

**AGREEMENT
BETWEEN
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND
TEXOMA AREA PARATRANSIT SYSTEM, INCORPORATED
FOR
FIXED ROUTE SHUTTLE BUS SERVICES**

Southeastern Oklahoma State University ("SE"), an Oklahoma public university, and Texoma Area Paratransit System, Incorporated ("TAPS"), a rural transit district and political subdivision of the State of Texas, hereby enter into this Agreement (the "Agreement") as of the Effective Date for the provision of fixed route shuttle bus services. SE and TAPS may be referred to jointly as the "Parties," and individually as a "Party."

RECITALS

WHEREAS, SE is a public higher education institution that is part of the Regional University System of Oklahoma and created pursuant to Oklahoma law, with its campus located in Durant, Bryan County, Oklahoma; and

WHEREAS, TAPS is a rural transit district established pursuant to the authority of Chapter 458 of the Texas Transportation Code, as amended, that provides public transit services; and

WHEREAS, TAPS operates the "Red River Route," a fixed route shuttle bus service that provides transit services between the counties of Bryan (Oklahoma) and Grayson (Texas);

WHEREAS, SE seeks to underwrite the provision of transit services for its students who may commute to and from SE's campus; and

WHEREAS, SE has requested transit services from TAPS, and TAPS agrees to provide the requested transit services pursuant to this Agreement; and

WHEREAS, the Parties acknowledge and find that it will be in their best interests and in the interest of the public to cooperate in the provision of the transit services as set forth in this Agreement.

NOW, THEREFORE, the Parties hereby make and enter into this Agreement for and in mutual consideration of the covenants and agreements set forth herein.

**Article 1,
Purpose and Consideration**

1.1 **Purpose:** SE and TAPS enter into this Agreement for the purpose of providing services in which the Parties are mutually interested and with each Party performing services it would be authorized to perform individually.

1.2 Consideration: SE and TAPS agree there is good and valuable consideration for entering into this Agreement, the receipt and sufficiency of which is acknowledged.

**Article 2.
Term and Termination**

2.1 Term: This Agreement shall be effective for a period of six (6) months beginning on January 1, 2015 (the "Effective Date") and terminating on June 30, 2015 (the "Termination Date"), unless terminated earlier by either SE or TAPS in accordance with the terms of this Agreement ("Term").

2.2 Termination:

a. This Agreement may be terminated prior to the Termination Date as follows:

(1) The Parties may terminate this Agreement by a written agreement signed by both Parties setting forth the agreed termination date;

(2) Either Party may terminate this Agreement with or without cause by providing written notice to the other Party not less than sixty (60) calendar days prior to the desired termination date; or

(3) Either Party may terminate this Agreement on the thirty-first (31st) calendar day after providing written notice to the other Party that the other Party is in breach of its obligations under this Agreement, which notice shall describe the alleged breach with reasonable particularity, and the Party receiving the notice has failed to cure the alleged breach.

b. Section 2.2(a) does not alter Section 2.3 or Section 2.5.

c. TAPS may seek payment for any services that it may provide prior to the effective date of a termination under Section 2.2(a).

2.3 Regulatory Change: If there is a material change in state or federal regulation(s) that affects or impairs either Party's ability to perform this Agreement, the Parties may renegotiate the terms of this Agreement so the affected Party can comply with the material change. The affected Party shall provide the other Party with written notice of the applicable material regulatory change within five (5) business days after the affected Party determines the change will affect or impair its ability to perform this Agreement. Should a Party choose not to renegotiate, or should the material regulatory change make it impossible for the affected Party to perform this Agreement, that Party may terminate this Agreement by providing fourteen (14) calendar days' written notice to the other Party. Termination shall be effective on the fourteenth (14th) calendar day after the day on which the notice is provided. TAPS may seek payment for any services that it may provide prior to the effective date of a termination under this Section 2.3.

2.4 Rescinding Termination: A Party that provides written notice of termination pursuant to Section 2.2(a)(2), Section 2.2(a)(3), or Section 2.3 may rescind same by providing written notice to

the other Party on or prior to the effective date of the termination, in which event this Agreement shall remain in full force and effect as if the notice of termination had never been given. A written agreement of termination pursuant to Section 2.2(a)(1) may be rescinded by written agreement signed by both Parties prior to the effective date of the termination, in which event this Agreement shall remain in full force and effect.

2.5 Suspension and Reinstatement:

- a. To the extent applicable, SE and TAPS acknowledge that TAPS is a governmental entity of the State of Texas and that, upon the inability of TAPS to obtain or appropriate finances to meet its obligations under this Agreement, TAPS shall have the right to suspend the Transit Services as of the effective date of such lack of fiscal funding. TAPS shall give written notice to SE as to any such failure of funding at the earliest possible time, but in any case not later than five (5) business days after TAPS becomes knowledgeable of the lack of funding. Upon receipt of fiscal funding that TAPS determines is sufficient to meet its obligations under this Agreement, TAPS shall reinstate the Transit Services and provide written notice to SE at least five (5) calendar days before reinstatement. In no event shall SE be liable for payment to TAPS during any period of suspension under this Section 2.5.
- b. To the extent applicable, SE and TAPS acknowledge that SE is a governmental entity of the State of Oklahoma and that, upon the inability of SE to obtain or appropriate finances to meet its obligations under this Agreement, SE shall have the right to suspend this Agreement as of the effective date of such lack of fiscal funding. SE shall give written notice to TAPS as to any such failure of funding at the earliest possible time, but in any case not later than five (5) business days after SE becomes knowledgeable of the lack of funding. Upon receipt of fiscal funding that SE determines is sufficient to meet its obligations under this Agreement, SE shall reinstate this Agreement and provide written notice to TAPS at least five (5) calendar days before reinstatement. In no event shall TAPS be liable for providing service to SE during any period of suspension under this Section 2.5.

2.6 Force Majeure: Neither SE nor TAPS shall be deemed in violation of this Agreement if either is prevented from performing any of the obligations hereunder by reason of, for, or through strike, act of terror, stoppage of labor, riot, fire, flood, storm, invasion, insurrection, accident, order of court, judge or civil authority, act of God, or any cause reasonably beyond the Party's control and not attributable to its neglect. In the event of such an occurrence, the time for performance of such obligations shall be suspended until such time that such inability to perform or circumstance beyond its control shall be removed. The Party claiming the suspension shall give written notice of such impediment or delay in performance to the other Party within two (2) business days of the knowledge of such occurrence. Each Party shall make all reasonable efforts to mitigate the effects of any suspension.

Article 3.
Responsibilities and Payment

3.1 TAPS Responsibilities: TAPS shall provide services related to the administration and operation of fixed route shuttle bus services along the Red River Route (the "Transit Services"), as follows:

a. Approved Transit Services, Times of Service: The Transit Services shall include regularly-scheduled stops in Durant, Bryan County, Oklahoma at or within short walking distance of the following locations:

- (1) 3712 W. Main Street ("Walmart");
- (2) 1012 Radio Road ("Alorica");
- (3) 1800 University Boulevard ("Medical Center of Southeastern Oklahoma");
- (4) SE, north of Morrison Hall between 5th Avenue and 6th Avenue ("the Loop");
- (5) 300 W. Evergreen Street ("City Hall");
- (6) 529 N. 16th Avenue ("Choctaw Nation Headquarters");
- (7) 1016 Waldron Drive/1 Gamco Place ("ETS/Gamco"); and
- (8) SE Aviation Hanger at Durant Regional Airport—Eaker Field.

The Transit Services shall also include a regularly-scheduled stop in Denison, Grayson County, Texas at or within short walking distance of 2300 Morton Street ("Morton Street Plaza"), and a regularly-scheduled stop in Sherman, Grayson County, Texas at or within short walking distance of 4800 Texoma Parkway ("Midway Mall").

The term "regularly-scheduled stop" means the Transit Services shall occur each day of the week during the Term, and passengers may embark or disembark from any of stops identified above at least once every two hours, with service:

- (1) Making its initial departure from Midway Mall at or around 5:00 a.m.;
- (2) Making its initial departure from Walmart at or around 6:30 a.m.;
- (3) Making its final arrival at Midway Mall at or around 11:45 p.m.; and
- (4) Making its final arrival at Walmart at or around 10:15 p.m.

- b. Transit Services to SE Aviation Hanger: TAPS reserves the right to terminate or modify the service to the SE Aviation Hanger at Durant Regional Airport—Eaker Field. TAPS may terminate or modify as this Section 3.1(b) permits after providing written notice to SE not less than fourteen (14) calendar days prior to the desired date of termination or modification.
- c. Administrative and Operational Services: TAPS shall provide all administrative and operational services associated with the Transit Services including, but not limited to, employment and management of necessary and sufficient personnel, management of dispatch and call center operations reasonable and necessary to provide the Transit Services, and collection and accounting of fares.
- d. Vehicles: TAPS shall provide the number of vehicles as may be necessary to provide the Transit Services.
- e. Americans with Disabilities Act: TAPS acknowledges and understands that it is responsible for compliance with, and agrees to comply with, the requirements of the Americans with Disabilities Act, as amended, in providing the Transit Services.
- f. Fares: TAPS shall administer the sale and distribution of bus passes and the collection of fares for the Transit Services. Transit Services fares shall be determined by TAPS. Transit Services revenues generated by the collection of Transit Services fares shall be owned by TAPS.
- g. Marketing and Branding: At least one bus used daily for the Transit Services shall contain wrapped window advertising regarding SE. At least one TAPS bus that provides service to or within Allen, Collin County, Texas, shall contain wrapped window advertising for SE's Occupational Safety and Health Degree (which SE offers through the Van Alstyne, Texas campus of Grayson College). Wrapped window advertising for SE's Occupational Safety and Health Degree is subject to SE's prior written approval.
- (1) SE grants to TAPS a non-exclusive, royalty free license to use SE's service marks and trademarks in print and electronic media produced by TAPS in relation to the marketing and promotion of the Transit Services. This license does not authorize the use of SE's service marks or trademarks (i) on any bus (other than those identified in this Section 3.1(g)) or other vehicle owned or operated by TAPS or its contractors, (ii) on any uniform or other clothing of the employees of TAPS or its contractors, or (iii) in any manner that may reasonably result in the appearance that SE has any responsibility for the operation of the Transit Services.
- (2) TAPS grants to SE a non-exclusive, royalty free license to use TAPS' service marks and trademarks in print and electronic media produced by SE in relation to the marketing and promotion of the Transit Services. SE will submit any print or electronic media bearing TAPS' service mark or trademark to TAPS for

approval prior to publishing such media, which approval shall not be unreasonably withheld, delayed or denied. Further, this license shall terminate upon the termination of this Agreement, at which time SE shall remove TAPS' service mark or trademark from all of SE's electronic media and destroy any undistributed print media (not including those copies retained in SE's files for archival purposes) that bears TAPS' service mark or trademark.

- h. Insurance: During the Term, TAPS shall maintain such insurance or participation in a self-insurance risk pool for governmental entities as TAPS is required by law to maintain, or may otherwise deem reasonable and necessary, to effectuate the terms of this Agreement.

3.2 SE Responsibilities: SE agrees to reasonably cooperate with TAPS so that TAPS may effectuate and fulfill the terms of this Agreement. SE's responsibilities in this regard shall include payment to TAPS for the Transit Services a sum of Ten Thousand and 00/100 Dollars (\$10,000.00).

3.3 Payment for Services:

- a. TAPS: Not later than ten (10) calendar days after the end of each calendar month of the Term, TAPS will submit to SE an invoice for services provided in an amount not to exceed Two Thousand and 00/100 Dollars (\$2,000.00) (1/5 of the total amount of the Agreement). Each invoice shall identify the period for which the payment is being requested and the services performed during that period.
- b. SE: SE shall pay TAPS within thirty (30) calendar days of receipt of each monthly invoice, unless a dispute arises as to any charge(s) contained in the invoice, in which case SE shall pay the undisputed amount of the invoice within thirty (30) calendar days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable. SE shall otherwise ensure that TAPS receives payment as set forth herein; otherwise, TAPS may suspend service until it receives payment of an overdue sum.

Article 4.
Liability

4.1 Liability: TAPS and SE shall be fully and solely responsible and liable for their own acts and omissions, including those of their respective officers, agents, representatives, employees or any other third parties for whom TAPS or SE is legally responsible, and for any and all damage to their respective vehicles, equipment and other property. TAPS and SE assume no such responsibility or liability. Neither TAPS nor SE shall have such responsibility or liability to the other party or the other party's officers, agents, representatives, employees or other persons. The provisions of this Section 4.1 are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

4.2 Special and Consequential Damages: In no event, whether as a result of breach of contract, warranty, tort (including negligence or infringement), strict liability or otherwise, shall either Party be liable to the other Party for any special, consequential, incidental, indirect or exemplary damages

including, but not limited to, loss of profits or revenues, cost of capital, cost of substitute goods, facilities, services or downtime costs.

4.3 No Waiver of Immunity: The Parties acknowledge that neither Party is an agent, servant, or employee of the other Party, and each Party agrees it is responsible for its own individual negligent acts or omissions or other tortious conduct, as well as such acts and deeds of its contractors, agents, representatives, and employees, during the performance of this Agreement without waiving any governmental immunity available to the Parties under applicable state or federal law, and without waiving any available defenses under applicable state or federal law.

Article 5. Miscellaneous

5.1 Notice: All notices, authorizations and requests in connection with this Agreement shall be deemed provided on the day they are (i) deposited in the mail, sufficient postage prepaid, certified or registered, return receipt requested; (ii) delivered by courier; (iii) delivered by electronic mail as indicated by a delivery receipt notification; or (iii) sent by facsimile as indicated by a fax confirmation sheet; and sent to the physical address, electronic mail address, or facsimile number of each party's agent, if any, as follows:

If to SE:

Southeastern Oklahoma State University
Attn: Ross Walkup, Vice President for Business Affairs
Administrative Building Room 213
1405 N. Fourth Street, PMB 4131
Durant, Oklahoma 74701
(580) 745-7505 (facsimile)
rwalkup@se.edu

If to TAPS:

Texoma Area Paratransit System, Inc.
Attention: Executive Director
3400 Texoma Parkway
Sherman, Texas 75090
(903) 893-4766 (facsimile)
bradunderwood@tapsbus.com

With copy to:

Darrell G-M Noga
Cantey Hanger LLP
1999 Bryan Street, Suite 3300
Dallas, Texas 75201
(214) 978-4150 (facsimile)
dnoga@canteyhanger.com

5.2 Recordkeeping and Right to Inspect Records: SE and TAPS shall have mutual access to, and the right to examine, all documents and records of the other Party involving transactions relating to this Agreement. SE and TAPS shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this Section 5.2. SE and TAPS shall give the other Party advance notice of at least forty-eight (48) business hours of intended audits.

5.3 Entire Agreement: This Agreement contains all representations, understandings, contracts and agreements between the Parties regarding the subject matter of this Agreement. This Agreement supersedes all oral or written previous and contemporaneous agreements, writings, understandings, representations, or contracts between the Parties regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not regard the subject matter of this Agreement.

5.4 Parties Bound: This Agreement shall be binding upon, and inure to the benefit of, the Parties to this Agreement and their respective successors and assigns.

5.5 Relationship: It is understood and agreed that the relationship between the Parties is contractual in nature between independent parties and does not constitute, and shall not be construed, as creating a partnership or joint venture relationship between or among the Parties. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any individual or entity that is not a signatory hereto. TAPS shall maintain sole control, supervision and direction over its operations and the Transit Services provided under this Agreement. With regard to said operations and Transit Services, SE shall have no control, supervision or direction of the means, methods, sequences, procedures, and techniques utilized by TAPS.

5.6 Amendment: The Parties may revise, amend or modify this Agreement only by written agreement signed by both Parties.

5.7 Severability: The provisions in this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

5.8 Place of Performance: This Agreement is performable in the State of Oklahoma in the county of Bryan and in the State of Texas in the counties of Grayson and Collin.

5.9 Remedies: No right or remedy granted herein or reserved to the Parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without written consent of the Parties. Forbearance or indulgence by either Party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

5.10 No Third Party Beneficiary: For purposes of this Agreement, including its intended operation and effect: (1) the Agreement only affects matters or disputes between the Parties, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding that such third person or entity may be in contractual relationship with SE or TAPS or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owed by them to either SE or TAPS.

5.11 E-Verify: TAPS warrants and certifies that it, its employees, and any TAPS subcontractor providing services under this Agreement participate in the free Employment Verification Program

("E-Verify") through the United States Department of Homeland Security, located at www.dhs.gov/E-Verify. This warranty remains in effect through the Term of this Agreement.

5.12 Non-Discrimination: TAPS and its subcontractors, if any, agree that they will not discriminate against any passenger or potential passenger in the provision of the Transit Services on the basis of race, religion, color, sex, national origin, age, or disability.

5.13 Counterparts: This Agreement may be signed in counterparts, and each executed copy shall be deemed a counterpart original, with full force and effect and enforceable against the Parties executing same.

5.14 Authority to Enter Agreement: Each Party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.

[Signatures on Following Page]

SIGNED AND AGREED this 19th day of January, 2015.

SOUTHEASTERN OKLAHOMA
STATE UNIVERSITY

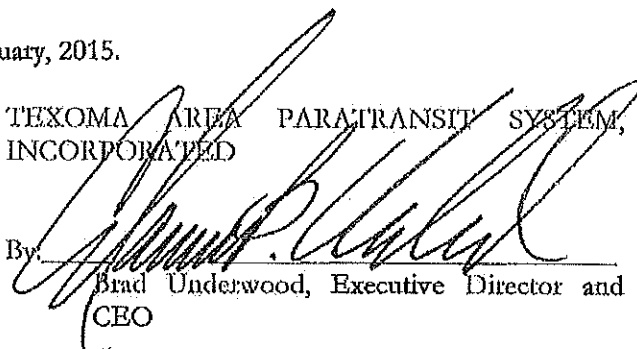
By: _____


Sean Burrage, President

SIGNED AND AGREED this 19 day of January, 2015.

TEXOMA AREA PARATRANSIT SYSTEM,
INCORPORATED

By: _____


Brad Underwood, Executive Director and
CEO

Executed on behalf of Texoma Area Paratransit
System, Incorporated pursuant to Board Resolution
No. _____