

SUBJECT: APPROVAL OF ANNUAL TRANSPORTATION AGREEMENT WITH COUNTY OF TULARE

SOURCE: Public Works Department - Transit

COMMENT: Since 1983, the City of Porterville has maintained an annual agreement with the County of Tulare to provide coordinated public transportation services to residents within the Porterville urbanized area. The current agreement expires June 30, 2014, and it is proposed the attached successor Agreement be approved and maintained for FY 2014/2015.

Traditionally, the County has shared in the net operating cost of the system, i.e., total operating costs less fare box revenues in proportion to the ridership percentage from the unincorporated area as experienced over the previous agreement year. However, calculations have been modified over the last several years due to the 2010 Census, average passenger mile, and the Federal Transit Administration's (FTA) Section 5307 program.

This year, the County proposes to reimburse the City at a rate of 15% of net operating costs for the Demand-Response System and at the rate of 30% of net operating costs for the transit system. These rates are based on actual ridership data reported during FY 2013/2014.

The County's contribution to City transit operations for the FY 2014/2015 agreement will be **\$275,350**, down 10% from last year's contribution of \$306,042. The decrease in the County's contribution is a direct result of the decrease in revenue service hours on the Demand-Response service and the increase in farebox revenues collected on the transit service.

RECOMMENDATION: That the City Council enter into an agreement with the County of Tulare for FY 2014/2015 to provide service to County residents within the Service Area Boundary, and authorize the Mayor to execute the agreement on behalf of the City.

ATTACHMENT: City and County Transit Agreement

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ACTING

Item No. 7

1 **AGREEMENT**

2 THIS AGREEMENT, is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by  
3 and between the COUNTY OF TULARE, hereinafter referred to as the "County", and the CITY  
4 OF PORTERVILLE, hereinafter referred to as the "City".

5 **WITNESSETH:**

6 WHEREAS, the County and the City desire to coordinate their respective public  
7 transportation systems in the Porterville urbanized area; and

8 WHEREAS, there are and will continue to be citizens of the County who can reasonably be  
9 served by the City's transit system and there are and will continue to be citizens of the City who  
10 can reasonably be served by the County's transit system; and

11 WHEREAS, the County and the City recognize the goals of providing a transportation  
12 system to the general public at a reasonable fare and that providing coordinated public  
13 transportation service within the Porterville urbanized area; and

14 WHEREAS, the County and the City desire to provide for the Joint Exercise of Powers for  
15 the purpose of providing and maintaining public transportation systems in the Porterville  
16 urbanized area;

17 NOW, THEREFORE, County and City mutually agree as follows:

18 1. **Scope of Work.** The County and City shall each control, manage, and operate a  
19 separate transit system. The City and County shall furnish each other thirty (30) days prior  
20 written notice of any and all service level and fare level changes.

21 (a) **County.** The County shall provide transit service to those residents of the  
22 City desiring to use the regularly scheduled service of the County transit system. The  
23 County shall establish bus stop location(s) within the City which will interface with  
24 the City bus stop locations and facilitate system transfers. The County stop(s) shall be  
25 established at locations acceptable to the City. Approval on behalf of the City shall  
26 be given by the City Transit Coordinator.

27 (b) **City.** The City shall establish a series of bus stop locations within the  
28 County. The City stops shall be established at locations acceptable to the County.  
29 Approval on behalf of the County shall be given by the Director of Transportation.  
30 The City shall provide transit service to County residents desiring transit service  
31 within the urbanized service area as set forth in Exhibit "A" which is attached hereto  
32 and made a part hereof by this reference.

33 2. **Management-County.** The County shall manage the County transit system in an  
34 appropriate manner, insuring cost effective operation, including marketing the system in a  
35 professional manner and collecting fares from riders on the County transit system.

1           **3. Management-City.** The City shall manage the City transit system in an  
2 appropriate manner, insuring cost effective operation, including marketing the system in a  
3 professional manner and collecting fares from riders on the City transit system.

4           **4. Compensation.** The County shall compensate the City for service to County  
5 residents living in the herein agreed upon service area. Compensation shall be limited to a  
6 percentage of the operating costs of the City's Transit System. The term "operating cost" as  
7 used in this Agreement shall be defined as all costs in the operating expense object classes  
8 of the Uniform Systems of Accounts for Public Transit Operators adopted by the State  
9 Controller pursuant to Public Utilities Code Section 99243.

10           Compensation for the period July 1, 2014 through June 30, 2015, will be as follows:

	<b>Demand Response</b>	<b>Route Service</b>
County LTF (See Below)	\$100,981	\$372,544
FTA Section 5307 Credit	(\$23,986)	(\$59,166)
Fare Box Credit	(\$5,039)	(\$135,882)
<u>Depreciation</u>	<u>\$2,067</u>	<u>\$23,831</u>
<b>Total Payment</b>	<b>\$ 74,023</b>	<b>\$201,327</b>

17           **5. Authorization of Payment.** FTA Section 5307 Funds will be claimed by the City on  
18 the County's behalf. The County by this Agreement authorizes the Tulare County  
19 Association of Governments to transfer \$275,350 of State Transit Assistance Funds, and/or  
20 Local Transportation Funds from the County's 2014/15 Apportionment to the City of  
21 Porterville's Apportionment. The County further authorizes the City to claim said \$275,350  
22 as full payment for services under this Agreement. In case of termination of this  
23 Agreement prior to June 30, 2015, the County agrees to compensate the City for a  
24 proportional amount of the sum of \$275,350 based upon the number of days the services  
25 were provided by the City during a 365 day period.

26           **6.FTA Funds.** Per the 2010 Census, the Porterville urbanized area has a population of  
27 72,329; 54,247 (75.0%) of which are City residents, and 18,082 (25.0%) of which are  
28 County residents. The Porterville Urbanized Area is eligible to receive Federal Transit  
29 Administration (FTA) Funds from Section 5307. The City of Porterville will be the  
30 claimant of these funds. The City will, at the request of the County, claim and transmit up  
31 to 34% of said funds for use by the County for eligible purposes under FTA Section 5307.  
32 In no case shall the amount transmitted or credited to the County exceed 34% of the total  
33 available. Any Section 5307 Funds which are to be transmitted to the County shall be  
34 handled under a separate agreement.

35           **7. Renegotiation.** In the event a contract between the Federal Transit  
36 Administration and the City of Porterville is not executed by June 30, 2014 for the Section

1 5307 Funds specified in paragraphs 4, 5 and 6 or in the event that \$83,152 exceeds 34% of  
2 the total FTA Section 5307 funds available to the Porterville urbanized area, this contract  
3 will be renegotiated to reflect this condition.

4 8. **Drivers.** The parties shall require that all transit drivers meet all licensing  
5 requirements of the State of California.

6 9. **Indemnification-City.** City shall hold harmless, defend and indemnify County,  
7 its agents, officers and employees from and against any liability, claims, actions, costs,  
8 damages or losses of any kind, including death or injury to any person and/or damage to  
9 property, arising out of the activities of City or its agents, officers and employees under this  
10 Agreement. This indemnification specifically includes any claims that may be made  
11 against County by any taxing authority asserting that an employer-employee relationship  
12 exists by reason of this Agreement. This indemnification obligation shall continue beyond  
13 the term of this Agreement as to any acts or omissions occurring under this Agreement or  
14 any extension of this Agreement.

15 10. **Indemnification-County.** County shall hold harmless, defend and indemnify  
16 City, its agents, officers and employees from and against any liability, claims, actions,  
17 costs, damages or losses of any kind, including death or injury to any person and/or damage  
18 to property, arising out of the activities of County or its agents, officers and employees  
19 under this Agreement, and any claims made against County alleging civil rights violations  
20 by City under Government Code section 12920 et seq. (California Fair Employment and  
21 Housing Act). This indemnification obligation shall continue beyond the term of this  
22 Agreement as to any acts or omissions occurring under this Agreement or any extension of  
23 this Agreement.

24 11. **Insurance-Liability.** The City and the County shall each provide comprehensive  
25 general public liability and comprehensive automotive liability insurance with single limit  
26 coverage of not less than \$5,000,000 or equivalent self-insurance covering their activities  
27 under this Agreement. Prior to commencing operations, each party shall file with the Clerk  
28 of the other party certificates of insurance evidencing the coverage required herein and  
29 naming the other party, its officers, agents and employees as additional insured's. Such  
30 certificates shall state that the named additional insured's are not responsible for the  
31 payment of any premium or assessment and shall provide that in the event of a cancellation  
32 or material change of policy, the insurer shall give the named additional insured's no less  
33 than thirty (30) days advance written notice of such cancellation or change. Upon request,  
34 each party shall provide the other with a complete copy of the insurance policy or policies  
35 or evidence and terms of self-insurance as required herein.

1           The parties agree, during the term of the Agreement, to maintain at their own expense  
2 (or require of their independent contractors) all necessary insurance for their respective  
3 officers, employees, and agents, including but not limited to workers' compensation,  
4 disability and unemployment insurance in accordance with state statutory requirements and  
5 to provide certificates of such insurance or other evidence of compliance to the other party  
6 upon request. The insurance, and evidence thereof, required by this Agreement may be  
7 provided either directly by the parties or, if a party contracts with an independent  
8 contractor/operator to provide the services required by this Agreement, by the operator of  
9 that party's system as deemed appropriate by such party.

10           **12. Term of Agreement.** This Agreement shall become effective July 1, 2014 and  
11 shall continue in full force and effect until June 30, 2015 unless terminated earlier, as  
12 herein provided.

13           **13. Termination.** The right to terminate this Agreement under this provision may be  
14 exercised without prejudice to any other right or remedy to which the terminating party may  
15 be entitled at law or under this Agreement.

16           (a) Without Cause. Either party shall have the right to terminate this  
17 Agreement without cause by giving the other party SIXTY (60) days prior written  
18 notice of its intention to terminate pursuant to this provision, specifying the date of  
19 termination.

20           (b) With Cause. This Agreement may be terminated by either party should the  
21 other party:

22                   (i) be adjudged a bankrupt, or

23                   (ii) become insolvent or have a receiver appointed, or

24                   (iii) make a general assignment for the benefit of creditors, or

25                   (iv) suffer any judgment which remains unsatisfied for 30 days, and which  
26 would substantively impair the ability of the judgment debtor to perform under  
27 this Agreement, or

28                   (v) materially breach this Agreement.

29           For any of the occurrences except item (v), termination may be effected upon  
30 written notice by the terminating party specifying the date of the termination. Upon a  
31 material breach, the Agreement may be terminated following the failure of the  
32 defaulting party to remedy the breach to the satisfaction of the non-defaulting party  
33 within FIFTEEN (15) days of written notice specifying the breach. If the breach is  
34 not remedied within that FIFTEEN (15) day period, the non-defaulting party may  
35 terminate the Agreement on further written notice specifying the date of termination.

1           If the nature of the breach is such that it cannot be cured within a FIFTEEN (15)  
2 day period, the defaulting party may, submit a written proposal within that period  
3 which sets forth a specific means to resolve the default. If the non-defaulting party  
4 consents to that proposal in writing, which consent shall not be unreasonably  
5 withheld, the defaulting party shall immediately embark on its plan to cure. If the  
6 default is not cured within the time agreed, the non-defaulting party may terminate  
7 upon written notice specifying the date of termination.

8           (c) Effects of Termination. Termination of this Agreement shall not terminate  
9 any obligations to indemnify, to maintain and make available any records pertaining  
10 to the Agreement, to cooperate with any audit, to be subject to offset, or to make any  
11 reports of pre-termination contract activities.

12           **14. Notices.** Any notices to be given shall be written and served either by personal  
13 delivery or by first class mail, postage prepaid and addressed as follows:

14                           County: Director of Transportation  
15                                       Resource Management Agency  
16                                       5961 S. Mooney Blvd.  
17                                       Visalia, CA 93277

18  
19                           City:     Transit Coordinator  
20                                       City of Porterville  
21                                       291 N. Main Street  
22                                       Porterville, CA 93257

23           **15. Integration.** This Agreement constitutes the sole and only Agreement between  
24 the parties hereto as to the services to be provided hereunder. Any prior agreements,  
25 promises, negotiations or representations as to such services not expressly referred to herein  
26 are of no force and effect.

27           **16. Modification.** The City and County shall furnish each other thirty (30) days prior  
28 written notice of any and all recommended service level and fare level changes. The City  
29 shall request and receive approval from the County Director of Transportation prior to any  
30 changes in service levels or fare levels in unincorporated areas of the service area. Except  
31 for said changes, this Agreement shall be modified or amended only with the prior written  
32 consent of both parties.

33           **17. Assignment.** Neither party shall assign or transfer any of the rights or privileges  
34 or any parts thereof of this Agreement without the other party's prior written consent.

35           **18. Records.** Each party agrees to maintain all books, records, documents, and other  
36 evidence pertaining to this Agreement, any disputes surrounding the subject matter of this

1 Agreement, and any other related circumstances in accordance with generally accepted  
2 accounting principles and practices. Each party shall allow the other party's agents or  
3 representative's access to such records for inspection, audit, and copying during normal  
4 business hours. Each party shall provide further facilities for such access and inspection.

5 **19. Surveys.** Either the City or the County may conduct periodic ridership surveys.  
6 Said surveys shall not interfere with the operation of the system.

7 **20. Legal Operation.** City and County each shall carry out its obligations under this  
8 Agreement in full compliance with all applicable federal, state and local laws, ordinances,  
9 rules and regulations.

10 **21. Construction.** This Agreement reflects the contributions of both parties and  
11 accordingly the provisions of Civil Code section 1654 shall not apply to address and  
12 interpret any uncertainty.

13 **22. Governing Law.** This Agreement shall be interpreted and governed under the  
14 laws of the State of California without reference to California conflicts of law principles.  
15 Any litigation arising out of this Agreement shall be brought in Tulare County California.  
16 City waives the removal provisions of California Code of Civil Procedure Section 394.

17 **23. Conflict with Laws or Regulations/Severability.** This Agreement is subject to  
18 all applicable laws and regulations. If any provision of this Agreement is found by any  
19 court or other legal authority, or is agreed by the parties, to be in conflict with any code or  
20 regulation governing its subject, the conflicting provision shall be considered null and void.  
21 The remainder of the Agreement shall continue in full force and effect.

22 **24. Headings.** Section headings are provided for organizational purposes only and do  
23 not in any manner affect the scope, meaning or intent of the provisions under the headings.

24 **25. No Third Party Beneficiaries.** Unless specifically set forth, the parties to this  
25 Agreement do not intend to provide any other party with any benefit or enforceable legal or  
26 equitable right or remedy.

27 **26. Waivers.** The failure of either party to insist on strict compliance with any  
28 provision of this Agreement shall not be considered a waiver of any right to do so, whether  
29 for that breach or any subsequent breach. The acceptance by either party of either  
30 performance or payment shall not be considered to be a waiver of any preceding breach of  
31 the Agreement by the other party.

32 **27. Exhibits and Recitals.** The Recitals and the Exhibits to this Agreement are fully  
33 incorporated into and are integral parts of this Agreement.

34 **28. Further Assurances.** Each party agrees to execute any additional documents and  
35 to perform any further acts which may be reasonably required to effect the purposes of this  
36 Agreement.

