

1 **AGREEMENT**

2 THIS AGREEMENT, is entered into as of this ____ day of _____, 2007, by
3 and between the COUNTY OF TULARE, hereinafter referred to as the "County", and the CITY
4 OF TULARE, hereinafter called the "City".

5 **W I T N E S S E T H:**

6 WHEREAS, the County and the City desire to coordinate their respective public
7 transportation systems in the Tulare 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 fixed route transit systems and there are and will continue to be citizens of
10 the City who can reasonably be served by the County's Transit System; and

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

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

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

20 (a) **County.** The County shall provide transit service to those residents of the
21 City desiring to use the regularly scheduled service of the County Transit System.
22 The County shall establish a series of bus stop locations within the City which will
23 interface with the City bus stop locations and facilitate system transfers. The County
24 stops shall be established at locations acceptable to the City. Such locations shall be
25 proposed on behalf of the County by the County Director of Transportation and shall
26 be approved on behalf of the City by the General Services Director.

27 (b) **City.** The City shall provide transit service to County residents desiring
28 transit service within the service area on the fixed route as set forth in Exhibit "A"
29 which is attached hereto and made a part hereof by this reference. The service area of
30 the fixed route may be modified only by mutual agreement of the General Services
31 Director and the County Director of Transportation.

32 2. **Management-County.** The County shall manage the County Transit System in
33 an appropriate manner, insuring cost effective operations, including marketing the system
34 in a 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 operations, 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 County trips in the
5 herein agreed upon service area by paying to the City for the period July 1, 2006 through
6 June 30, 2007 the sum of \$27,535 which represents the County's share of the net operating
7 cost.

8 5. **Authorization of Payment.** The County by this Agreement authorizes the Tulare
9 County Association of Governments to transfer of State Transit Assistance Funds, and/or
10 Local Transportation Funds from the County's 2006/07 Apportionment to the City of
11 Tulare's Apportionment. The County further authorizes the City to claim said \$27,535 as
12 full payment for services under this agreement. In case of termination of this Agreement
13 prior to June 30, 2007, the County agrees to compensate the City only for a proportional
14 amount of the sum of \$27,535 based upon the number of days the services were actually
15 provided by the City. In the event of any overpayment by the County to the City, the City
16 agrees to reimburse the County within thirty (30) days of written demand by the County.

17 6. **Drivers.** The parties shall require that all transit drivers meet all licensing
18 requirements of the State of California.

19 7. **Indemnification-City.** City shall hold harmless, defend and indemnify County,
20 its agents, officers and employees from and against any liability, claims, actions, costs,
21 damages or losses of any kind, including death or injury to any person and/or damage to
22 property, arising out of the activities of City or its agents, officers and employees under this
23 Agreement. This indemnification specifically includes any claims that may be made
24 against County by any taxing authority asserting that an employer-employee relationship
25 exists by reason of this Agreement, and any claims made against County alleging civil
26 rights violations by City under Government Code section 12920 et seq. (California Fair
27 Employment and Housing Act). This indemnification obligation shall continue beyond the
28 term of this Agreement as to any acts or omissions occurring under this Agreement or any
29 extension of this Agreement.

30 8. **Indemnification-County.** County shall hold harmless, defend and indemnify
31 City, its agents, officers and employees from and against any liability, claims, actions,
32 costs, damages or losses of any kind, including death or injury to any person and/or damage
33 to property, arising out of the activities of County or its agents, officers and employees
34 under this Agreement. This indemnification obligation shall continue beyond the term of
35 this Agreement as to any acts or omissions occurring under this Agreement or any
36 extension of this Agreement.

1 **9. Insurance-Liability.** The City and the County shall each provide comprehensive
2 general public liability and comprehensive automotive liability insurance with single limit
3 coverage of not less than \$5,000,000 or equivalent self-insurance covering their activities
4 under this Agreement. Prior to commencing operations, each party shall file with the Clerk
5 of the other party certificates of insurance evidencing the coverage required herein and
6 naming the other party, its officers, agents and employees as additional insureds. Such
7 certificates shall state that the named additional insureds are not responsible for the
8 payment of any premium or assessment and shall provide that in the event of a cancellation
9 or material change of policy, the insurer shall give the named additional insureds no less
10 than thirty (30) days advance written notice of such cancellation or change. Upon request,
11 each party shall provide the other with a complete copy of the insurance policy or policies
12 or evidence and terms of self-insurance as required herein.

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

22 **10. Term of Agreement.** This Agreement shall become effective July 1, 2006 and
23 shall continue in full force and effect until June 30, 2007 unless terminated earlier, as
24 herein provided.

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

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

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

- 34 (i) be adjudged a bankrupt, or
- 35 (ii) become insolvent or have a receiver appointed, or
- 36 (iii) make a general assignment for the benefit of creditors, or

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

4 (v) materially breach this Agreement.

5 For any of the occurrences except item (v), termination may be effected upon
6 written notice by the terminating party specifying the date of the termination. Upon a
7 material breach, the Agreement may be terminated following the failure of the
8 defaulting party to remedy the breach to the satisfaction of the non-defaulting party
9 within FIVE (5) days of written notice specifying the breach. If the breach is not
10 remedied within that FIVE (5) day period, the non-defaulting party may terminate the
11 Agreement on further written notice specifying the date of termination.

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

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

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

25 County: Director of Transportation
26 Resource Management Agency
27 5961 S. Mooney Blvd.
28 Visalia, CA 93277

29
30 City: City Manager
31 City of Tulare
32 411 East Kern Street
33 Tulare, CA 93274

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

1 **14. Modification.** Except as otherwise specifically provided herein, this Agreement
2 shall be modified or amended only with the prior written consent of the parties.

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

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

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

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

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

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

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

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

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

24. Exhibits and Recitals. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement. Each Exhibit shall be initialed by both parties to this Agreement.

25. 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.

26. Assurances of Non-Discrimination. City 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: C. BRIAN HADDIX
County Administrative Officer/
Clerk of the Board of Supervisors.

By _____
Deputy

CITY OF TULARE

By Kerhard Oltz
Title: _____
"CITY"

ATTEST: City Clerk

By *[Signature]*
Deputy

Approved as to Form,
County Counsel

By Cherie D. LTB
Deputy 1-4-07

EXHIBIT "A"

Tulare Transit Express

688-5706

Service hours: Mon.-Fri. 6:30am-6pm, Sat. 9am-5:30pm

