

1 **AGREEMENT**

2 THIS AGREEMENT, made and entered into this 1 day of July, 2018,  
3 by and between the CITY OF LINDSAY, hereinafter referred to as the "City" and the COUNTY  
4 OF TULARE, hereinafter referred to as the "County".

5 **WITNESSETH:**

6 WHEREAS, the City and the County desire to provide coordinated transit service in the  
7 Lindsay area; and

8 WHEREAS, it is mutually beneficial for the City and the County to provide this transit  
9 service by agreement; and

10 WHEREAS, the County operates Tulare County Transit, a public transit system; and

11 WHEREAS, there are and will continue to be, citizens of the County who can reasonably be  
12 served by a demand response transit system within the City, and there are and will continue to be,  
13 citizens of the City who can reasonably be served by the County's demand response transit system;  
14 and

15 WHEREAS, there are and will continue to be, citizens of the County who can reasonably be  
16 served by a fixed-route transit system operating within the City, and there are and will continue to  
17 be, citizens of the City who can reasonably be served by the County's fixed-route transit system;  
18 and

19 WHEREAS, the County and City recognize the goals of providing a transportation system  
20 to the general public at a reasonable fare and that of providing coordinated public transportation  
21 service within the Lindsay area.

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

- 23 1. **Scope of Work.** The County shall operate and manage a demand response public  
24 transit service within the Service Areas as shown on Exhibit "A" attached hereto and fully  
25 incorporated herein by this reference and shall provide transit service to those residents of  
26 the City desiring to use the demand response services of the County transit system. The  
27 operation and management of the demand response transit service shall be the responsibility  
28 of the County. The service area may be modified by mutual agreement of the City Manager  
29 and the County Director of Transportation. The County shall also continue to operate a fixed-  
30 route service per the route maps shown on Exhibit "B" attached hereto and fully incorporated  
31 herein by this reference and shall provide transit service to those residents of the City desiring  
32 to use the regularly scheduled services of this County transit system. The operation and  
33 management of the fixed-route service shall be the responsibility of the County. The route  
34 may be modified by mutual agreement of the City Manager and the County Director of  
35 Transportation.

1           **2. Hours of Operation.** The demand response transit service will operate on a dial-  
2 a-ride basis, Monday through Friday except on those holidays that the senior citizen meal  
3 sites are not open. The hours of operation shall be set by mutual agreement of the City  
4 Manager and the County Director of Transportation. The fixed-route service shall operate  
5 Monday through Sunday except on those holidays that are recognized by Tulare County  
6 Transit. The hours of operation for demand response shall be set by mutual agreement of the  
7 City Manager and the County Director of Transportation.

8           **3. Management.** The County shall manage and operate the transit system in an  
9 appropriate manner, insuring a cost effective operation, including marketing the system and  
10 collecting fares from the riders.

11           **4. Fuel, Oil and Storage.** The City shall provide fuel, oil and storage facilities for  
12 the transit vehicles. Only the cost of the fuel and oil provided for the vehicles shall be billed  
13 to the County. The cost of the storage facilities shall be borne by the City.

14           **5. Collection of Fares.** For the demand response transit service, the City shall count,  
15 collect, receipt and secure all cash fares delivered to the City by County Agent on a daily  
16 basis. The City shall return all said cash fares to the County according to schedules and  
17 procedures acceptable to the City Manager and the County Director of Transportation. No  
18 additional compensation shall be due either party to this Agreement for this service. Fares  
19 collected on the fixed-route service shall be collected, counted and secured by the County.

20           **6. Compensation.** In addition to any fares collected and due to the County under  
21 paragraph 5, the City shall compensate the County the sum of \$64,699 for service provided  
22 under this Agreement. Compensation is based on the prorated share of the City's and  
23 County's previous year ridership on the dial-a-ride transit service, and an agreed upon  
24 amount contributed by the City to help offset the operational costs of the fixed-route service.  
25 The City hereby authorizes, by execution of this Agreement, the Tulare County Association  
26 of Governments (TCAG) to transfer said compensation from the City's 2017/2018  
27 Transportation Development Act Apportionment to the County's 2017/2018 Transportation  
28 Development Act Apportionment. The County shall then submit a claim to TCAG for the  
29 amount specified as 2017/2018 Compensation. Said compensation shall be as follows:

	<u>COMPENSATION</u>	<u>SOURCE</u>
Lindsay	\$64,699	Local Transportation Fund and/or State Transit Assistance Funds

34           **7. Credits.** The City has allowed the County to apply on its behalf for various transit  
35 funding sources, not directly available to the City. The County agrees to reduce the

1 compensation requirement discussed in paragraph 6 by 90% of the aggregate amount of these  
2 funding sources (detailed below):

	<u>CREDIT</u>	<u>SOURCE</u>
3		
4		
5	Lindsay \$12,833	Public Transportation Modernization
6	(90% = 11,552)	Improvement Service Enhancement Account
7		
8	Lindsay \$5,169	California Office of Emergency Services Funds
9	(90% = 4,652)	
10	Lindsay \$17,246	SB1 – State of Good Repair Funding
11	(90% = 15,521)	

12 In the event the County does not receive any of the transit funding sources described  
13 above in full, the City’s credits will be reduced and they will be responsible for payment.

14

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

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

33 **10. Insurance-Liability.** The County shall provide comprehensive general public  
34 liability and comprehensive automotive liability insurance with single limit coverage of not  
35 less than \$5,000,000 or equivalent self-insurance covering their activities under this  
36 Agreement. Prior to commencing operations, the County shall file with the Clerk of the other  
37 party certificates of insurance evidencing the coverage required herein and naming the other

1 party, its officers, agents and employees as additional insureds. Such certificates shall state  
2 that the named additional insureds are not responsible for the payment of any premium or  
3 assessment and shall provide that in the event of a cancellation or material change of policy,  
4 the insurer shall give the named additional insureds no less than thirty (30) days advance  
5 written notice of such cancellation or change. Upon request, the County shall provide the  
6 City with a complete copy of the insurance policy or policies or evidence and terms of self-  
7 insurance as required herein. The insurance, and evidence thereof, required by this  
8 Agreement may be provided either directly by the County or, if the County contracts with an  
9 independent contractor/operator to provide the services required by this Agreement, by the  
10 operator of the County's system as deemed appropriate by the County.  
11

12 **11. Term of Agreement.** Except as to the obligations described in Section 11(c) this  
13 Agreement shall become effective July 1, 2017 and shall terminate June 30, 2018, unless  
14 terminated earlier as provided in this Agreement.

15 **12. 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. County shall have the right to terminate this Agreement  
19 without cause by giving City SIXTY (60) days prior written notice of its intention to  
20 terminate pursuant to this provision, specifying the date of termination.

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

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

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

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

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

12       **13. Conditions to Continuing the Agreement.** This Agreement is entered into with  
13 the anticipation of certain funds being available, either locally or from the State or Federal  
14 governments, and such funding for any reason is no longer available, this Agreement may be  
15 terminated by County on written notice specifying the date of termination. Termination of  
16 this agreement does not relieve the City of the obligation to pay for services already rendered  
17 in accordance with this Agreement.

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

20 /  
21 /  
22 /

23                   City:    City Manager  
24                                City of Lindsay  
25                                P. O. Box 369  
26                                Lindsay, California 93274

27  
28                   County: County Director of Transportation  
29                                Resource Management Agency  
30                                5961 S. Mooney Blvd.  
31                                Visalia, California 93277

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

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

1           **17. Surveys.** Either the City or the County may conduct periodic ridership surveys.  
2 Said surveys shall not interfere with the operation of the system.

3           **18. Legal Operation.** City and County each shall carry out its obligations under this  
4 Agreement in full compliance with all applicable federal, state and local laws, ordinances,  
5 rules and regulations.

6           **19. Construction.** This Agreement reflects the contributions of both parties and  
7 accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret  
8 any uncertainty.

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

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

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

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

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

28           **25. Exhibits and Recitals.** The Recitals and the Exhibits to this Agreement are fully  
29 incorporated into and are integral parts of this Agreement.

30           **26. Further Assurances.** Each party agrees to execute any additional documents and  
31 to perform any further acts which may be reasonably required to effect the purposes of this  
32 Agreement.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

**28. Assignment/Subcontracting.** Neither party shall assign or transfer any rights or privileges or any parts thereof of this agreement without the other's prior written consent.

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

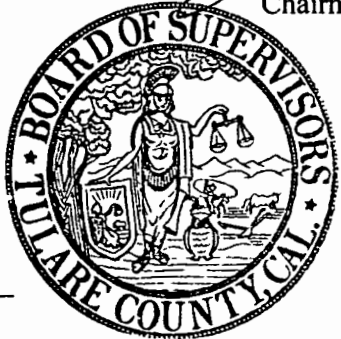
**REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY**

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

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

COUNTY OF TULARE

By *[Signature]*  
Chairman, Board of Supervisors  
"County"



ATTEST:  
County Administrative Officer/  
Clerk of the Board of Supervisors.

By *[Signature]*  
Deputy

CITY OF LINDSAY

By *[Signature]*  
Title: Pamela Kimball, Mayor  
"City"

ATTEST: City Clerk,  
CITY OF LINDSAY

By *[Signature]*  
Bret Harmon

Approved as to form,  
County Counsel

By *[Signature]* 4/7/18  
2018319  
Deputy