

1 **AGREEMENT**

2 THIS AGREEMENT, is entered into as of this _____ day of _____, 2019, by
3 and between the COUNTY OF TULARE, hereinafter referred to as the "County", and the CITY
4 OF PORTERVILLE, hereinafter referred to as the "City".

5 **WITNESSETH:**

6 WHEREAS, the County and the City desire to coordinate their respective public
7 transportation systems in the Porterville urbanized 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 transit system and there are and will continue to be citizens of the City who
10 can reasonably be served by the County's transit system; and

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

14 WHEREAS, the County and the City did not come to agreement in the 2017/2018 Fiscal
15 Year but now agree to the amounts the County will pay to City for providing transportation
16 services for the unincorporated areas; and

17 WHEREAS, the County and the City desire to provide for the Joint Exercise of Powers for
18 the purpose of providing and maintaining public transportation systems in the Porterville
19 urbanized area;

20 NOW, THEREFORE, County and City mutually agree as follows:

21 1. **Scope of Work.** The County and City shall each control, manage, and operate a
22 separate transit system. The City and County shall furnish each other thirty (30) days prior
23 written notice of any and all service level and fare level changes.

24 (a) **County.** The County shall provide transit service to those residents of the
25 City desiring to use the regularly scheduled service of the County transit system. The
26 County shall establish bus stop location(s) within the City which will interface with
27 the City bus stop locations and facilitate system transfers. The County stop(s) shall be
28 established at locations acceptable to the City. Approval on behalf of the City shall
29 be given by the City Transit Coordinator.

30 (b) **City.** The City shall establish a series of bus stop locations within the
31 County. The City stops shall be established at locations acceptable to the County.
32 Approval on behalf of the County shall be given by the Director of Transportation.
33 The City shall provide transit service to County residents desiring transit service
34 within the urbanized service area as set forth in Exhibit "A" which is attached hereto
35 and made a part hereof by this reference.

1 2. **Management-County.** The County shall manage the County 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 County transit system.

4 3. **Management-City.** The City shall manage the City transit system in an
5 appropriate manner, insuring cost effective operation, including marketing the system in a
6 professional manner and collecting fares from riders on the City transit system.

7 4. **Compensation.** The County shall compensate the City for service to County
8 residents living in the herein agreed upon service area. Compensation shall be limited to a
9 set dollar amount of \$740,694. Compensation for the period July 1, 2017 through June 30,
10 2019, will be as follows:

11		
12	17-18 County LTF/STA	\$342,253
13		
14	18-19 County LTF/STA	\$398,441
15		
16	Total Payment	\$740,694

17 5. **Authorization of Payment.** FTA Section 5307 Funds will be claimed by the City on
18 the County's behalf. The County by this Agreement authorizes the Tulare County
19 Association of Governments to transfer \$342,253 from the County's 2017/18
20 Apportionment and \$398,441 from the County's 2018/19 Apportionment of State Transit
21 Assistance Funds, and/or Local Transportation Funds to the City of Porterville's
22 Apportionment. The County further authorizes the City to claim said \$740,694 as full
23 payment for services under this Agreement. In case of termination of this Agreement prior
24 to June 30, 2019, the County agrees to compensate the City for a proportional amount of
25 the sum of \$740,694 based upon the number of days the services were provided by the City
26 during a 730 day period.

27 6. **FTA Funds.** Per the 2010 Census, the Porterville urbanized area has a population of
28 72,329; 54,247 (75.0%) of which are City residents, and 18,082 (25.0%) of which are
29 County residents. The Porterville Urbanized Area is eligible to receive Federal Transit
30 Administration (FTA) Funds from Section 5307. The City of Porterville will be the
31 claimant of these funds. The amount included under Section 4 "compensation" reflects a
32 credit of Section 5307 Funds to the County from the City.

33 7. **Renegotiation.** In the event a contract between the Federal Transit
34 Administration and the City of Porterville is not executed by June 30, 2019 for the Section
35 5307 Funds specified in paragraphs 4, 5 and 6, this contract may be renegotiated to reflect
36 this condition.

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

3 9. **Indemnification-City.** City shall hold harmless, defend and indemnify County,
4 its agents, officers and employees from and against any liability, claims, actions, costs,
5 damages or losses of any kind, including death or injury to any person and/or damage to
6 property, arising out of the activities of City or its agents, officers and employees under this
7 Agreement. This indemnification specifically includes any claims that may be made
8 against County by any taxing authority asserting that an employer-employee relationship
9 exists by reason of this Agreement. This indemnification obligation shall continue beyond
10 the term of this Agreement as to any acts or omissions occurring under this Agreement or
11 any extension of this Agreement.

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

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

33 The parties agree, during the term of the Agreement, to maintain at their own expense
34 (or require of their independent contractors) all necessary insurance for their respective
35 officers, employees, and agents, including but not limited to workers' compensation,
36 disability and unemployment insurance in accordance with state statutory requirements and

1 to provide certificates of such insurance or other evidence of compliance to the other party
2 upon request. The insurance, and evidence thereof, required by this Agreement may be
3 provided either directly by the parties or, if a party contracts with an independent
4 contractor/operator to provide the services required by this Agreement, by the operator of
5 that party's system as deemed appropriate by such party.

6 **12. Term of Agreement.** This Agreement shall become effective July 1, 2017 and
7 shall continue in full force and effect until June 30, 2019 unless terminated earlier, as
8 herein provided.

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

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

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

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

25 For any of the occurrences except item (v), termination may be effected upon
26 written notice by the terminating party specifying the date of the termination. Upon a
27 material breach, the Agreement may be terminated following the failure of the
28 defaulting party to remedy the breach to the satisfaction of the non-defaulting party
29 within FIFTEEN (15) days of written notice specifying the breach. If the breach is
30 not remedied within that FIFTEEN (15) day period, the non-defaulting party may
31 terminate the Agreement on further written notice specifying the date of termination.

32 If the nature of the breach is such that it cannot be cured within a FIFTEEN (15)
33 day period, the defaulting party may, submit a written proposal within that period
34 which sets forth a specific means to resolve the default. If the non-defaulting party
35 consents to that proposal in writing, which consent shall not be unreasonably
36 withheld, the defaulting party shall immediately embark on its plan to cure. If the

1 default is not cured within the time agreed, the non-defaulting party may terminate
2 upon written notice specifying the date of termination.

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

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

9 County: Director of Transportation
10 Resource Management Agency
11 5961 S. Mooney Blvd.
12 Visalia, CA 93277
13

14 City: Transit Coordinator
15 City of Porterville
16 291 N. Main Street
17 Porterville, CA 93257

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

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

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

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

1 19. **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 20. **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 21. **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
8 interpret any uncertainty.

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

13 23. **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
15 court 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 24. **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 25. **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 26. **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 27. **Exhibits and Recitals.** The Recitals and the Exhibits to this Agreement are fully
29 incorporated into and are integral parts of this Agreement.

30 28. **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 29. **Assurances of Non-Discrimination.** City and County expressly agrees that it
34 will not discriminate in employment or the provision of services on the basis of any
35 characteristic or condition upon which discrimination is prohibited by state or federal law
36 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

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

COUNTY OF TULARE

By _____
Chairman, Board of Supervisors
"COUNTY"

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

By _____
Deputy

CITY OF PORTERVILLE

By _____
Mayor "CITY"

ATTEST: Clerk of City of Porterville

By _____
Deputy

Approved as to Form,
County Counsel

By _____
Deputy

Approved as to Form,
City Attorney

By _____
City Attorney

