

COUNCIL AGENDA: AUGUST 19, 2014

SUBJECT: APPROVAL OF THE AGREEMENT FOR TRANSIT SERVICES FOR THE COLLEGE OF THE SEQUOIAS STUDENT TRANSIT PASS PROGRAM

SOURCE: Public Works Department – Transit Division

COMMENT: On December 14, 2010, the College of the Sequoias (COS) entered into an agreement between the Tulare County Association of Governments and participating Tulare and Kings Counties transit agencies to provide students with an unlimited fixed route transit pass valid on Tulare and Kings Counties fixed route bus services. The participating Tulare and Kings Counties bus service includes the following transit providers: City of Visalia, City of Tulare, City of Dinuba, City of Porterville, Kings Area Rural Transit and the County of Tulare.

This new agreement is necessary because of a change in student transportation fees. The students at COS recently approved an additional \$5 fee per both full-time and part-time students per semester. The previous fees were \$5 for full-time students and \$4 for part-time students. With the increase, the fee for full-time students will be \$10 and the fee for part-time students will be \$9 per semester. The COS Board of Trustees will also contribute \$1 to the transportation fund for each COS student that is enrolled each semester.

If approved, this agreement between TCAG and the City of Porterville would take effect with the Fall 2014 academic semester and be effective through the Fall 2020 academic semester, unless otherwise amended or suspended.

Finally, this agreement sets forth the distribution of funds collected. TCAG will distribute 50% of funds to participating transit providers based on ridership and mileage criteria and 50% based on new and expanded service costs incurred by transit providers as a direct result of the COS Student Transit Pass Program.

Historically, Porterville Transit transports an average of 800 COS students per semester and receives \$300 in program funds. This equates to an average passenger fare of approximately \$0.38 per rider per semester. The increase in student fees will increase the program funds the City receives, but COS student fares still trail behind the average passenger fare of \$1.01 that non-COS passengers paid during the previous fiscal year.

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Earlier this year, City and TCAG staff aggressively worked with the COS Student Senate to increase the mandatory transportation fee to help ensure the COS program will continue for future semesters. Staff will continue to work with TCAG to look for additional grant programs to supplement the COS Student Program funds in order to bring the COS average passenger fare in line with the system-wide passenger fare.

Staff recommends that the Council continue to participate in the COS Student Pass Program to make transportation more affordable for students, especially for students who otherwise could not afford to attend college due to the costs of transportation. The COS Student Pass Program will also continue to increase ridership, thereby decreasing dependency on automobiles and reducing the environmental pollution caused by such automobiles.

At this time, the City does not have an agreement with Porterville College to provide a similar student pass program. Staff has been hesitant to develop a local program since the COS "model" program had been severely underfunded. However, the Council authorized a reduced Student monthly pass of \$25 per month in July 2013.

The amended attached agreement was reviewed by all of the transit providers in both the County of Tulare and Kings County and they were requested to take it before their respective governing boards for approval.

RECOMMENDATION: That the City Council:

1. Approve the attached Agreement for Transit Services for the College of the Sequoias Student Transit Pass Program;
2. Authorize the Mayor to execute the Transit Services Agreement; and
3. Authorize staff to forward the executed Agreement for Transit Services to TCAG.

ATTACHMENT: Agreement for Transit Services for the College of the Sequoias Student Transit Pass Program

AGREEMENT

FOR TRANSIT SERVICES FOR THE COLLEGE OF THE SEQUIOIAS STUDENT TRANSIT PASS PROGRAM

BETWEEN THE TULARE COUNTY ASSOCIATION OF GOVERNMENTS (TCAG) AND THE _____

This Agreement is made and entered into this ___ Day of 2014, by and between the Tulare County Association of Governments, hereinafter referred to as "TCAG," and the _____, hereinafter referred to as "Agency."

RECITALS

WHEREAS, in September 2010 College of the Sequoias (COS) students voted to implement a mandatory transportation fee of \$5 per full-time student, and \$4 per part-time student, which would provide students with an unlimited fixed route transit pass valid on Tulare County fixed route bus services (excluding Sequoia Shuttle) and Kings Area Rural Transit fixed routes; and

WHEREAS, in May 2014 COS students voted to implement an additional mandatory fee of \$5 per full-time and part-time student to contribute to the existing COS Student Transit Pass Program; and

WHEREAS, the transit services available to registered students will include fixed route services on the following transit systems: Visalia Transit, Visalia Towne Trolley, Tulare Intermodal Express (TIME), Dinuba Area Regional Transit (DART), Dinuba Connection, Porterville Transit, Tulare County Area Transit (TCaT), and Kings Area Rural Transit (KART); and

WHEREAS, the COS Board of Trustees will contribute \$1.00 to the transportation fund for each COS student that is enrolled, per semester in the semester in which they are enrolled; and

WHEREAS, COS students will not receive student transit program identification valid on participating fixed route transit unless they have paid their student transportation fees for the semester; and

WHEREAS, additional funding may be received from grants and other sources and may be applied during the contract period of the agreement; and

WHEREAS, COS will collect all transportation funds and provide to TCAG, based on the total number of students paying fees; and

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WHEREAS, Agency transit will track transit ridership by students using valid COS identification cards using a tracking method approved by TCAG; and

WHEREAS, Agency will submit ridership data for student passengers using valid COS student identification to TCAG monthly; and

WHEREAS, Agency will submit the average miles per passenger for participating fixed route systems only from each year's State Controller's Report or National Transit Database reporting; and

WHEREAS, TCAG will retain 1% from the Board of Trustees and COS Student funds for administration costs; and

WHEREAS, if Agency fails to submit appropriate COS student ridership data by the 15th of each month, the Agency agrees to accept payment based on one-half of their previous month's ridership data; and

WHEREAS, TCAG shall distribute fifty-percent of received funds to participating transit providers based on ridership and mileage criteria; and

WHEREAS, TCAG shall distribute fifty-percent of received funds to transit providers based on new and expanded service costs incurred by transit providers as a direct result of COS student riders; and

WHEREAS, TCAG shall determine the criteria for determining new and expanded service costs incurred as a direct result of COS student riders, with input from transit providers, and will approve amounts payable; and

WHEREAS, TCAG shall adopt criteria for determination of new and expanded service costs, and the first proposal for criteria parameters will be presented to the TCAG Board in September 2014; and

WHEREAS, this agreement shall be valid for the Fall 2014 academic semester through the Fall 2020 academic semester, unless otherwise amended or superseded.

NOW, THEREFORE, the parties agree as follows:

1. **TERM.** This agreement shall commence on August 1, 2014 and shall expire at 11:59 PM on December 31, 2020, unless otherwise terminated, amended, or superseded. The agreement will be renewable for similar or different terms and conditions upon mutual agreement between all parties.
2. **INDEPENDENT CONTRACTOR.** While engaged in carrying out and complying with the terms and conditions of this agreement, TCAG is an independent contractor, and not an officer, agent, or employee of Agency.

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3. **PAYMENT.** TCAG agrees to transfer the funds received by COS (less administrative costs) after the conclusion of each semester/session in which funds are collected to participating agencies within 10 business days of receiving the funds, and once all COS student ridership data and average passenger mileage is received for the semester/session. Ridership totals are to be submitted monthly, and are due by the 15th of every month. If the 15th falls on a weekend, the data is due the following working day. If Agency fails to submit the required data by the 15th each month, Agency agrees to accept payment based on one-half of their previous month's ridership.

TCAG will disburse fifty-percent of the funds received (less administrative costs) to transit providers based on the following formula: 50% of applicable semester/session funds in proportion to provider passenger percentage and 50% of applicable semester/session funds in proportion to provider average passenger mile percentage. Ridership shall be tracked by the Agency through the Agency operations contractor/employees and submitted in a report. Agency shall make available the source documents to verify that report if requested by TCAG.

TCAG will disburse funds from the other fifty-percent of those received (less administration) to transit providers based on new and expanded service costs incurred by transit providers as a direct result of COS student riders. TCAG shall determine the criteria for determining new and expanded service costs incurred as a direct result of COS student riders, with input from transit providers, and will approve amounts payable. TCAG shall adopt criteria for determination of new and expanded service costs.

If the latter defined fifty-percent of funds exceeds the approved amount of costs incurred, TCAG will hold those funds for future said expenses. If the funds are less than the approved costs incurred, TCAG will disperse funds up to the payable amount as they come in. In the instance that multiple agencies are owed amounts for this portion of funds, funds will be paid out proportionately based on amount owed to each agency.

4. **ADMINISTRATION COSTS.** In consideration of the above payments and other activities associated with the program's administration, TCAG will retain 1% of total funds for administration costs. Funds received for the program shall also pay for proper identification for student riders. Student identification shall be updated every semester/session.
5. **DEFAULT.** Upon default by TCAG or Agency in any of the covenants or conditions of this agreement, TCAG or Agency may terminate agreement upon 60 days advance written notice to the defaulting party.
6. **AMENDMENTS.** This agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by both parties.
7. **GOVERNING LAW.** This agreement shall be governed by and construed in accordance with the laws of the State of California.

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8. **BINDING EFFECT.** This agreement is for the benefit of and shall be binding on all parties and their respective successors, heirs, and assigns.
9. **ATTORNEYS' FEES AND COSTS.** Each party shall bear its own attorneys' fees and costs for all such fees and costs incurred prior to the date of execution of this agreement.
10. **BREACH OF AGREEMENT.** If either party breaches this agreement, the prevailing party shall be entitled to all damages reasonably flowing from the breach.
11. **INDEMNIFICATION.** Agency and TCAG shall hold each other harmless, defend and indemnify their respective agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, arising out of the activities of Agency or TCAG or its agents, officers and employees under this agreement. This indemnification shall be provided by each party to the other party regarding its own activities undertaken pursuant to this agreement, or as a result of the relationship thereby created, including any claims that may be made against either party by any taxing authority asserting that an employer-employee relationship exists by reason of this agreement, and any claims made against either party alleging civil rights violations by such party under Government Code sections 12920 et seq. (California Fair Employment and Housing Act). This indemnification obligation shall continue beyond the term of this agreement as to any acts or omissions occurring under this agreement or any extension of this agreement.
12. **EXECUTION IN COUNTERPARTS.** This agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy of an original, with all signatures appended together, shall be deemed a fully executed agreement.
13. **SEVERABILITY.** If any provision of this agreement is held to be void, voidable, or unenforceable, the remaining portions of the agreement shall remain in full force and effect.
14. **INTERPRETATION.** The language of all parts of this agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.
15. **COMPLIANCE WITH LAW.** TCAG agrees to perform the services contemplated by this agreement in a professional and a competent manner and in compliance with all state or federal laws or regulations governing the services to be rendered pursuant to this agreement.
16. **BOARD APPROVAL.** The parties recognize that the effectiveness of this agreement is contingent upon approval by the Agency and TCAG.
17. **OTHER DOCUMENTS/ACTS.** The parties agree to work together diligently and to execute related documents and perform related acts necessary for the successful performance of this agreement.

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18. **ENTIRE AGREEMENT.** This agreement and its attachments, if any, constitute the entire agreement and understanding between the parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in this agreement. All prior understandings, terms, or conditions are deemed merged into this agreement and its attachments.
19. **NOTICES TO PARTIES.** All notices to be given to the parties to this agreement shall be in writing and served by depositing same in the United States Mail, postage prepaid, registered or certified mail.

Notices to TCAG should be addressed to:

Tulare County Association of Governments
210 N. Church Street, Suite B
Visalia, CA 93291

Notices to Agency should be addressed to:

Agency
Address
Phone

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first herein above written.

TULARE COUNTY ASSOCIATION OF GOVERNMENTS:

Signature _____ Date _____

Ted Smalley, Executive Director

Name and Title _____

AGENCY:

Signature _____ Date _____

Name and Title _____

APPROVED AS TO FORM
COUNTY COUNSEL

Signature _____

Date _____