

TO: BOARD OF TRUSTEES

FROM: SUPERINTENDENT/PRESIDENT

COMMUNICATION NO. 181-2009/10-SSV  
Prepared by the Vice President-Student Services  
For Presentation to the Board of Trustees  
April 12, 2010

SUBJECT: APPROVAL OF THE ANTELOPE VALLEY TRANSPORTATION AUTHORITY  
(AVTA) TRANSIT ACCESS PASS (TAP) CARD AGREEMENT

A. BACKGROUND

The Student Development and College Activities Office has sold AVTA bus passes in the past to provide access to our students, employees, and community members. The AVTA has changed its process, which allows us to sell Transit Access Pass (TAP) cards to students, employees and the community. AVC would receive a 5% commission on the sales of the local monthly full and reduced fares, a \$50 per monthly payment to defray the cost of a dedicated phone line to operate the Compact Point of Sale (CPOS) ticketing device, and the reimbursement of the installation costs of the dedicated phone lines for the CPOS. The commission fund will help to support student activities.

B. BUDGET IMPLICATION

There is no cost to the District.

C. RECOMMENDATION

The Board of Trustees approves the AVTA TAP contract allowing the college to sell bus passes and receive a commission (Attachments A and B) to this communication.

Respectfully submitted,

*Jackie Fisher by R Hall*

Jackie L. Fisher, Sr., Ed.D.  
Superintendent/President

Prepared By:

*Rosa E. Hall*

Rosa E. Hall, Ph.D.  
Assistant Superintendent/  
Vice President – Student Services

Office of Student Services  
Communication No. 181-2009/10-SSV

APPROVAL OF THE ANTELOPE VALLEY TRANSPORTATION AUTHORITY  
(AVTA) TRANSIT ACCESS PASS (TAP) CARD AGREEMENT

April 12, 2010

EXHIBIT A

TAP© CPOS LICENSE AND SERVICES AGREEMENT

This TAP CPOS License and Services Agreement (“Agreement”) is entered into as of, March 8, 2010 by and between Antelope Valley College (“Licensee”) and the Los Angeles County Metropolitan Transportation Authority (“Licensor”).

RECITALS:

A. Licensee and Licensor have entered into that certain Metro Pass Sellers Agreement dated \_\_\_\_\_ whereby Licensee will sell Metro Passes, Stamps, Transit Access Pass (TAP) Cards and associated products on behalf of Licensor (the “Pass Sellers Agreement”).

B. In order to sell the TAP Cards, Licensee must use a Compact Point Of Sales Device supplied by Licensor. The Compact Point Of Sales Device consists of and is defined hereunder to include all hardware, software, program documentation and any program updates supplied by Licensor necessary to sell the TAP Cards (collectively, “CPOS”).

C. Licensor desires to license the CPOS to Licensee and Licensee desires to license the CPOS on the terms and conditions contained in this Agreement.

AGREEMENT:

1. Subject to the terms and conditions contained herein, Licensor hereby grants to Licensee and Licensee hereby accepts a non-exclusive, non-transferable, revocable license to use the CPOS provided by Licensor for the sole purpose of selling TAP Cards and associated products in accordance with the Pass Sellers Agreement. Licensee shall not use the CPOS for any purpose not specified in this Agreement.
2. Each CPOS device is loaded with one copy of the Software. Use of the CPOS is used solely for the sale of the TAP Card and associated products. The Software also has the capability to print sales reports and transaction history.
3. This License shall commence on the day Licensee receives the CPOS from Licensor and shall continue until such time Licensee no longer sells TAP Cards pursuant to the Pass Sellers Agreement. Upon termination of this Agreement, Licensee shall have no rights to use the CPOS. Licensor shall disable the CPOS to prevent Licensee from continued use of the CPOS after termination of this Agreement and Licensee shall return the CPOS on demand by Licensor.

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4. Licensee hereby grants Licensor, or its agent, the right to perform audits to ensure Licensee's use of the CPOS complies with the terms of this Agreement. Such audits shall be conducted during normal business hours and upon reasonable advance notice to Licensee. Licensee shall cooperate with Licensor in any audit, and shall provide Licensor with all records reasonably related to Licensee's use of the CPOS.

5. Licensor retains all title to, ownership and intellectual property rights to the CPOS. No title to the CPOS is transferred hereunder to Licensee.

6. Licensee shall not:

a. copy, reproduce, tamper or otherwise modify the CPOS or any associated software;

b. sell, license, sublicense, disclose, distribute or otherwise transfer the CPOS, in whole or in part, or any associated software to any third party;

c. remove or modify any program markings or any notice of Licensor's proprietary rights;

d. make the programs or materials resulting from the CPOS available in any manner to any third party for use by a third party's business operations;

e. modify, alter or change the CPOS, in whole or in part, or attempt to decode, reverse engineer or disassemble the CPOS and associated software; or

f. disclose results of any program benchmark tests without Licensor's prior written consent.

7. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE CPOS WILL PERFORM AS INDICATED OR THAT THE CPOS WILL BE SUITABLE FOR THE PURPOSES FOR WHICH IT IS PERMITTED TO BE USED UNDER THIS AGREEMENT. LICENSOR DOES NOT GUARANTEE THAT THE CPOS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT LICENSOR WILL CORRECT ALL PROGRAM ERRORS. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY WAIVED.

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8. Licensors shall, under no circumstance, be liable for special, incidental, exemplary or consequential damages suffered by Licensee, including, but not limited to loss of projects, anticipated revenue, interest, loss of use or other such claims arising from any causes whatsoever, whether or not such loss or damage is based on contract, warranty, tort (including negligence), indemnity or otherwise.  
TAP CPOS License and Services Agreement

9. If Licensee breaches the terms of this Agreement and fails to correct the breach within 30 days after Licensor provides written notice, Licensor may terminate this Agreement. If Licensee is in default under this Agreement, Licensee shall not be authorized to use the CPOS and may be subject to civil and/or criminal action.

10. This Agreement and the Pass Sellers Agreement constitute the entire understanding between the parties, with respect to the subject matter herein. The Agreement shall not be amended, nor any provisions or breach hereof waived, except in writing. Except for the Pass Sellers Agreement, this Agreement supersedes all prior or contemporaneous agreements or representations regarding such programs and/or services.

11. This Agreement shall be governed by California law. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

12. Notices shall be in writing and shall be given to the parties at the address specified below, unless otherwise notified in writing of change of address.

Licensor:

LACMTA  
One Gateway Plaza  
Los Angeles, CA 90012,  
Attention: Vanessa Smith, TAP Office

Licensee:

Antelope Valley College  
3041 West Avenue K  
Lancaster, CA 93536

13. Licensee may not assign this Agreement or give or transfer the CPOS, in whole or in part, to another individual or entity.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives

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Licensor:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Name: Jim Pachan  
Title: Director  
Date: \_\_\_\_\_

Licensee: ANTELOPE VALLEY COMMUNITY COLLEGE DISTRICT

By: \_\_\_\_\_  
Name: Jackie L. Fisher, Sr., Ed.D.  
Title: Superintendent/President  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form for  
LACMTA by the  
Office of County Counsel  
March 2008

## **Exhibit B**

# **Los Angeles County Metropolitan Transportation Authority Regional Pass Seller Agreement**

This Regional Pass Seller Agreement (the "Agreement") is between the

**Los Angeles County Metropolitan Transportation Authority (LACMTA),  
Antelope Valley Transit Agency ("Agency")**

**AND**

**("Seller")**

Antelope Valley College  
3041 West Avenue K  
Lancaster, CA 93536

In consideration of the services to be rendered by Seller and the compensation to be paid therefore by Agency, the parties agree as follows:

1. A. Seller shall sell Transit Access Pass ("TAP") Cards and associated products for Agency and LACMTA at the location(s) listed above and at any other locations that may be agreed upon by the parties in writing and causes to be displayed at the Seller's expense on the premises such advertising matter as may be supplied by Agency and LACMTA, as long as such advertising matter does not conflict with the business interest of Seller.

B. Seller understands and agrees that the loading and sale of the TAP Card will require Seller to use a compact point of sales device ("CPOS") supplied by LACMTA to Seller. To receive the CPOS, Seller shall execute the TAP CPOS License and Services Agreement attached hereto as Exhibit A. If the CPOS is damaged, lost or stolen, Seller shall pay a replacement fee of \$3,267 or more as determined by LACMTA (fee based on current market replacement cost for CPOS and other administrative costs). Seller shall distribute LACMTA and Agency TAP brochures and promotional materials, to Agency customers at the location listed above and any other locations that may be agreed upon by the parties in writing, as long as such brochures and promotional materials do not conflict with the business interests of Seller.

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2. Seller shall properly file and maintain all printed material, folders, circulars and bulletins supplied by LACMTA and Agency and/or its agents and shall, to the best of its ability, furnish to the public complete and accurate information in accordance therewith and shall conform to all instructions and rules which may be issued by LACMTA and/or its agents.
3. Seller shall use LACMTA, Agency and TAP trademarks and logos in accordance with LACMTA and Agency graphic design guidelines on all forms of signs and display materials which mention TAP and to obtain prior approval from LACMTA and/or its representatives on all such materials before posting or displaying.
4. Seller may purchase TAP cards from TAP Participating Regional Transit Agency at face value, for resale at a \$2 U.S.D. price.
5. The relationship between Seller and LACMTA and Agency is not that of debtor and creditor, but trustee and beneficiary. All funds collected for the account of LACMTA and Agency and all funds derived from the sale of TAP Cards and associated products are the property of LACMTA.
6. Seller shall hold in trust for LACMTA TAP Cards, CPOS or other items supplied by LACMTA to Seller for use or sale. Seller shall keep proceeds of sales and any funds collected for account of LACMTA in trust, and shall remit the proceeds to LACMTA. At the close of each sales period, LACMTA will invoice Seller for Antelope Valley Transit Agency passes sold based on sales reported by the CPOS. Invoice will be due within 30 days. Additional TAP Card stock will not be delivered and CPOS TAP Card loading capabilities will be disabled until Seller has remitted to LACMTA all sales proceeds for the prior month's TAP Card and product sales. Seller shall notify the TAP Service Center at 1-866-TAPTOGO immediately if the CPOS is found to be defective.
7. A. **[Not Applicable for Non-Metro Pass Sales]**

The Metro Passes and Stamps sales proceeds from each monthly sales period shall be fully remitted by Seller to LACMTA in two installments per sales period. The first installment shall be known as the "early payment" and shall be in an amount determined by the LACMTA from time to time. Effective as of Fill in date, the early payment shall be an amount equal to Fill in amount. LACMTA shall provide Seller notice by letter of changes to the early payment amount and effective date of the change. The early payment shall be effected by means of an electronic funds transfer on the seventh day of each month, or if that day is a weekend day or holiday, on the first business day thereafter. Seller shall authorize LACMTA to effect such an electronic funds transfer. All Metro Passes and Stamps sales proceeds shall be deposited by Seller into an account at a financial institution that is accessible to the electronic fund transfer system employed on behalf of LACMTA.

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**B. [Not Applicable for Non-Metro Pass Sales]**

The second installment of payment for Metro Passes and Stamps sales shall be known as the "final payment" and shall be in an amount equal to the difference between the total dollar amount of sales for the sales period less the amount of the early payment and any commissions due the Seller. The final payment for each monthly selling period shall be made by Seller directly to LACMTA, in such a manner as directed by LACMTA, within five days after the close of the sales period. All written reports of Metro Passes and Stamps sales and LACMTA business shall be delivered to LACMTA within five days of the close of the current sales period. Seller shall return all unsold Metro Passes and Stamps to LACMTA on a monthly basis.

C. TAP Card sales including associated product loads, shall be fully remitted by Seller to LACMTA within five days following receipt of a monthly invoice from LACMTA. Each monthly invoice will cover a four or five week period and will be for an amount equal to the difference between the total dollar amount of TAP sales and any commissions due the Seller.

**8. A. [Not Applicable for Non-Metro Pass Sales]**

Metro Passes and Stamps for any monthly sales period shall not be distributed to Seller until Seller has remitted to LACMTA all reports and sales proceeds of the prior monthly sales period. If, however, Seller obtains current monthly Metro Passes and Stamps but has not remitted to LACMTA the full balance due for any prior month's Metro Passes and Stamps sales, the Seller shall return all current Metro Passes and Stamps to LACMTA on demand. Failure to timely remit Metro Passes and Stamps sales reports and proceeds shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement. LACMTA may, at its option, suspend distribution of Metro Passes and Stamps to Seller pending a credit review of Seller by LACMTA and/or its designated agents, if Seller fails to timely remit Metro Passes and Stamps sales reports and proceeds.

B. Additional TAP Card stock will not be delivered and CPOS TAP Card loading capabilities will be disabled until Seller has remitted to LACMTA all sales proceeds for the prior month's TAP Card and product sales. Upon request by LACMTA, Seller shall return all TAP card stock and CPOS device(s). Failure to timely remit TAP Card and associated product sales proceeds shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement. If Seller fails at any time to timely remit TAP Card sales proceeds, LACMTA may, at its option, suspend Seller's distribution of TAP Cards and Seller's CPOS loading capabilities pending a credit review of Seller by LACMTA and/or its designated agents.

9. Seller shall be responsible for all TAP Cards and CPOS product loads, and other items for sale delivered to Seller by LACMTA and all money collected by Seller for LACMTA and Agency and will indemnify and save harmless the LACMTA and Agency from loss, whether occasioned by theft, forgery or other similar or dissimilar

## Regional Pass Seller Agreement

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- causes. All losses of TAP Cards and associated products, or other items for sale both physically and electronically shall be calculated based on the face value thereof.
10. Seller shall permit the authorized representative of LACMTA, during reasonable hours and upon adequate prior notice to examine as to amount, TAP Cards and other property of the LACMTA, inclusive of LACMTA funds on hand, and to inspect and audit all records and accounts pertaining to business of LACMTA and the TAP program.
  11. Seller shall contact the TAP Regional Service Center, an authorized representative of LACMTA for determination in all matters related to refunds for adjustments of sales on all TAP cards and associated products.
  12. Seller is an independent contractor and not a beneficiary or employee of LACMTA and/or Agency within the meaning of any Worker's Compensation Law, or any law which would entitle him to benefits arising out of any State or Federal Unemployment or old age fund or similar law, or any right or privilege extended by LACMTA to its employees. Seller's authority is limited to the purpose herein specified and to said premises. Seller has no power to bind LACMTA, by contract or otherwise, except as herein provided as to the sale of transportation for persons or property.
  13. A. Seller shall, at its own expense, procure and maintain in effect during the term hereof, public liability insurance with limits of not less than \$50,000 on account of injuries to, or death of more than one person, and \$150,000 on account of injuries to, or death of more than one person as the result of any accident or occurrence, and property damage insurance in the amount of \$5,000.  
  
B. LACMTA shall be provided a Certificate of Insurance naming the LACMTA as an additional insured under such policy. LACMTA shall be given 15 days notice of the termination of such insurance. Such insurance shall protect and indemnify both Seller and LACMTA from any liability arising out of the occupancy and use of the facility by Seller.  
  
C. A lesser amount of insurance coverage or self-insurance by Seller may be agreed to by the parties in writing.
  14. This Agreement may not be assigned or transferred by Seller. Seller will report, without delay, any change that may affect the Seller or its operation. In the event of transfer of Seller ownership interest, this Agreement shall terminate. In the event of death or disability of Seller, this Agreement shall terminate at the option of LACMTA.
  15. No modification of this Agreement shall be effective unless made in writing and signed by both parties.

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16. The terms of this Agreement shall be from month to month and may be terminated by either party without cause upon 30 days written notice.
  17. No provision of this Agreement shall be construed to require LACMTA or the TAP Participating Regional Transit Agency to continue to operate any bus service to or from the facility of Seller or elsewhere during the term of the Agreement, and it is expressly agreed that the LACMTA shall incur no liability to Seller by reason of any rerouting, rescheduling, discontinuance or other changes in bus or other transit services operated by LACMTA.
  18. In the event of default to the terms and conditions referenced herein, Seller hereby agrees to pay any and all collection costs, court costs and reasonable attorneys' fees that may be incurred in the collection and/or legal enforcement of payment.
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**Seller: Antelope Valley College**

**Los Angeles County  
Metropolitan Transportation  
Authority (LACMTA)**

**By:** Jackie L. Fisher, Sr., Ed.D.

**By:** \_\_\_\_\_

**Title:** Superintendent/President

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Agency: Antelope Valley Transit Agency**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_