

1 **AGREEMENT**

2 THIS AGREEMENT, is entered into as of this _____ day of _____, 2018, by
3 and between the COUNTY OF TULARE, hereinafter referred to as the "County", and the CITY
4 OF WOODLAKE, 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 Woodlake 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 dial-a-ride transit system and there are and will continue to be citizens of the
10 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 Woodlake 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 Woodlake 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 Director of Transportation and shall be
26 approved on behalf of the City by the City Manager.

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

31 2. **Management-County.** The County shall manage the County Transit System in
32 an appropriate manner, insuring cost effective operations, including marketing the system
33 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, 2017 through
6 June 30, 2018 the sum of \$28,791. This represents the County's share of the net operating
7 cost of the transit service. Compensation is based upon the prorated share of the City's and
8 County's previous year ridership on the City's dial-a-ride transit system.

9 5. **Additional Compensation.** The City has allowed the County to apply on its
10 behalf for various transit funding sources, not directly available to the City. The County
11 agrees to increase the compensation discussed in paragraph 4 by 90% of the aggregate
12 amount of these funding sources (detailed below):

	<u>CREDIT</u>	<u>SOURCE</u>
Woodlake	\$5,617	California Office of Emergency Services Funds
	(90% = 5,055)	

17 6. **Authorization of Payment.** The County by this Agreement authorizes the Tulare
18 County Association of Governments to transfer \$33,846 of State Transit Assistance Funds,
19 and/or Local Transportation Funds from the County's 2017/18 Apportionment to the City of
20 Woodlake's Apportionment. The County further authorizes the City to claim said \$33,846
21 as full payment for the County's share of the transit system's net operating cost and
22 compensation for common pass/token usage during the period of July 1, 2017 through June
23 30, 2018. In case of termination of this Agreement prior to June 30, 2018, the County
24 agrees to compensate the City only for a proportional amount of the sum of \$33,846 based
25 upon the number of days the services were actually provided by the City, and the value of
26 tokens and passes honored during that period. In the event of any overpayment by the
27 County to the City, the City agrees to reimburse the County within thirty (30) days of
28 written demand by the County.

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

31 7. **Indemnification-City.** City shall hold harmless, defend and indemnify County,
32 its agents, officers and employees from and against any liability, claims, actions, costs,
33 damages or losses of any kind, including death or injury to any person and/or damage to
34 property, arising out of the activities of City or its agents, officers and employees under this
35 Agreement. This indemnification specifically includes any claims that may be made
36 against County by any taxing authority asserting that an employer-employee relationship

1 exists by reason of this Agreement, and any claims made against County alleging civil
2 rights violations by City under Government Code section 12920 et seq. (California Fair
3 Employment and Housing Act). This indemnification obligation shall continue beyond the
4 term of this Agreement as to any acts or omissions occurring under this Agreement or any
5 extension of this Agreement.

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

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

29 The parties agree, during the term of the Agreement, to maintain at their own expense
30 (or require of their independent contractors) all necessary insurance for their respective
31 officers, employees, and agents, including but not limited to workers' compensation,
32 disability and unemployment insurance in accordance with state statutory requirements and
33 to provide certificates of such insurance or other evidence of compliance to the other party
34 upon request. The insurance, and evidence thereof, required by this Agreement may be
35 provided either directly by the parties or, if a party contracts with an independent

1 contractor/operator to provide the services required by this Agreement, by the operator of
2 that party's system as deemed appropriate by such party.

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

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

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

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

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

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

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

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

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

7 County: Director of Transportation
8 Resource Management Agency
9 5961 S. Mooney Blvd.
10 Visalia, CA 93277

11
12 City: City Administrator
13 City of Woodlake
14 350 North Valencia
15 Woodlake, CA 93286

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

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

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

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

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

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

36 19. **Governing Law.** This Agreement shall be interpreted and governed under the
37 laws of the State of California without reference to California conflicts of law principles.

1 Any litigation arising out of this Agreement shall be brought in Tulare County California.
2 City waives the removal provisions of California code of Civil Procedure Section 394.

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

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

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

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

18 **24. Exhibits and Recitals.** The Recitals and the Exhibits to this Agreement are fully
19 incorporated into and are integral parts of this Agreement.

20 **25. Further Assurances.** Each party agrees to execute any additional documents and
21 to perform any further acts which may be reasonably required to effect the purposes of this
22 Agreement.

23 **26. Assurances of Non-Discrimination-City.** City expressly agrees that it will not
24 discriminate in employment or the provision of services on the basis of any characteristic or
25 condition upon which discrimination is prohibited by state or federal law or regulation.

26 **27. Assurances of Non-Discrimination-County.** County expressly agrees that it will
27 not discriminate in employment or the provision of services on the basis of any
28 characteristic or condition upon which discrimination is prohibited by state or federal law
29 or regulation.

30 **REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**
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36

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

3
4 COUNTY OF TULARE

5
6 By _____
7 Chairman, Board of Supervisors
8 "COUNTY"

9 ATTEST:

10
11 County Administrative Officer/
12 Clerk of the Board of Supervisors.

13
14 By _____
15 Deputy

16
17 CITY OF WOODLAKE

18 By *Frances [Signature]*
19 Title:
20 *Vice Mayor* "CITY"

21 ATTEST: City Clerk

22
23 By _____
24 Deputy

25
26
27
28 Approved as to Form,
29 County Counsel

30
31 By *[Signature]* 2018370 4/19/18
32 Deputy

Approved as to Form,
City Attorney

By *[Signature]*
Mario U. Zamora

EXHIBIT A

Boundary Map

SERVICE AREA FOR CONTRACT WITH CITY OF WOODLAKE

