COUNCIL AGENDA: MAY 7, 2013

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 contract transit service to residents within the unincorporated but urban areas of the community. The current Agreement expires June 30, 2013, and it is proposed the attached successor Agreement be approved and maintained for FY 2013/2014.

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. Last year, the County reimbursed the City at a rate of 28% of net operating costs for the Demand-Response System and at the rate of 30% of net operating costs for the Transit System.

The County contribution to City transit operations for the FY 2013/2014 Agreement will be $306,042, down 12% from last year’s contribution of $348,010. The decrease in the County’s contribution is a direct result of staff’s efforts to improve efficiency, decrease operating expenses, and continue to transition passengers to the fixed-route system.

The Demand-Response service was the largest contributing factor to this year’s decrease. The Demand-Response service was able to reduce total operating expenses by reducing 424 revenue hours compared to last year, which represents a decrease of $44,352 in County contribution to the system.

The Fixed-Route service also continues to improve. Staff was able to slightly decrease total operating expenses while increasing passenger revenues by $43,183 over the previous year. The net result of decreasing operating expenses, while increasing revenues and depreciation, is a slight increase of $2,384 to the County’s contribution for transit service.

Dir BSA Appropriated/Funded MBS CM J Item No. 10
RECOMMENDATION: That the City Council:

1. Enter into an Agreement with the County of Tulare for FY 2013/2014 to provide service to County residents within the Service Area Boundary; and

2. Authorize the Mayor to execute the Agreement on behalf of the City.

ATTACHMENT: City / County Transit Agreement
AGREEMENT

THIS AGREEMENT, is entered into as of this ___ day of _____________, 2013, by and between the COUNTY OF TULARE, hereinafter referred to as the “County”, and the CITY OF PORTERVILLE, hereinafter referred to as the “City”.

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

Compensation for the period July 1, 2013 through June 30, 2014, will be as follows:

<table>
<thead>
<tr>
<th></th>
<th>Demand Response</th>
<th>Route Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>County LTF (See Below)</td>
<td>$126,143</td>
<td>$392,382</td>
</tr>
<tr>
<td>FTA Section 5307 Credit</td>
<td>($40,729)</td>
<td>($96,197)</td>
</tr>
<tr>
<td>Fare Box Credit</td>
<td>($3,899)</td>
<td>($102,988)</td>
</tr>
<tr>
<td>Depreciation</td>
<td>$2,697</td>
<td>$28,633</td>
</tr>
<tr>
<td><strong>Total Payment</strong></td>
<td><strong>$84,212</strong></td>
<td><strong>$221,830</strong></td>
</tr>
</tbody>
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5. **Authorization of Payment.** FTA Section 5307 Funds will be claimed by the City on the County’s behalf. The County by this Agreement authorizes the Tulare County Association of Governments to transfer $306,042 of State Transit Assistance Funds, and/or Local Transportation Funds from the County’s 2013/14 Apportionment to the City of Porterville’s Apportionment. The County further authorizes the City to claim said $306,042 as full payment for services under this Agreement. In case of termination of this Agreement prior to June 30, 2014, the County agrees to compensate the City for a proportional amount of the sum of $306,042 based upon the number of days the services were provided by the City during a 365 day period.

6. **FTA Funds.** Per the 2000 Census, the Porterville urbanized area has a population of 59,961; 39,615 (66.0%) of which are City residents, and 20,346 (34.0%) of which are County residents. The Porterville Urbanized Area is eligible to receive Federal Transit Administration (FTA) Funds from Section 5307. The City of Porterville will be the claimant of these funds. The City will, at the request of the County, claim and transmit up to 34% of said funds for use by the County for eligible purposes under FTA Section 5307. In no case shall the amount transmitted or credited to the County exceed 34% of the total available. Any Section 5307 Funds which are to be transmitted to the County shall be handled under a separate agreement.

7. **Renegotiation.** In the event a contract between the Federal Transit Administration and the City of Porterville is not executed by June 30, 2013 for the Section
5307 Funds specified in paragraphs 4, 5 and 6 or in the event that $136,926 exceeds 34% of the total FTA Section 5307 funds available to the Porterville urbanized area, this contract will be renegotiated to reflect this condition.

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

9. Indemnification-City. City shall hold harmless, defend and indemnify County, its 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 City or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against County by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement. 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.

10. Indemnification-County. County shall hold harmless, defend and indemnify City, its 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 County or its agents, officers and employees under this Agreement, and any claims made against County alleging civil rights violations by City under Government Code section 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.

11. Insurance-Liability. The City and the County shall each provide comprehensive general public liability and comprehensive automotive liability insurance with single limit coverage of not less than $5,000,000 or equivalent self-insurance covering their activities under this Agreement. Prior to commencing operations, each party shall file with the Clerk of the other party certificates of insurance evidencing the coverage required herein and naming the other party, its officers, agents and employees as additional insured’s. Such certificates shall state that the named additional insured’s are not responsible for the payment of any premium or assessment and shall provide that in the event of a cancellation or material change of policy, the insurer shall give the named additional insured’s no less than thirty (30) days advance written notice of such cancellation or change. Upon request, each party shall provide the other with a complete copy of the insurance policy or policies or evidence and terms of self-insurance as required herein.
The parties agree, during the term of the Agreement, to maintain at their own expense (or require of their independent contractors) all necessary insurance for their respective officers, employees, and agents, including but not limited to workers' compensation, disability and unemployment insurance in accordance with state statutory requirements and to provide certificates of such insurance or other evidence of compliance to the other party upon request. The insurance, and evidence thereof, required by this Agreement may be provided either directly by the parties or, if a party contracts with an independent contractor/operator to provide the services required by this Agreement, by the operator of that party's system as deemed appropriate by such party.

12. Term of Agreement. This Agreement shall become effective July 1, 2013 and shall continue in full force and effect until June 30, 2014 unless terminated earlier, as herein provided.

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

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

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

(i) be adjudged a bankrupt, or
(ii) become insolvent or have a receiver appointed, or
(iii) make a general assignment for the benefit of creditors, or
(iv) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
(v) materially breach this Agreement.

For any of the occurrences except item (v), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within FIFTEEN (15) days of written notice specifying the breach. If the breach is not remedied within that FIFTEEN (15) day period, the non-defaulting party may terminate the Agreement on further written notice specifying the date of termination.
If the nature of the breach is such that it cannot be cured within a FIFTEEN (15) day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of termination.

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

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

**County:** Director of Transportation
Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277

**City:** Transit Coordinator
City of Porterville
291 N. Main Street
Porterville, CA 93257

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

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

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

18. **Records.** Each party agrees to maintain all books, records, documents, and other evidence pertaining to this Agreement, any disputes surrounding the subject matter of this
Agreement, and any other related circumstances in accordance with generally accepted
accounting principles and practices. Each party shall allow the other party’s agents or
representative’s access to such records for inspection, audit, and copying during normal
business hours. Each party shall provide further facilities for such access and inspection.

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

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

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

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

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

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

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

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

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

28. Further Assurances. Each party agrees to execute any additional documents and
to perform any further acts which may be reasonably required to effect the purposes of this
Agreement.
29. Assurances of Non-Discrimination. City and County expressly agrees that it will not discriminate in employment or the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

COUNTY OF TULARE

By ___________________________
Chairman, Board of Supervisors
“COUNTY”

ATTEST: JEAN ROUSSEAU,
County Administrative Officer/
Clerk of the Board of Supervisors.

By ___________________________
Deputy

CITY OF PORTERVILLE

By ___________________________
Mayor “CITY”

ATTEST: Clerk of City of Porterville

By ___________________________
Deputy

Approved as to Form,
County Counsel

By ___________________________
Deputy

Approved as to Form,
City Attorney

By ___________________________
City Attorney