

AGREEMENT

THIS AGREEMENT, is entered into as of this _____ day of _____, 2006, by and between the COUNTY OF TULARE, hereinafter referred to as the "County", and the CITY OF PORTERVILLE, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, the County and the City desire to coordinate their respective public transportation systems in the Porterville Urbanized area; and

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

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

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

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

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

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

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

2. **Management-County.** The County shall manage the County transit system in an appropriate manner, insuring cost effective operation, including marketing the system 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 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. Compensation shall be limited to a
6 percentage of the operating costs of the City's Transit System. The term "operating cost" as
7 used in this Agreement shall be defined as all costs in the operating expense object classes
8 of the Uniform Systems of Accounts for Public Transit Operators adopted by the State
9 Controller pursuant to Public Utilities Code Section 99243.

10 Compensation for the period July 1, 2006 through June 30, 2007, will be as follows:

	Demand Response	Route Service
County LTF (See Below)	\$330,632	\$321,973
FTA Section 5307 Credit	(\$99,415)	(\$87,625)
Fare Box Credit	(\$38,235)	(\$64,253)
Annual Credit Adjustment (Third of Six equal credits)		(\$68,911)
<u>Depreciation</u>	\$6,141	\$13,800
Total Payment	\$199,123	\$114,984

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 \$314,107 of State Transit Assistance Funds, and/or
21 Local Transportation Funds from the County's 2006/07 Apportionment to the City of
22 Porterville's Apportionment. The County further authorizes the City to claim said \$314,107
23 as full payment for services under this Agreement. In case of termination of this
24 Agreement prior to June 30, 2007, the County agrees to compensate the City for a
25 proportional amount of the sum of \$314,107 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 Porterville Urbanized Area has a population of
28 59,961; 39,615 (66.0%) of which are City residents, and 20,346 (34.0%) 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 City will, at the request of the County, claim and transmit up
32 to 34% of said funds for use by the County for eligible purposes under FTA Section 5307.
33 In no case shall the amount transmitted or credited to the County exceed 34% of the total
34 available. Any Section 5307 Funds which are to be transmitted to the County shall be
35 handled under a separate agreement.

1 7. **Renegotiation.** In the event a contract between the Federal Transit
2 Administration and the City of Porterville is not executed by June 30, 2007 for the Section
3 5307 Funds specified in paragraphs 4, 5 and 6 or in the event that \$187,040 exceeds 34% of
4 the total FTA Section 5307 funds available to the Porterville urbanized area, this contract
5 will be renegotiated to reflect this condition.

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

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

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

26 11. **Insurance-Liability.** The City and the County shall each provide comprehensive
27 general public liability and comprehensive automotive liability insurance with single limit
28 coverage of not less than \$5,000,000 or equivalent self-insurance covering their activities
29 under this Agreement. Prior to commencing operations, each party shall file with the Clerk
30 of the other party certificates of insurance evidencing the coverage required herein and
31 naming the other party, its officers, agents and employees as additional insured's. Such
32 certificates shall state that the named additional insured's are not responsible for the
33 payment of any premium or assessment and shall provide that in the event of a cancellation
34 or material change of policy, the insurer shall give the named additional insured's no less
35 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, 2006 and
13 shall continue in full force and effect until June 30, 2007 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 FIFTEEN (15) days of written notice specifying the breach. If the breach is

1 not remedied within that FIFTEEN (15) day period, the non-defaulting party may
2 terminate the 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 FIFTEEN (15)
4 day period, the defaulting party may, submit a written proposal within that period
5 which sets forth a specific means to resolve the default. If the non-defaulting party
6 consents to that proposal in writing, which consent shall not be unreasonably
7 withheld, the defaulting party shall immediately embark on its plan to cure. If the
8 default is not cured within the time agreed, the non-defaulting party may terminate
9 upon written 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 Coordinator
22 City of Porterville
23 291 N. Main Street
24 Porterville, CA 93257

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 representative's 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. Each Exhibit shall be initialed
36 by both parties to this Agreement.

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

COUNTY OF TULARE

ATTEST: C. BRIAN HADDIX,
County Administrative Officer/
Clerk of the Board of Supervisors.

CITY OF PORTERVILLE

ATTEST: Clerk of City of Porterville

Approved as to Form,
County Counsel

Approved as to Form,
City Attorney

City Attorney

By 
City Attorney

EXHIBIT "A"

2006 Porterville Transit/COLT - Service Area

