETWORK shall comply with and ensure that work performed under this Agreement is done in compliance with all applicable provisions of federal, state and local laws, statutes, ordinances, rules, regulations and procedural requirements, including without limitation, Federal Acquisition Regulations (FAR) and the applicable requirements and regulations of AUTHORITY. NETWORK acknowledges responsibility for obtaining copies of and complying with

the terms of the most recent federal, state or local laws and regulations and AUTHORITY requirements, including any amendments thereto.

**ARTICLE 6. IT IS MUTUALLY UNDERSTOOD AND AGREED:**

All PARTIES agree to the following responsibilities:

A. This Agreement shall commence upon execution by both PARTIES and shall continue in full force and effect through June 30, 2027. This Agreement may only be extended upon mutual agreement by both PARTIES. The amount of funding assistance to be provided by AUTHORITY will be based on information retrieved from the National Transit Database (NTD) reporting for modes of services operated by NETWORK, unit values distributed by FTA for the respective Fiscal Year (FY), and based on the annual congressional appropriations.

B. This Agreement supersedes Cooperative Agreement No. C-7-1760 between AUTHORITY and NETWORK. Any funds distributed under Cooperative Agreement No. C-7-1760 shall be deducted from the obligation under this Agreement.

C. This Agreement may be terminated by either PARTY after giving ninety (90) days written notice. If NETWORK becomes a direct recipient of federal funds at any time during the term of this Agreement, NETWORK may terminate this Agreement after giving AUTHORITY ninety (90) days written notice.

D. This Agreement may be amended in writing at any time by the mutual consent of both PARTIES. No amendment shall have any force or effect unless executed in writing by both PARTIES.

E. The persons executing this Agreement on behalf of the PARTIES hereto warrant that they are duly 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. All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or

by depositing said notices in the U.S. mail, registered, or certified mail and addressed as follows:

To NETWORK:

Anaheim Transportation Network  
1354 South Anaheim Boulevard  
Anaheim, California 92805

Attention: Diana Kotler  
Executive Director  
(714) 563-5287  
dkotler@atnetwork.org

To AUTHORITY:

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

Attention: Luis Martinez  
Contract Administrator  
(714) 560-5767  
Lmartinez1@octa.net

C: P. Sam Kaur, Department Manager,  
Revenue and Grants Administration

G. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not part of and not intended to govern, limit or aid in the construction or interpretation of any terms or provision thereof.

H. The provision 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.

I. 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 to 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.

J. 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.

K. 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.

#### **ARTICLE 7. PROMPT PAYMENT CLAUSE**

A. NETWORK agrees to pay any expenses related to reimbursement request such as, but not limited to, each contractor and subcontractors for the satisfactory work performed under this Agreement prior to submitting the Request for Reimbursement to AUTHORITY. , NETWORK agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. AUTHORITY reserves the right to request the appropriate documentation from NETWORK showing payment has been made to the subcontractors. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by AUTHORITY. NETWORK agrees further to provide proof of payment documentation to AUTHORITY as part of the Request for Reimbursement.

B. Failure to comply with this provision or delay in payment without prior written approval from AUTHORITY will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a penalty of two percent (2%) of the invoice amount due per month for every month that payment is not made.

C. These prompt payment provisions must be incorporated in all subcontract agreements issued by NETWORK under this Agreement.

#### **ARTICLE 8. INDEPENDENT CONTRACTOR**

NETWORK's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. NETWORK's personnel performing services under this Agreement shall at

all times be under NETWORK's exclusive direction and control and shall be employees of NETWORK and not employees of AUTHORITY. NETWORK shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

#### **ARTICLE 9. CONFLICT OF INTEREST**

NETWORK agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, NETWORK is unable, or potentially unable to render impartial assistance or advice to AUTHORITY; NETWORK's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or NETWORK has an unfair competitive advantage. NETWORK is obligated to fully disclose to AUTHORITY in writing Conflict of Interest issues as soon as they are known to NETWORK. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

#### **ARTICLE 10. CODE OF CONDUCT**

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

#### **ARTICLE 11. ACCESS TO RECORDS AND REPORTS**

Upon reasonable notice, NETWORK shall permit authorized personnel of the AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to NETWORK's accounting books, records, payroll documents and facilities of the NETWORK which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. NETWORK 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 NETWORK's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors. NETWORK shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

**ARTICLE 12. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

NETWORK and all subcontractors performing work under this Agreement, shall be prohibited from concurrently representing or lobbying for any other party competing for a contract with AUTHORITY, either as a prime NETWORK or subcontractor. Failure to refrain from such representation may result in termination of this Agreement after 15 days written notice is provided by AUTHORITY to NETWORK.

**ARTICLE 13. FEDERAL, STATE AND LOCAL LAWS**

NETWORK warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

**ARTICLE 14. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with its performance under this Agreement, NETWORK shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. NETWORK shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**ARTICLE 15. CIVIL RIGHTS ASSURANCE**

During the performance of this Agreement, NETWORK, for itself, its assignees and successors in interest agree as follows:

A. Compliance with Regulations: NETWORK shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

B. Nondiscrimination: NETWORK, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The NETWORK shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the NETWORK for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the NETWORK of the NETWORK's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: NETWORK shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AUTHORITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a NETWORK is in the exclusive possession of another who fails or refuses to furnish this information the NETWORK shall so certify to the AUTHORITY as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the NETWORK's noncompliance with nondiscrimination provisions of this Agreement, the AUTHORITY shall impose Agreement sanctions



as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the NETWORK under the Agreement until the NETWORK complies; and/or

2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Title VI of the Civil Rights Act: In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d et seq. and DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21. In addition, FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for FTA Recipients,” 05-13-07, provides FTA guidance and instructions for implementing DOT’s Title VI regulations.

G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

H. Incorporation of Provisions: NETWORK shall include the provisions of paragraphs (A) through (H) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The NETWORK shall take such action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a NETWORK becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the NETWORK may request the AUTHORITY to enter into such litigation to protect the interests of the AUTHORITY, and, in addition, the NETWORK may request the United States to enter into such litigation to protect the interests of the United States.

#### **ARTICLE 16. PROHIBITED INTERESTS**

A. NETWORK covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B. No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Agreement or to the benefits thereof.

#### **ARTICLE 17. PRIVACY ACT**

NETWORK shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, NETWORK agrees to obtain the express consent of the Federal Government before NETWORK or its employees operate a system of records on behalf of the Federal Government. NETWORK understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

#### **ARTICLE 18. INCORPORATION OF FTA TERMS:**

All provisions required by DOT, whether or not expressly set forth in this document, as set forth in FTA Circular's 9030.1D, 4220.1F, and 5010.1D, as amended and FTA's Master Cooperative Agreement are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Cooperative Agreement. NETWORK shall not perform any act, fail to perform any act, or refuse to comply with any requests, which cause AUTHORITY to be in violation of the FTA terms or conditions.

#### **ARTICLE 19. FEDERAL CHANGES**

NETWORK shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between AUTHORITY and FTA , as they may be amended or promulgated from time to time during

this Agreement. NETWORK's failure to comply shall constitute a material breach of contract.

**ARTICLE 20. ALCOHOL AND DRUG POLICY**

A. NETWORK agrees to establish and implement an alcohol and drug program that complies with 49 Code of Federal Regulations Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or AUTHORITY, to inspect the facilities and records associated with the implementation of the alcohol and drug testing program as required under 49 CFR Part 655 and review the testing process.

B. NETWORK agrees further to certify annually its compliance with Part 655 and to submit the Management Information System reports to, and when requested by, AUTHORITY's Project Manager and AUTHORITY's Alcohol and Drug Program Manager. To certify compliance NETWORK shall use the "Substance Abuse Certifications" and the "Annual List of Certifications and Assurances for Federal Transit Administration (FTA) Grants and Cooperative Agreements," which is published annually in the Federal Register.

C. On an annual basis, and no later than February 15 of each year, NETWORK shall submit to AUTHORITY's People and Community Engagement Division annual drug and alcohol testing data using the appropriate FTA prescribed forms. The report shall cover testing conducted during the previous calendar year. It shall be addressed as follows:

OCTA People and Community Engagement

Attn: Alcohol and Drug Program Manager

550 South Main Street

P. O. Box 14184

Orange, CA 92863-1584

D. Using the EZ format prescribed by the FTA for the annual report, NETWORK shall send a quarterly drug and alcohol testing report to the Project Manager, with a copy to the Alcohol and Drug Program Manager in People and Community Engagement Division. The quarterly report must

be submitted no later than the 15<sup>th</sup> of the month following the close of each quarter (April, July, October, January).

E. NETWORK agrees further to submit upon request a copy of the Policy Statement developed to implement its alcohol and drug testing program.

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

#### **ARTICLE 21. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

AUTHORITY and NETWORK acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to AUTHORITY, NETWORK, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. NETWORK agrees to include these requirements in all of its subcontracts.

#### **ARTICLE 22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

A. NETWORK acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this Agreement, NETWORK certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FTA assisted project for which this Agreement's work is being performed. NETWORK also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on NETWORK to the extent the Federal Government deems appropriate.

B. NETWORK also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. §§5316/5317, the Government reserves the right to impose the penalties of 18 U.S.C. §§1001 et seq. and 49 U.S.C. §§5316/5317 on NETWORK, to the extent the Federal Government deems appropriate. NETWORK agrees to include this requirement in all of its subcontracts.

#### **ARTICLE 23. RECYCLED PRODUCTS**

NETWORK shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. §6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247. NETWORK agrees to include this requirement in all of its subcontracts.

#### **ARTICLE 24. LOBBYING**

NETWORK who applies or bids for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### **ARTICLE 25. ENERGY CONSERVATION REQUIREMENTS**

NETWORK shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy

Policy Conservation Act.

**ARTICLE 26. CLEAN AIR**

NETWORK shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. NETWORK shall report each violation to AUTHORITY, who will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. NETWORK agrees to include this requirement in all of its subcontracts.

**ARTICLE 27. CLEAN WATER REQUIREMENTS**

NETWORK shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq. NETWORK shall report each violation to AUTHORITY and understands and agrees that AUTHORITY who will in turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office. NETWORK agrees to include this requirement in all of its subcontracts.

**ARTICLE 28. DEBARMENT AND SUSPENSION**

NETWORK shall not do business with a subcontractor or other participant who is debarred, suspended or otherwise disqualified. NETWORK shall comply with 2 CFR Part 180, as adopted and supplemented by 2 CFR Part 1200. NETWORK shall include these requirements in any lower tier covered transaction it enters into.

**ARTICLE 29. NEW FEDERAL FUNDING NOT COVERED BY THIS AGREEMENT**

AUTHORITY and NETWORK agree that should a new source of federal funding for transportation purposes become available to AUTHORITY, AUTHORITY shall, at NETWORK's request, agree to engage in good faith discussions with NETWORK regarding NETWORK's eligibility for such federal funding. In no event shall this ARTICLE be read to require AUTHORITY to allocate any such funding to NETWORK and AUTHORITY shall retain full discretion as to the allocation and use of such federal funds. It is intended that the ARTICLE shall only apply to funding not covered under this Agreement.

This Cooperative Agreement shall be made effective upon execution by both PARTIES.

**IN WITNESS WHEREOF**, the PARTIES hereto have caused this Cooperative Agreement No. C-2-2777 to be executed on the date first above written.

**ANAHEIM TRANSPORTATION  
NETWORK**

By: \_\_\_\_\_  
Diana Kotler  
Executive Director

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

**APPROVED AS TO FORM:**

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

**APPROVED:**

By: \_\_\_\_\_  
Andrew Oftelie  
Chief Financial Officer