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2 **AGREEMENT**

3 THIS AGREEMENT, is entered into as of this ____ day of _____, 2018, by
4 and between the COUNTY OF TULARE, hereinafter referred to as the "County", and the CITY
5 OF VISALIA, hereinafter referred to as the "City".

6 **WITNESSETH:**

7 WHEREAS, the County and the City desire to coordinate their respective public
8 transportation systems in the Visalia area; and

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

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

15 WHEREAS, the County and the City desire to provide for the Joint Exercise of Powers for
16 the purpose of providing and maintaining public transportation systems in the Visalia 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 Manager.

27 (b) **City.** The City shall establish a series of bus stop locations within the
28 unincorporated areas of the County. The City stops shall be established at locations
29 acceptable to the County. Approval on behalf of the County shall be given by the
30 County Director of Transportation. The City shall provide transit service to County
31 residents desiring transit service within the service area as set forth in Exhibit "A"
32 which is attached hereto 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 during the term of the Agreement.
6 Compensation shall be limited to a percentage of the operating costs of the City's Transit
7 System. The term "operating cost" as used in this Agreement shall be defined as all costs
8 in the operating expense object classes of the Uniform Systems of Accounts for Public
9 Transit Operators adopted by the State Controller pursuant to Public Utilities Code Section
10 99243.

11 Compensation for the period July 1, 2017 through June 30, 2018, will be as follows:

Demand Response/Route Service	
County portion of costs	\$ 222,279
Facility Lease	<u>\$ 42,179</u>
Total Payment	\$ 264,458

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18 5. **Authorization of Payment.** FTA Section 5307 Funds will be claimed by the City on
19 the County's behalf. The County by this Agreement authorizes the Tulare County
20 Association of Governments to transfer \$264,458 of State Transit Assistance Funds, and /or
21 Local Transportation Funds (LTF) from the County's 2017/18 Apportionment to the City of
22 Visalia's Apportionment. The County further authorizes the City to claim said \$264,458
23 as full payment for services under this Agreement. In case of termination of this
24 Agreement prior to June 30, 2018, the County agrees to compensate the City for a
25 proportional amount of the sum of \$264,458 based upon the number of days the services
26 were provided by the City during a 365 day period.

27 6. **FTA Funds.** Per the 2000 Census, the Visalia Urbanized Area, as set forth in Exhibit
28 "A", has a population of 120,044; 91,220 (76.0%) of which are City of Visalia residents,
29 and 10,963 (9.1%) of which are County residents, and 9,124 (7.6%) of which are Exeter
30 residents, and 8,737 (7.3%) of which are Farmersville residents. The Visalia Urbanized
31 Area is eligible to receive Federal Transit Administration (FTA) Funds from Section 5307.
32 The City of Visalia will be the claimant of these funds. The City will, at the request of the
33 County, claim and transmit up to 9.1% of said funds for use by the County for eligible
34 purposes under FTA Section 5307. In no case shall the amount transmitted or credited to
35 the County exceed 9.1% of the total available. Any Section 5307 Funds which are to be
36 transmitted to the County shall be handled under a separate agreement.

1 7. **Renegotiation.** In the event a contract between the Federal Transit Admini-
2 stration and the City of Visalia is not executed by June 30, 2018 for the Section 5307 Funds
3 specified in paragraphs 4, 5 and 6, this contract will be renegotiated to reflect this
4 condition.

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

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

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

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

1 each party shall provide the other with a complete copy of the insurance policy or policies
2 or evidence and terms of self-insurance as required herein.

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

12 **12. Term of Agreement.** This Agreement shall become effective July 1, 2017 and
13 shall continue in full force and effect until June 30, 2018 unless terminated earlier, as
14 herein provided.

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

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

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

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

31 For any of the occurrences except item (v), termination may be effected upon
32 written notice by the terminating party specifying the date of the termination. Upon a
33 material breach, the Agreement may be terminated following the failure of the
34 defaulting party to remedy the breach to the satisfaction of the non-defaulting party
35 within FIVE (5) days of written notice specifying the breach. If the breach is not

1 remedied within that FIVE (5) day period, the non-defaulting party may terminate the
2 Agreement on further written notice specifying the date of termination.

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

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

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

16 County: Director of Transportation
17 Resource Management Agency
18 5961 S. Mooney Blvd.
19 Visalia, CA 93277

20
21 City: Transit Manager
22 City of Visalia
23 425 E. Oak Ave.
24 Visalia, CA 93291

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

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

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

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

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

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

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

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

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

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

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

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

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

36

1 28. Further Assurances. Each party agrees to execute any additional documents and
2 to perform any further acts which may be reasonably required to effect the purposes of this
3 Agreement.

4 29. Assurances of Non-Discrimination. City and County expressly agree not to
5 discriminate in employment or the provision of services on the basis of any characteristic or
6 condition upon which discrimination is prohibited by state or federal law or regulation.

7
8 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the
9 date first above written.


10 COUNTY OF TULARE

11
12 By _____
13 Chairman, Board of Supervisors
14 "COUNTY"

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16
17 ATTEST:
18 County Administrative Officer/
19 Clerk of the Board of Supervisors.

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21
22 By _____
23 Deputy


24 CITY OF VISALIA

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26 By 
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28 Title: CITY MANAGER
29 "CITY"

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31 ATTEST: Clerk of City of Visalia

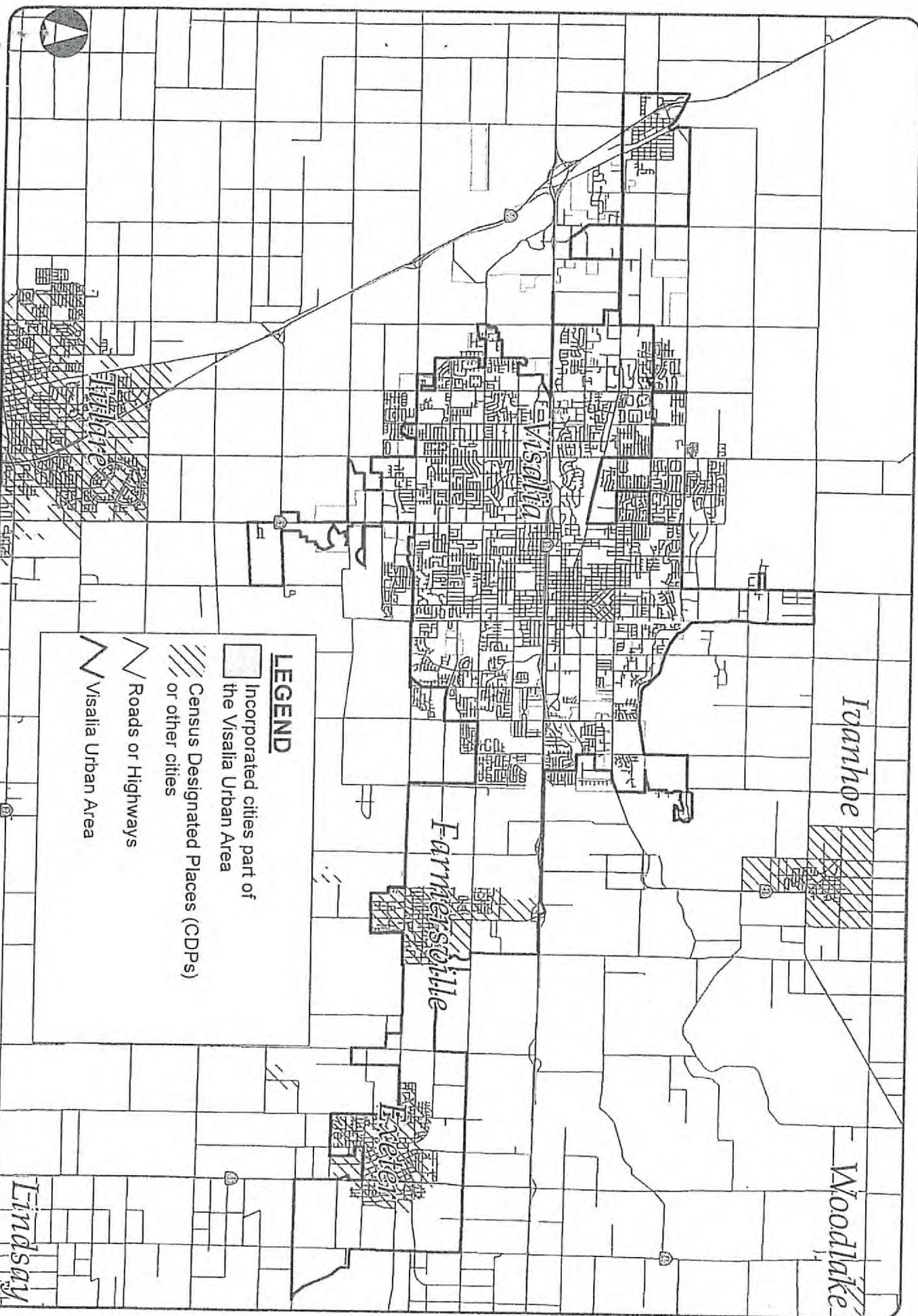
32
33 By 
34 Chief Deputy City Clerk
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38 Approved as to Form,
39 County Counsel

40
41 By  2018458
42 Deputy 4/24/18

43 Approved as to Form,
44 City of Visalia

45 By 
46 City Attorney







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EXHIBIT A

MAP OF VISALIA URBAN AREA CENSUS 2000

LEGEND

-  Incorporated cities part of the Visalia Urban Area
-  Census Designated Places (CDPs) or other cities
-  Roads or Highways
-  Visalia Urban Area