

## Settlement Agreement

This Settlement Agreement ("**Agreement**") is entered into by the parties set forth below for the purpose of completely resolving two cases: (1) Case No. 249043 – Petition for Writ of Mandate, Superior Court, State of California, County of Tulare, challenging the adoption of Tulare County General Plan 2030 Update and Climate Action Plan (collectively "**General Plan Project**") and certification by the County of Tulare of the environmental impact report for the General Plan Project ("**GP Project EIR**"); and (2) Case No. VCU249877 Petition for Writ of Mandate for Injunctive and Declaratory Relief and Complaint to Determine Validity of Proceedings for Injunctive and Declaratory Relief, Superior Court, State of California, County of Tulare, Visalia Division, challenging the adoption of the "2010 Amendment to the Redevelopment Plan for the Porterville Redevelopment Project No. 1" ("**2010 Amendment**") and certification of the environmental impact report for the 2010 Amendment ("**2010 Amendment EIR**").

This Agreement is made and effective this \_\_\_\_ day of April 2014 (the "**Date of Execution**") by and among certain parties to Case No. 249043, namely the City of Porterville, a municipal corporation ("**City**"), and the County of Tulare, a political subdivision of the State of California ("**County**"), and the Board of Supervisors of the County of Tulare ("**County Board**"), and to case No. VCU249877, Petitioner and Plaintiff, the County, and Respondents and Defendants, the City and the City Council of the City of Porterville ("**City Council**").

The City, City Council, County, and County Board are collectively referred to herein as the "**Parties**" and individually as a "**Party**." This **Agreement** is intended to resolve the outstanding legal disputes between the Parties without further litigation and serve in lieu of any determination by the Court as to the merits of Petitioners' and/or Plaintiffs' allegations in either of these cases.

### RECITALS

**WHEREAS**, the City is a municipal corporation, organized and existing under the laws of the State of California, and the City Council of the City of Porterville is the governing body of the City;

**WHEREAS**, the County is a public entity organized and existing under the laws of the State of California and an affected taxing entity, and the County Board is the governing body of the County;

**WHEREAS**, the Successor Agency for the City of Porterville Redevelopment Agency is a duly formed successor agency under Section 34173 of the California Health & Safety Code, and the Oversight Board to the Successor Agency of the City of Porterville Redevelopment Agency is required pursuant to Section 34179 of the California Health & Safety Code;

**WHEREAS**, Petitioner City has not identified Respondent Does 1-10 in Case No. 249043;

**WHEREAS**, Plaintiff and Petitioner County has not identified Defendant/Respondent Does 1-50 in Case No. VCU249877:

**WHEREAS**, Petitioner City filed a Petition for Writ of Mandate in the State of California Superior Court, County of Tulare against County and County Board on September 27, 2012, which petition is designated as Case No. 249043 (the "**General Plan Litigation**") generally challenging the adoption of the **General Plan Project** and certification by the County of the **GP Project EIR** and seeking to set aside the adoption of the **General Plan Project**.

**WHEREAS**, the County filed a petition for writ of mandate for injunctive and declaratory relief and a complaint for declaratory and injunctive relief to determine the validity of the proceedings, which petition and complaint is designated as, Case No. VCU249877 ("**Redevelopment Litigation**") and requested that the Court direct the City to vacate and set aside Ordinance No. 1765 adopting the **2010 Amendment** for failure to comply with the California Environmental Quality Act (Pub. Resources Code § 21000 et seq., "**CEQA**") and California Redevelopment law, and to invalidate and declare Ordinance No. 1765 as void.

**WHEREAS**, on August 28, 2012, the County Board certified **GP Project EIR** (State Clearinghouse No. 2006041162) prepared by the County under **CEQA**, which analyzed the environmental impacts of the **General Plan Project**.

**WHEREAS**, on August 28, 2012, the County Board adopted Resolution 2012-0696 certifying the **GP Project EIR** and adopting the **CEQA Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program** for the **GP Project EIR** and Resolution.

**WHEREAS**, on August 28, 2012, the County Board also adopted Resolution No. 2012-0697 adopting the **General Plan Project**.

**WHEREAS**, on June 15, 2010, the City certified the **2010 Amendment EIR** prepared by the City under **CEQA**, which analyzed the environmental impacts of the **2010 Amendment**.

**WHEREAS**, on June 15, 2010, the Porterville Redevelopment Agency and the City adopted Resolution No. PRA 2010-10 and Resolution No. 73-2010, respectively, certifying the **2010 Amendment EIR**, making written findings pursuant to **CEQA**, adopting a Statement of Overriding Considerations, and adopting a Mitigation and Monitoring Program.

**WHEREAS**, on June 15, 2010 the City adopted Ordinance No. 1765 adopting the **2010 Amendment**.



**WHEREAS**, the Parties have mutually agreed that settlement is the most efficient and practical way to resolve both the **General Plan Litigation** and **Redevelopment Litigation** (collectively "**Litigation**"). Without any Party admitting or denying the truthfulness of any of the allegations or claims raised between and among the Parties and without accepting any liability arising out of such claims, the Parties now intend to settle the **Litigation** in its entirety on the terms and conditions set forth in this **Agreement**.

**WHEREAS**, the Parties have negotiated in good faith and agreed to the terms of this **Agreement**, including Attachments A, B, C, D, E, and F, attached hereto.

**NOW, THEREFORE**, in consideration of the mutual benefits of this **Agreement** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**I. Incorporated by Reference**

- a. The recitals set forth above are incorporated by this reference as if set out in full.
- b. The attachments referred to in and attached to this **Agreement** are incorporated by reference as if set out in full.

**II. Purpose**

- a. This **Agreement** is intended to settle the **Redevelopment Litigation**, as provided in Section XI and Attachment C, and the **General Plan Litigation**, as otherwise provided herein.
- b. This **Agreement** constitutes a "mutually adopted agreement between County and Porterville regarding the collection of public facilities impact fees" as provided in Goal PF-4A of the County General Plan.
  - i. Consequently, in accordance with the introductory paragraph to the policies under Goal PF-4A of the Tulare County General Plan 2030 Update, Part I, County will apply the policies under Goal PF-4A, in addition to the policies already in place under Goal PF-4, to the City and any land within the **CACUDB for Porterville** and **CACUAB for Porterville**. Goal PF-4 and PF-4A of the County's General Plan are set forth in Attachment A.

**III. Definitions**

- a. For the purposes of this **Agreement**, and in addition to the terms defined elsewhere in this **Agreement**, the following terms shall have the meanings provided below.
  - i. **Date of Execution** – the first day on which all Parties executed this Agreement.

- ii. **City UDB** – the City’s officially adopted Urban Development Boundary, beyond which urban development is not allowed during the time period for which it is effective.
- iii. **Community (Unincorporated Community)** – is a closely settled, named, unincorporated place that generally contains a mixture of residential, commercial, and industrial areas similar to those found in incorporated places of similar sizes.
- iv. **County Adopted City Urban Area Boundary for Porterville (“CACUAB for Porterville”)** – a County officially adopted and mapped line around the City. It establishes areas (the area between the CACUDB for Porterville and CACUAB for Porterville) in which the County and the City may coordinate plans and policies relating to street and highway construction, public utility systems, and future right of way preservation, affecting the orderly development of urban fringe areas.
- v. **County Adopted City Urban Development Boundary for Porterville (“CACUDB for Porterville”)** – a County officially adopted and mapped line around the City. It delineates the area expected for urban growth over a 20-year period. This line may be coterminous to the Local Agency Formation Commission Sphere of Influence.
- vi. **County Community UDB** – a County adopted line surrounding a **Community (Unincorporated Community)** dividing land to be developed from land to be protected for agricultural, natural, open space, or rural uses. It serves as the official area for communities over a 20-year period.
- vii. **County Corridor Plan** – shall have the same definition as provided in Part II, Section 2.1 of the County General Plan. The “County Corridor development nodes” identified in County General Plan Policies PF-4.18 and PF-4.19, which are set forth in Attachment A, will be the areas covered by these County Corridor plans, if or when such plans are adopted.
- viii. **Hamlet Development Boundary** – an officially adopted and mapped County line around a hamlet that divides lands suitable for development from lands to be protected for agricultural, natural, or rural uses.
- ix. **Sphere of Influence (“SOF”)** – shall have the meaning set forth in Government Code section 56076.

**IV. Adoption and Application of City UDB and City’s Standards and Designations for CACUDB for Porterville.**

- a. If City first proposes and pays the costs of consideration required by this **Agreement**, County shall, at a regularly scheduled meeting of the County’s Board of Supervisors, consider and take action on the following items, in accordance with the procedures required by state law:



- i. Amendment of the **CACUDB for Porterville** to be coterminous with the **City UDB**. The parties intend that this line be coterminous with the City's SOI adopted by Tulare County Local Agency Formation Commission ("**LAFCO**") and meet **LAFCO**'s criteria and policies applicable to SOIs, as set out in Section IX.
    - 1. **LAFCO** action on the **City's SOI Amendment Application**, as specified in Section IX, is a condition precedent to the County's obligation to amend the **CACUDB for Porterville**.
  - ii. Within the **CACUDB for Porterville**, adoption of the City's (1) General Plan land use designations and development policies, (2) master plans for sewer, water, and storm drain facilities, and (3) circulation element diagrams reflecting anticipated future streets (collectively, "**City's Standards and Designations**").
  - iii. Adoption of any other regulations and/or amendments to the County's General Plan that will ensure the regulations, land use designations, and development policies within the **CACUDB for Porterville** are consistent with the **City's Standards and Designations** ("**City Proposed Amendment**").
- b. For purposes of this Agreement, the Parties agree that after adoption, if any, of the City's Standards and Designations, County General Plan PF-4.18 (which is set forth in Attachment A) shall be interpreted as follows:
- i. When processing any application for development within the **CACUDB for Porterville** after adoption of **City's Standards and Designations**, the County will not approve development that would result in any inconsistency or incompatibility with the **City's Standards and Designations**, except:
    - 1. When the application proposes development on land inside the East Porterville **County Community UDB**.
    - 2. When the application proposes to modify an existing, legal non-conforming use.
    - 3. When the application proposes development on land containing existing or vacant agricultural support facilities, if City will not or cannot annex.
    - 4. When the application proposes development on land that the County designates or zones for agriculture (except where the City designation creates a less intensive agricultural designation or zone).
    - 5. When state or federal law requires that the land be designated, zoned, or developed otherwise.

6. Where the County and City have agreed on a different designation than that stated in the City's General Plan or master plans for sewer, water, and storm drains.
- ii. Prior to adoption of **City's Standards and Designations** or amendment of the **CACUDB for Porterville** to be coterminous with the **City UDB**, the County will consider the **City's Standards and Designations** when processing any application for development within the **CACUDB for Porterville**.
  - iii. The County agrees that this interpretation is consistent with and implements the County's General Plan Goals and Policies, including PF-4, PF-4A, and PF-4.18, which are set forth in Attachment A.
- c. The County shall not be required to take any action, including (1) amendment of the **CACUDB for Porterville**, (2) adoption of the **City's Standards and Designations**, and/or (3) adoption of any **City Proposed Amendment** if such action would result in any inconsistency in the County's General Plan.
  - d. The Parties recognize and agree that the actions discussed herein will require further legislative action by the County. This **Agreement** does not abridge any legislative or discretionary authority vested with the County or constitute a waiver of the County's police power.
  - e. The County shall comply with all applicable laws and regulations, and retains its discretion to approve or deny any (1) amendment to the **CACUDB for Porterville**, (2) adoption of the **City's Standards and Designations**, and/or (3) adoption of any **City Proposed Amendment**.
  - f. Prior to County's processing, consideration, amendment, and/or adoption, if any, of (1) amendment to the **CACUDB for Porterville**, (2) the **City's Standards and Designations**, and/or (3) any **City Proposed Amendment**:
    - i. City shall propose and provide evidence to support any (1) amendment to the **CACUDB for Porterville**, (2) adoption of the **City's Standards and Designations**, and/or (3) any **City Proposed Amendment**;
    - ii. Pay to County the reasonable costs of processing, consideration, and adoption.
      1. City will pay, by advance deposit or reimbursement, any reasonable costs incurred or anticipated to be incurred by County.
        - a. For purposes of this **Agreement**, County's reasonable costs include but are not limited to staff time, consultant time and expenses, notice and hearing costs, and other related expenditures. The total reasonable costs shall not exceed those that would be charged to a private party for a comparable application.



- b. County may, in its own discretion, require City to advance funds and/or reimburse County for reasonable costs that either have been or will be incurred by County. Any County request must be in writing and delivered to City.
  - i. If City has not, within forty-five (45) calendar days of a request by County, advanced or reimbursed County, County may suspend processing, consideration, or adoption, provided County provides City ten (10) days written notice of its intent to do so.
  - ii. If any processing, consideration, or adoption remains in suspension, as provided for in Section IV(f)(ii)(1)(b)(i), for one (1) year, it shall be deemed withdrawn. In the event of any withdrawal, City shall remain responsible for all reasonable costs incurred by County.
- g. City agrees to defend, hold harmless, and indemnify County, as further provided in Section XX, in any challenge to the processing, consideration, or adoption of (1) any amendment to the **CACUDB for Porterville**, (2) the **City's Standards and Designations**, and/or (3) any **City Proposed Amendment**.
- h. County shall, to the extent allowed by law, process and consider (1) amendment to the **CACUDB for Porterville**, (2) adoption of the **City's Standards and Designations**, and/or (3) any **City Proposed Amendment** in good faith and in a timely manner, consistent with the timeline provided in Section XIV(c).
  - i. County's processing and consideration is not subject to any statutory time requirements, including but not limited to those contained in the Permit Streamlining Act.

**V. Adoption and Application of City Plan Lines in the CACUAB for Porterville**

- a. If City first proposes and pays the costs of consideration as required by this **Agreement**, the County will, at a regularly scheduled meeting of the County's Board of Supervisors, consider and take action on:
  - i. Any City proposal that the County adopt, within the **CACUAB for Porterville**, the plan lines in the City's (1) circulation element diagrams and (2) master plans for water, sewer, and storm drainage facilities reflecting the location of future streets and future utilities and set-back standards from those streets and for those utilities (collectively, "**City Plan Lines**"). The **City Plan Lines** may be included within, and adopted as part of, the **City's Standards and Designations** discussed in Section IV.
    - 1. The Parties agree that in order to effectively comply with this provision, the County must adopt such regulations in accordance with applicable law and retains its discretion to approve or deny any **City Plan Lines**.

2. The County shall not be required to take any action, including adoption of any **City Plan Lines**, if such action would result in any inconsistency in the County's General Plan.
  3. Prior to County's adoption, if any, under this provision, the City agrees to propose and pay the costs of consideration and adoption of any **City Plan Lines**, in the same manner provided in Section IV(f).
- b. For purposes of this **Agreement**, the Parties agree that after adoption of the **City Plan Lines**, if any, County General Plan Policy PF-4.19 (which is set forth in Attachment A) shall be interpreted as follows:
- i. When processing applications for development within the **CACUAB for Porterville**:
    1. The County shall not approve any development that is inconsistent or incompatible with the **City Plan Lines**.
    2. In addition, the County will consider the City's General Plan and adopted facility plans during the development review process.
    3. The County will apply the County's Rural Valley Lands Plan checklist or something similar mutually agreed to by the County and City to proposed County General Plan Amendments or rezoning in the **CACUAB for Porterville**.
    4. Where small "stand-alone" nonurban projects are proposed, County need not apply **City's Standards and Designations** but will apply City utility and street master plan setbacks. For purposes of this **Agreement**, "stand-alone" nonurban projects are defined as residential projects of four or fewer lots or non-residential projects smaller than two acres.
  - ii. The County agrees that this interpretation is consistent with and implements the County's General Plan Goals and Policies, including PF-4, PF-4A, and PF-4.19, which are set forth in Attachment A.
- c. When processing any application for development within the **CACUAB for Porterville** before adoption of the **City Plan Lines**, the County will consider the **City Plan Lines**.

## **VI. County and City Cooperation on Planning and Development**

- a. County will treat as mandatory all policies in the County's General Plan, including but not limited to policies PF-4.1, PF-4.2, PF-4.3, PF-4.6, PF-4.12, PF-4.13, PF-4.14, PF-4.15, PF-4.17, PF-4.18, PF-4.19, PF-4.20, PF-4.21, PF-4.22, PF-4.23 and PF-4.24 (all of which are set forth in Attachment A), that:



- i. Permit or encourage cooperation, consultation, or coordination between the County and City on planning issues and actions that will affect the City; and
  - ii. Permit or encourage the County to adopt planning and development regulations for areas adjacent to the City that are consistent with the City's own planning and development regulations as provided in Sections IV and V.
- b. County agrees to consult with City, pursuant to the procedures outlined in Attachment E, before repealing or amending the General Plan Policies described in Section VI(a).
- c. To implement County General Plan Policy PF-4.17, which provides for the establishment of a working committee between County and City and is set forth in Attachment A, the Parties agree to implement the consultation process set forth in Attachment E.

## **VII. County Corridor Plans**

- a. County agrees that, to the extent allowed by law and as set out in County General Plan Policy PF-4.18 (which is set forth in Attachment A), a **County Corridor Plan**:
  - i. Will not be located inside the **CACUDB for Porterville** or City's **SOI** unless:
    - 1. Mutually agreed upon by the Parties; or
    - 2. The **County Corridor Plan** will be located within an existing **County Community UDB** or **Hamlet Development Boundary**.
- b. County agrees that, to the extent allowed by law and as set out in County General Plan Policy PF-4.19 (which is set forth in Attachment A), a **County Corridor Plan**:
  - i. Will not be located inside the **CACUAB for Porterville** unless:
    - 1. The **County Corridor Plan** is within a **County Community UDB** or **Hamlet Development Boundary**; and
    - 2. The County provides to City thirty (30) days written notice of its intent to take such action and otherwise complies with the consultation process set forth in Attachment E.

## **VIII. County Development Impact Fee Program**

- a. City agrees to consider in good faith the adoption and implementation of a County Development Impact Fee Program ("**DIF Program**"), as described in Attachment D.

- i. Should City not adopt and implement a **DIF Program** as specified in Attachment D, or should it reduce the fees to be paid under any such program, County retains the right to seek other forms of mitigation, on a project-by-project basis, from the City.

## **IX. City Sphere of Influence**

- a. County and City will work cooperatively to establish a new twenty (20) year **CACUDB for Porterville**, to be considered for adoption by both County and City as follows:
  - i. County and City will use their best efforts to make any new **CACUDB for Porterville** coterminous with the City's **SOI** as established by **LAFCO**.
  - ii. City agrees to propose, provide evidence to support, and pay the costs of processing and consideration of any application submitted by City to County to establish a new twenty (20) year **CACUDB for Porterville** as needed to accomplish (i).
- b. City intends to seek annexation of additional land by way of submitting an application to amend its **SOI** ("**SOI Amendment Application**") to **LAFCO**.
  - i. Prior to submitting any **SOI Amendment Application** to **LAFCO**:
    1. City shall consult with County pursuant to the procedures enumerated in Attachment E.
    2. City shall advise County of anticipated changes in development on land to be annexed, and comply with all laws related to mitigation.
  - ii. County has not seen or analyzed any **SOI Amendment Application**, and thus cannot commit to supporting any such application before **LAFCO**. However, County generally agrees not to oppose any **SOI Amendment Application** that:
    1. Complies with applicable **LAFCO** policies regarding annexation; and
    2. Mitigates to a level of insignificance all significant environmental impacts associated with development on any annexed lands, either on a project-by-project basis or through the **DIF Program**.

## **X. Taxation Terms**

- a. As further described in Attachment B, City shall pay to County eight percent (8%) of any transient occupancy tax, and eight percent (8%) of the City's General Sales Tax Revenue.



- i. City's tax sharing obligations shall not be accelerated unless City specifically requests such acceleration.
    - 1. Should City request an acceleration of its tax sharing obligations, the Parties will meet and confer in good faith to determine an appropriate acceleration schedule.
  - ii. The provisions of Attachment B shall remain applicable in perpetuity, unless otherwise agreed to in writing by the Parties
- b. County shall transfer to City three percent (3%) of the County's share of the **Property Base Tax** of any (1) existing and developed **County Islands** and (2) existing **Disadvantaged Communities** upon annexation of those **County Islands** or **Disadvantaged Communities** to City.
- i. For purposes of this **Agreement**, **Property Base Tax** shall mean the amount of property tax revenues collected by the County for the County in the **County Island** or **Disadvantaged Communities** in the tax year of the annexation.
  - ii. For purposes of this **Agreement**, **County Islands** shall mean those existing unincorporated county islands identified as "County Island" or "Island" on Attachment F.
  - iii. For purposes of this **Agreement**, **Disadvantaged Communities** shall mean those disadvantaged communities identified as "DUC" or "Added Areas" on Attachment F.
  - iv. The provisions in this section X(b) shall remain applicable in perpetuity unless otherwise agreed to in writing by the Parties

#### **XI. Redevelopment Litigation**

- a. This **Agreement** settles the **Redevelopment Litigation**, subject to the requirements and limitations in Section XIV.
  - i. The provisions of Attachment C shall become operative on the **Date of Execution** of this **Agreement**, except that:
    - 1. The County shall not be required to make the one-time transfer of \$750,000 to City unless and until the **Redevelopment Litigation** and the **General Plan Litigation** are dismissed with prejudice.

#### **XII. Attorneys Fees**

- a. City has incurred attorneys fees in litigating and drafting this **Agreement**.

- i. As agreed by the Parties, County will pay to City \$90,000 for such fees incurred.
  - ii. City has submitted records documenting time and expenses incurred on the litigation and settlement sufficient to demonstrate that the award is reasonable.
  - iii. County shall pay to City the amount specified in subsection (i), above, within sixty (60) days of the **Date of Execution** of this **Agreement**.
- b. The Parties expect that additional work may be required by (1) Shute, Mihaly & Weinberger LLP and (2) McCormick, Kabet, Jenner & Lew (collectively, "**City's Counsel**"), to facilitate full implementation of this **Agreement**.
  - i. County agrees to pay up to, but not to exceed, \$10,000 to City for additional attorneys fees incurred by City and/or **City's Counsel**.
    - 1. Any payment of any additional fees is contingent upon the City and/or **City's Counsel** sufficiently demonstrating through documentation that the award is reasonable and consistent with the time, effort, and expense spent on facilitating implementation of this **Agreement**.
    - 2. Any additional fees incurred by City and/or **City's Counsel** as discussed herein, shall be paid from County to City within sixty (60) days of documentation demonstrating that such award is reasonable.

### **XIII. Mutual Defense**

- a. By entering into this **Agreement**, all parties acknowledge it is in their best interest to ensure that the **General Plan Project** and **GP Project EIR**, and all provisions of this **Agreement** are upheld against legal challenge by any other party. In the event of any legal challenge to this **Agreement**, the parties shall jointly defend the **Agreement**. Upon the filing of any legal or administrative claim or action by any third party regarding the validity, adoption, or enforceability of the **Agreement**, the Parties shall determine whether (i) each Party shall appear in the action through separate counsel who shall each vigorously defend the **Agreement**, or (ii) the Parties shall be jointly represented by counsel who participated in preparation of the **Agreement**, or other counsel jointly agreed to at the time, in which case all costs incurred in defending the **Agreement** shall be equally shared.

### **XIV. Disposition of the Litigation**

- a. Within ten (10) days of the **Date of Execution** of this **Agreement**:
  - i. City shall file in Tulare County Superior Court a request for dismissal, without prejudice, of the **General Plan Litigation** and any and all associated claims contained therein.



- ii. County shall file in Tulare County Superior Court a request for dismissal, without prejudice, of the **Redevelopment Litigation** and any and all associated claims contained therein.
- b. Any statute of limitations for prosecution of the **General Plan Litigation**, and all claims contained therein, shall be tolled for one (1) year following the **Date of Execution** ("**Tolling Period**").
  - i. While the statute of limitations is tolled, the City reserves its right to prosecute the **General Plan Litigation**, unless otherwise barred by the terms of this **Agreement**.
  - ii. If the City refiles or otherwise pursues the **General Plan Litigation** during the **Tolling Period**, the County waives any defense it may have to the claims raised in the **General Plan Litigation** based on the expiration of the statute of limitations, equitable defenses of laches, estoppel, or waiver regarding the passage of time, action or inaction during the **Tolling Period**.
- c. The statute of limitations for prosecution of the **Redevelopment Litigation**, and all claims contained therein, shall be tolled for one (1) year following the **Date of Execution**.
  - i. While the statute of limitations is tolled, the County reserves its right to prosecute the **Redevelopment Litigation**, unless otherwise barred by the terms of this **Agreement**.
  - ii. If the County refiles or otherwise pursues the **Redevelopment Litigation** during the **Tolling Period**, the City waives any defense it may have to the claims raised in the **Redevelopment Litigation** based on the expiration of the statute of limitations, equitable defenses of laches, estoppel, or waiver regarding the passage of time, action or inaction during the **Tolling Period**.
- d. If the Parties are working cooperatively toward implementation of this **Agreement** and the **Tolling Period** is likely to expire, the Parties may mutually agree, in writing, to extend the **Tolling Period**.
  - i. The County agrees to act in good faith and to not unreasonably withhold its agreement to extend the **Tolling Period** of the **General Plan Litigation** for a period sufficient to effectuate the terms of this **Agreement**.
- e. To give the Parties time to take action on the items described in Sections IV(a)(i) and IV(a)(ii), the City shall not re-file or otherwise prosecute the **General Plan Litigation** and the County shall not re-file or otherwise prosecute the **Redevelopment Litigation**, during the first 11 months following the **Date of Execution**.

- f. If the County approves the items described in Sections IV(a)(i) and IV(a)(ii), namely (1) amendment of the **CACUDB for Porterville** to be coterminous with the **City UDB** and (2) adoption of the **City's Standards and Designations**, as proposed by the City ("**County Approvals**"):
- i. City shall, within forty-five (45) days of the County's posting of the final Notice of Determination or Notice of Exemption for the **County Approvals**, file in Tulare County Superior Court a request for dismissal, or motion to dismiss, with prejudice, all the causes of action in the **General Plan Litigation** with respect to all respondents.
  - ii. County shall, within forty-five (45) days of the County's posting of the final Notice of Determination or Notice of Exemption for the **County Approvals**, file in Tulare County Superior Court a request for dismissal or motion to dismiss, with prejudice, all the causes of action with respect to all defendants and respondents in the **Redevelopment Litigation**.
  - iii. If a third party files a timely lawsuit or submits a timely and valid referendum petition challenging the **County Approvals**, the Parties shall discuss whether an amendment to the **Agreement** would be appropriate to effectuate the purposes of the **Agreement**.
  - iv. If the County does not adopt the **City's Standards and Designations** as proposed by the City but instead approves modified standards and designations (land use designations, development policies, master plans for sewer, water, and storm drain facilities, and circulation element diagrams reflecting anticipated future streets) within the **CACUDB for Porterville**, the County shall have nonetheless satisfied the requirement in this section provided the City determines that the modifications are not substantial. Modifications that do not create an inconsistency or incompatibility with the **City's Standards and Designations** shall not be considered substantial. If the City determines that the modifications are substantial, that determination must be reasonable and made in good faith.
- g. If, after the City has proposed and paid the costs of taking such actions pursuant to Section IV(f), the County does not amend the **CACUDB for Porterville** to be coterminous with the **City UDB** and **SOI** or adopt the **City's Standards and Designations**, and any City Proposed Amendment as proposed by the City or with modifications that are not substantial as provided in subsection (f)(iv) above, the City may terminate this **Agreement** and refile or otherwise pursue the **General Plan Litigation**, subject to subsection (b), in which case all remaining obligations under this **Agreement** shall be null and void.
- h. To ensure timely resolution of the **Litigation**, the Parties shall use best efforts to comply with the following deadlines for presenting the County with the proposed



**CACUDB for Porterville** amendment and the **City's Standards and Designations**, as described in Sections IV(a)(i) and IV(a)(ii). A Party's failure to comply with these deadlines shall not be considered a breach of this **Agreement**:

- i. By June 15, 2014: City provides County with:
  1. proposed resolution(s) or ordinance(s) that, if adopted, would adopt the **City's Standards and Designations**, within the **CACUDB for Porterville** and any **City Proposed Amendment** and
  2. supporting documentation, evidence, and environmental review documents that the City believes will be legally sufficient to support the actions in Section IV.
- ii. By June 22, 2014: Representatives of City and County meet to discuss the proposed resolutions and supporting documentation and County informs City:
  1. whether the proposed resolution(s) or ordinance(s) are adequate;
  2. whether the County requires additional documentation, evidence, or environmental review before proceeding with consideration of the proposed resolution(s) or ordinance(s);
  3. the cost to the City of processing the proposed resolution(s) or ordinance(s); and
  4. the anticipated timeline for presenting the proposed resolution(s) or ordinance(s) to the County Planning Commission (if necessary) and Board of Supervisors.
- iii. By August 31, 2014: City provides County with any additional information, documentation, and revisions requested by the County.
- iv. By September 30, 2014: County circulates environmental review document for public review and comment, if necessary.
- v. By November 14, 2014: Planning Commission considers adoption of and takes action on proposed resolution(s) or ordinance(s).
- vi. By December 17, 2014: Board of Supervisors considers adoption of and takes action on proposed resolution(s) or ordinance(s).
- vii. The timeline for proposing and considering the adoption of the **City's UDB** by the County shall be based on the date when LAFCO approves a new **SOI** for the City. Recognizing that the Parties intend the

proposed **CACUDB for Porterville** to be not only coterminous with the **City's UDB** but also coterminous with the **City's SOI** adopted by LAFCO and meet LAFCO's criteria and policies applicable to SOIs, the Parties will implement Section IX. However, recognizing that this action depends upon a third party, LAFCO, the Parties may complete Section IX as it pertains to the **City's UDB** either before, concurrently or after the Parties complete implementation of Section IV as it pertains to the **City's Standards and Designations**. Once LAFCO approves a new SOI for the City, the City shall, within 30 days, propose resolution(s) or ordinance(s) that, if adopted, would amend the **CACUDB for Porterville** to be coterminous with the **City's UDB** and **SOI**. The Parties shall thereafter follow a schedule consistent with the timing set forth in subsections (ii)-(vi) to provide the County with a timely opportunity to consider adoption of the proposed resolution(s) or ordinance(s).

- i. Notwithstanding any other provision of this **Agreement**, the City may dismiss the **General Plan Litigation** with prejudice at any time.
- j. Following the **Date of Execution** of this **Agreement**, City shall not provide any support, funding, encouragement, advice, assistance or information (except such information as City is required to disclose by law) of any kind to any third party for the purpose of aiding or assisting in any way the prosecution of any legal challenge to the **General Plan Project** and/or **GP Project EIR** unless the City refiles or otherwise prosecutes its **General Plan Litigation** as permitted in Section XIV(a)(iii)(1)(a)(i) of this **Agreement**. It is acknowledged and understood that City has provided **City's Counsel** with confidential information in order to analyze and litigate the legal adequacy of the **General Plan Project** and **GP Project EIR** and to evaluate and negotiate the terms and advisability of this **Agreement** that could be adverse to the County's interests if used by the **City's Counsel** to assist a third party in challenging the County's **General Plan Project** and **General Plan Project EIR**.
  - i. In the event that **City's Counsel** seeks to represent a third party in any action to invalidate the **General Plan Project** or **GP Project EIR**, City agrees to jointly file a motion to disqualify or recuse, or other similar action, **City's Counsel**. County agrees to reimburse City for the reasonable costs and fees of cooperating on such motion or action.
  - ii. In the event that **City's Counsel** represents or intentionally assists, directly or indirectly, a third party challenging the legal adequacy of the adoption of the **General Plan Project** or the certification of the **GP Project EIR** after the **Date of the Execution** of this **Agreement**, County will not be required to reimburse City for its attorney's fees or costs (with the exception of the direct fees and costs associated with preparing the motion to disqualify). In the event such fees and costs have already been paid to City pursuant to Section XII, City shall



return these fees and costs to County within one month after County provides City with evidence of such actions.

- iii. County acknowledges that **City's Counsel** may represent clients in administrative proceedings or lawsuits challenging projects or actions in Tulare County that do not challenge the legal adequacy of the adoption of the **General Plan Project** or the certification of the **GP Project EIR**. Such representation shall not be prohibited by, or constitute a breach of, this **Agreement**.
- k. Following the **Date of Execution** of this **Agreement**, County shall not provide any support, funding, encouragement, advice, assistance or information (except such information as County is required to disclose by law) of any kind to any third party for the purpose of aiding or assisting in any way the prosecution of any legal challenge to the **2010 Amendment**.

#### **XV. Release of Claims**

- a. The Parties intend and agree that this **Agreement** shall, when fully implemented in accordance with the provisions thereof, be effective as a full and final accord and satisfaction and general release of and from all claims in the **Litigation**.
  - i. Upon dismissal, with prejudice, of the **General Plan Litigation**, consistent with this **Agreement**, City shall be conclusively deemed to have released County, the County Board, and Does 1 through 10, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "**County Released Parties**") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, and causes of action, whether known or unknown, including the **General Plan Litigation**, at law or in equity, which City had, or now has as of the **Date of Execution** of this **Agreement**, against **County Released Parties**, or any of them, arising from or relating to the certification of the **GP Project EIR** and approval of the **General Plan Project** as adopted by the County Board on August 28, 2012, including, without limitation, all costs and fees incurred by City in, or arising from, such actions (the "**County Released Claims**"). City shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542"), which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release shall not be construed to limit the rights of City to institute legal action to seek specific performance of this **Agreement**.

- ii. Upon dismissal, with prejudice, of the **Redevelopment Litigation**, consistent with this **Agreement**, County shall be conclusively deemed to have released the City, the City Council, the Successor Agency for the City of Porterville Redevelopment Agency, the Oversight Board to the Successor Agency of the City of Porterville Redevelopment Agency, DOES 1-50 and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "**City Released Parties**") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, and causes of action, whether known or unknown, including the **Redevelopment Litigation**, at law or in equity, which County had or now has as of the **Date of Execution** of this **Agreement** against **City Released Parties**, or any of them, arising from or relating to the adoption of Ordinance No. 1765, the **2010 Amendment**, the accompanying **2010 Amendment EIR** certified by the City and the City of Porterville Redevelopment Agency, the Statement of Overriding Considerations, and the Mitigation and Monitoring Program, including, without limitation, all costs and fees incurred by County in, or arising from, such actions (the "**City Released Claims**"). County shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release shall not be construed to limit the rights of County to institute legal action to seek specific performance of this **Agreement**.
- b. The Parties, by executing this **Agreement**, assume the risk that they are unaware of the subject matter of this **Agreement**, or are otherwise mistaken as to relevant facts, and acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true concerning the **County Released Claims** and the **City Released Claims** (collectively "**Released Claims**") and other matters contained in or concerning this **Agreement**. The Parties nevertheless agree and intend this **Agreement** to be a complete release of the **Released Claims**, and to settle all disputes related to the **Released Claims**, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among the Parties, unless otherwise specifically provided in this **Agreement**. Unless otherwise specified in this **Agreement**, the Parties waive any and all rights under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. The Parties hereby acknowledge and represent that (1) they understand the significance and the consequences of such specific waiver of unknown claims and hereby assume full responsibility for any injuries, damages, lawsuit or liabilities that it may incur, both now and hereafter, from the waiver of said unknown claims, (2) they may discover facts different from, or in addition to, those facts that they now know or



believe to be true, and agree that the **Agreement** and the releases contained herein shall be and remain effective in all respects notwithstanding any subsequent discovery of different or additional facts, (3) they have undertaken their own independent investigation of all the facts relating to the matters being released herein, and in entering into this **Agreement** and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly provided herein, and (4) this waiver is an essential and material term of this **Agreement**.

- i. City, understanding the above and the provisions of this **Agreement**, intends by this **Agreement**, and with and upon the advice of its own independently selected counsel, to release fully, finally and forever all **County Released Claims**, unless as otherwise specified in this **Agreement**.
- ii. County, understanding the above and the provisions of this **Agreement**, intends by this **Agreement**, and with and upon the advice of its own independently selected counsel, to release fully, finally and forever all **City Released Claims**, unless as otherwise specified in this **Agreement**.

#### **XVI. Enforcement and Remedies**

- a. The Parties entered into this **Agreement** with the intent and for the purpose of avoiding litigation. This **Agreement** is to be enforced solely through the procedures set forth in this section, which are designed to avoid resorting to court enforcement or, if court enforcement is necessary, to provide simple and straightforward relief.
- b. The Parties obligations discussed herein are mutual and dependent. Except as otherwise specifically provided in Sections XIV(c) and XVI(d), failure by any Party to perform any obligation hereunder within the time periods provided following notice and failure to cure as described hereafter, constitutes a “**Default**” under this **Agreement**. A Party alleging **Default** shall (1) give written notice of **Default** to the other Party, specifying in reasonable detail the nature of the alleged **Default**, and, where appropriate, the manner in which the alleged **Default** may be cured; (2) offer to meet and confer in good faith to resolve the issue, whether through the process provided in Attachment E or otherwise; (3) and provide the other Party sixty (60) days to cure the alleged **Default** commencing at the time of receipt of the notice of a properly detailed written **Default** notice. The Parties agree that time is of the essence in performance of the Parties’ obligations provided in the **Agreement**.
- c. Mediation. If an alleged **Default** in performance has not been cured during the 60-day period described above, any Party may request that the dispute first be submitted to mediation prior to judicial enforcement. The Parties shall share equally the costs for the services of the mediator. If mediation is requested by any Party, the Parties must first make a good faith effort to resolve through mediation any dispute about another Party’s alleged default in performance. When selecting

a mediator, each Party shall provide the other party with a list of three (3) potential mediators and a short biography of each mediator and his or her qualifications, which should be of the same nature as well-respected mediators throughout California. The Parties shall work together in good faith to select a mediator from the lists provided. The Parties shall commence mediation within thirty (30) days after notice of the mediation and designation of the mediator, subject to the mediator's schedule. A Party shall not continue mediation for more than thirty (30) days at a time, unless mutually agreed by both Parties. With the exception of the cost of the mediator's services, which shall be shared equally, each Party shall bear its own fees and costs related to the mediation.

- d. Effect of Modification of Party's Powers. In addition to the specific provisions of this **Agreement**, neither Party shall be deemed to be in **Default** if its powers are modified by state or federal legislation or otherwise in any way that precludes the Party from performing its obligations under this **Agreement**.
- e. Extraordinary Financial Situations. A Party's financial obligations under this **Agreement**, including the County's obligation to pay attorneys' fees, shall be suspended in the extraordinary financial circumstances defined hereunder.
  - i. An **Extraordinary Financial Situation** has been formally declared by the County Board or City Council such that performing its obligations under the **Agreement** would necessarily result in violation of the financial covenants County or City made to its creditors and lienholders in return for the extension of credit in the form of bonds, loans, letters of credit and other forms of financing necessary to maintain County's or City's overall financial stability.
  - ii. "**Extraordinary Financial Situation**" as used in this section means circumstances that include, but are not limited to, the type of financial circumstances that County or City may experience in a formally declared state of fiscal emergency following natural disasters such as a major earthquake or fire; or other extraordinary events.
  - iii. Upon the conclusion of these extraordinary circumstances, County or City will promptly resume performance of its financial obligations under this **Agreement**.
- f. Institution of Legal Action. In addition to the other rights or remedies and subject to the restrictions otherwise set forth in this **Agreement**, after expiration of the cure period provided in Section XVI(b) and mediation pursuant to Section XVI(c), any Party may institute a legal action to seek specific performance of the terms of this **Agreement** to cure, correct or remedy any **Default**. The rights of any non-breaching Party shall not be affected by the institution of a legal action alleging breach against another Party. Each Party shall bear its own attorneys fees, except when an award of attorneys fees is based upon statute or case law due



to a finding of public interest or unless agreed to as an element of settlement of any alleged **Default**.

**XVII. Procedure for Fulfilling the Parties' Obligations**

- a. The processing, consideration, adoption, effectuation, and/or establishment, if any, of each and every obligation or action contemplated in this **Agreement**, shall be in accordance with applicable law, including but not limited to, the Government Code and the Public Resources Code.

**XVIII. Representations and Warranties**

- a. Each of the Parties represents, warrants, and agrees as follows:
  - i. The individuals signing and executing the **Agreement** on behalf of the Parties have the right, power, legal capacity, and authority to do so, and no further approval or consent of any person, office, board, or other person or entity is necessary.
  - ii. Each of the Parties has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein and with respect to the advisability of executing this **Agreement**. Each Party's attorney has reviewed the **Agreement**, made any desired changes, and signed the **Agreement** to indicate that the attorney approved the **Agreement** as to form. Each of the Parties has been fully advised by its attorneys with respect to its rights and obligations under this **Agreement** and understands those rights and obligations.
  - iii. Except for the statements expressly set forth in this **Agreement**, no Party, or representative or attorney of or for any Party, has made any statement or representation to any other Party regarding a fact relied upon by the other Party in entering into this **Agreement**, and no Party has relied upon any statement, representation, or promise, written or oral, of any other Party, or of any representative or attorney for any other Party, in executing this **Agreement** or in making the settlement provided for herein.
  - iv. Each of the Parties, or a Party representative, has carefully read the **Agreement**, knows and fully understands the contents thereof, and has made such investigation of the facts pertaining to the settlement and this **Agreement** and of all matters pertaining hereto as it deems necessary or desirable.
  - v. Except as otherwise expressly represented, warranted or provided in this **Agreement**, each of the Parties expressly assumes the risk that (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this **Agreement**, including, without limitation, unknown or unanticipated claims which, if known by either Party on the date of execution, may have materially affected the Party's

decision to execute this **Agreement**, (ii) it may have misunderstood matters relevant to negotiating and entering into this **Agreement**, and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts pertinent to the **Agreement**. The Parties agree that, should unknown or unanticipated claims, misunderstandings, mistakes, unintentional misrepresentations, or nondisclosures exist, the Parties intend that this **Agreement** shall thereafter continue in full force and effect and shall not be subject to rescission or rejection for any reason, except as specifically provided in this **Agreement**.

- vi. This **Agreement** is contractual, the result of negotiations between the Parties, and intended to be final and binding as between the Parties, and is further intended to be effective as full and final accord and satisfaction between the Parties. Each of the Parties hereto relies on the finality of this **Agreement** as a material factor inducing that Party's execution of this **Agreement**.
- vii. The Parties shall, together and/or individually, execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this **Agreement**.
- viii. Each of the Parties to this **Agreement** agrees that such Party will not take any action that would interfere with the performance of this **Agreement** by any of the Parties, or that would adversely affect the rights provided for herein.

#### **XIX. General Provisions**

- a. **No Admission.** The Parties explicitly acknowledge and covenant that this **Agreement** represents a settlement of disputed rights and claims and that, by entering into this **Agreement**, no Party hereto admits or acknowledges the existence of any liability or wrongdoing, all such liability being expressly denied. Neither this **Agreement**, nor any provision contained herein, nor any provision of any related document, shall be construed as any admission or concession of liability, of any wrongdoing, or of any preexisting liability.
- b. **Governing Law.** This **Agreement** shall be governed by and interpreted and construed in accordance with the laws of the State of California.
- c. **Construction.** This **Agreement** shall be construed according to the fair and plain meaning of its terms. Nothing in this **Agreement** shall be construed to limit or restrict County's or City's constitutional police power or land use authority in any way with respect to future legislative, administrative, or other actions by County or City.
- d. **Integration.** This **Agreement** constitutes a single integrated written contract, and represents and expresses the entire agreement and understanding of the Parties with respect to the subject matter contained herein. All prior and



contemporaneous discussions and negotiations, oral or written, between the Parties are merged and integrated into, and are superseded by, this **Agreement**. No covenants, agreements, representations, or warranties of any kind whatsoever, whether express or implied in law or fact, have been made by any Party hereto, except as specifically set forth in this **Agreement** or in any amendment, contemporaneous or subsequent written agreement between the Parties.

- e. Severability. Should any provision of this **Agreement** be held or found void, voidable, unlawful or, for any reason, unenforceable by a court of competent jurisdiction, the Parties shall work together to determine whether any other provisions remain binding and enforceable. If the parties cannot agree on which provisions remain binding and enforceable, any party may request mediation to resolve the dispute, as provided in Section XVI(c) or institute a legal action to reform the **Agreement**.
- f. No Waiver. The failure of any Party hereto to enforce the rights conferred or reserved to it in this **Agreement**, or insist on performance of any of the terms and conditions of this **Agreement** shall not void any of the rights, terms or conditions, constitute a waiver or modification of any rights, terms or conditions, nor be construed as a waiver or relinquishment by any Party of the performance of any such rights, terms or conditions. No custom or practice which exists or arises between or among the Parties in the course of administration of this **Agreement** will be construed to waive or modify any Party's rights to (1) insist upon the performance by any other Party of any covenant and/or promise in this **Agreement**, or (2) exercise any rights given to it on account of any breach of such covenant and/or promise.
- g. Amendment. This **Agreement** may be modified or amended only by written amendment executed by all of the Parties. The Parties acknowledge that, due to the nature of the actions and obligations provided in this **Agreement**, it may be necessary for the Parties, from time to time, to execute additional or supplemental documentation to clarify and implement the provisions of this **Agreement**. The Parties agree to cooperate in good faith, and to negotiate and enter into such additional or supplemental documentation, as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this **Agreement** are permissible, so long as such actions are agreed to by all of the Parties. Any amendment, modification, additional or supplemental documentation to the **Agreement** must be in writing and executed by the Parties, or individuals with authority to execute such documentation on behalf of the Parties. Any amendment, modification, additional or supplemental documentation deemed necessary by the Parties shall be executed in either an original document with all signatures, or by counterparts, in the manner proscribed in Subsection (i), below.
- h. Computation of Time. The time in which any act is to be done under this **Agreement** is computed by excluding the first day, and including the last day, unless the last day is a holiday or a Saturday or Sunday, and then that day is also

excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code.

- i. Counterparts. This **Agreement** may be executed in counterparts and by facsimile or electronic signatures, which, when joined together, shall constitute a full agreement and shall be binding on the Parties, even though all signatures may not be on one original document or the same counterpart.
- j. Notices. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by overnight delivery or first class mail, postage prepaid and addressed as follows:

**COUNTY:**

County Administrative Officer  
2800 W. Burrel Ave.  
Visalia, CA 93291  
Phone: (559) 636-5005  
Fax: (559) 733-6318

**with a copy to:**

County Counsel  
2900 W. Burrel Ave.  
Visalia, CA 93291  
Phone (559) 636-4950  
Fax: (559) 737-4319

**CITY:**

City Manager  
291 North Main Street  
Porterville, CA 93257  
Phone: (559) 782-7466  
Fax: (559) 791-7999

**with a copy to:**

Julia M. Lew, City Attorney  
McCormick, Kabot, Jenner & Lew  
1220 West Main Street  
Visalia, CA 93291  
Phone: (559) 734-6729  
Fax: (559) 734-8762



- i. Notice personally delivered or sent by overnight mail is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.
- k. Successors and Assigns. This **Agreement** shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties, including, but not limited to, their respective heirs, administrators, agents, employees, officers, and boards. This **Agreement** does not, expressly or impliedly, confer upon any person other than the Parties, their successors or assigns, any rights or benefits under or by reason of this **Agreement**.
- l. Third Party Beneficiary. This **Agreement** shall not create any right of action in any third party except that the Successor Agency for the City of Porterville Redevelopment Agency and the Oversight Board to the Successor Agency for the City of Porterville Redevelopment Agency are third party beneficiaries to this **Agreement** for purposes of enforcing the requirements of Section XIV(b), Section XV(a)(ii), and Attachment C.
- m. Headings. The descriptive headings used in this **Agreement** are for convenience only. They are not part of the **Agreement**, and should not be construed to affect the meaning of any provision of this Agreement.
- n. Good Faith Clause. The Parties agree to cooperate fully, reasonably, and in good faith in the implementation of this **Agreement**. The Parties also agree to execute any and all supplemental documents, and to take all additional lawful and reasonable actions, which may be necessary or appropriate to give full force and effect to the basic terms and to fully implement the goals and intent of this Agreement.
- o. Sunset. This **Agreement** shall terminate and shall have no further force and effect either (i) twenty (20) years from the **Date of Execution** or (ii) upon County adoption of a comprehensive General Plan Update, with new Land Use and Circulation Elements, whichever is later, except that:
  - i. The provisions of Section X(a), Section X(b), and Attachment B shall remain applicable in perpetuity, unless otherwise agreed to in writing by the Parties.

## **XX. Indemnification**

- a. For any legal or administrative claims, actions, or demands initiated by any third party against County challenging (1) the legality of any action taken toward any amendment or adoption described in Section IV(a), Section V(a), and/or Section IX(a), or (2) the sufficiency of the evidence supporting the actions described in

(1) ("**Actions**"), City agrees to defend, hold harmless, and indemnify County for all costs and liabilities incurred by County as a result of such **Actions**.

i. In the case of indemnification of such **Actions**:

1. City may choose counsel for the defense of any **Actions**, provided County approves such counsel, which approval may not be unreasonably withheld.
2. Indemnification shall include payment for the costs of County's reasonable staff and consultant time incurred in the participation of the defense of any such **Actions**.
3. The indemnification shall include payment of any plaintiffs' attorneys' fees awarded in any such **Actions**.
4. County shall cooperate fully and make available to City such information under its control or in its possession relating to any **Actions**.
5. City shall, at its option, be entitled to control the defense, compromise or settlement of any such **Actions**, provided that City shall not approve or enter into any settlement of any **Actions** unless and until County approves any proposed settlement. County shall act in good faith and not unreasonably withhold its approval.

**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date. April 29, 2014


By:



Chairman, Board of Supervisors




ATTEST: JEAN ROUSSEAU  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

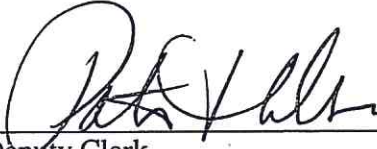
Date: April 29, 2014 By:   
Deputy Clerk



CITY OF PORTERVILLE

Date: 4/23/14, 2014 By:   
Mayor, City Council

ATTEST:  
City Clerk/Clerk of the City Council  
Of the City of Porterville

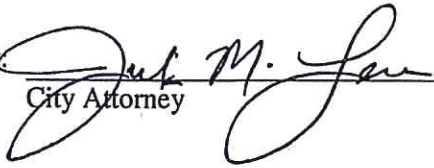
Date: April 23, 2014 By:   
Deputy Clerk

APPROVED AS TO FORM:  
County Counsel

Date: 4-30-14, 2014 By:   
Deputy

APPROVED AS TO FORM:  
City Attorney

Date: April 22, 2014

By:   
City Attorney

579235.4



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**2.4 Cities**

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**PF-4**

To direct urban development within UDBs of existing incorporated cities and ensure that all development in unincorporated areas adjacent to incorporated cities is well planned and adequately served by necessary infrastructure and other public facilities and furthers countywide economic development goals.

**PF-4.1 CACUABs for Cities**

The County shall establish CACUABs which define the area where land uses are presumed to have an impact upon the adjacent incorporated city, and within which the cities' concerns may be given consideration as part of the land use review process. The lands within the UAB are considered to be the next logical area in which urban development may occur and the area within which UDBs may ultimately be expanded.

Although it is the policy of the County that this area will at some time become appropriate for urban development, generally no public purpose is served by permitting intensive development therein. As communities grow and expand, it is logical to assume the UDBs may be correspondingly expanded or established until they coincide with the ultimate UAB. The land lying between the Urban Development Boundary and the Urban Area Boundary will generally have an agricultural land use designation or rural residential land use designation in conformity with Land Use Policy LU 3.8: Rural Residential Interface.

**PF-4.2 CACUDBs for Cities – Twenty Year Planning Area**

The County shall establish CACUDBs which define the anticipated twenty-year planning areas around incorporated cities in which the County and cities may coordinate plans, policies, and standards relating to building construction, subdivision development, land use and zoning regulations, street and highway construction, public utility systems, environmental studies, water supply availability and sufficiency, and other closely related matters affecting the orderly development of areas adjacent to incorporated cities. It is recognized that these boundaries provide an official definition of the interface between future urban and agricultural land uses.

Within this boundary, the County may also establish planning areas representative of shorter time periods in order to assist in more precise implementation of plans and policies.

Tulare County General Plan

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**PF-4.3 Modification of CACUABs and CACUDBs**

The County may consider modification of CACUABs and CACUDBs at such time as the land use plan for a city is revised to reflect changing needs and circumstances over an extended time frame. Preservation of productive agricultural lands and operations shall be one consideration when considering such modifications. Cities may examine existing CACUAB and CACUDB lines and recommend changes to the Board of Supervisors, as appropriate.

**PF-4.4 Planning in CACUDBs**

The County acknowledges that the cities have an interest in planning for growth within a CACUDBs and will in the future become ultimately responsible for urban development and the provision of urban services within those areas upon annexation.

**PF-4.5 Spheres of Influence**

CACUDBs and the SOI as administered by LAFCo may be consistent insofar as it is feasible and appropriate to do so.

**PF-4.6 Orderly Expansion of City Boundaries**

When the County is considering outward expansion of CACUDBs, the following criteria shall be encouraged:

1. The city has demonstrated a need for additional territory after documenting a good faith effort to implement programs for infill development and/or increased efficiency of development and minimize conversion of agricultural lands.
2. UDBs should not be expanded onto Prime Farmland if Farmland of Statewide Importance or of lesser quality is available and suitable for expansion.
3. Emphasis shall be placed upon reasonable expectations for the provision of urban services within the next twenty years as reflected in LAFCo's Municipal Service Reviews when determining the location of UDBs.

**PF-4.7 Avoiding Isolating Unincorporated Areas**

The County may oppose any annexation proposal that creates an island, peninsula, corridor, or irregular boundary. The County will also encourage the inclusion of unincorporated islands or peninsulas adjacent to proposed annexations.

**PF-4.8 Updating Land Use Diagram in CACUDBs**

Following city adoption of a General Plan update or amendment that reflects the area within a CACUDB, the County shall update Part III (Community Plans, Kings River Plan, Mountain Sub-Area Plans, and CAC General Plans), if applicable, to reflect the city's modified plan. Any unresolved conflicts between the County and city plans shall be identified for the Board of Supervisors. The County shall establish and maintain land use controls on unincorporated lands within the UDB consistent with the policies of the County General Plan.

**PF-4.9 Transition to Agricultural Use**

The County shall encourage cities to adopt land use policies that minimize potential conflicts with agricultural operations and other agricultural activities at the urban edge through the provision of appropriate buffers or other measures.

**PF-4.10 Urban Improvement Areas for Cities**

All Urban Improvement Areas established in the 1974 Urban Boundaries Element for cities and adjacent cities in adjacent counties, are hereby converted to Urban Development Boundaries.



## 2. Planning Framework

**PF-4.11 Coordination with Cities in Adjacent Counties**

The policies set forth in this Section (PF-4: Cities) shall also apply to planning and development within the UDBs of adjacent cities in adjacent counties (Corcoran, Delano, Kingsburg, Orange Cove, and Reedley), except Policy PF-4.4: Planning in UDBs.

**PF-4A**

To provide the means to further manage urban development within CACUDBs and CACUABs of existing incorporated cities while ensuring that the limitation on development is in the best interests of the County and its residents in both the incorporated and unincorporated areas and enhances the County's ability to provide adequate County facilities and countywide social, health, safety and welfare services impacted by development in the cities and County.

The following policies will become applicable upon mutually adopted agreement between the County and each city regarding the collection of public facilities impact fees in accordance with policies PF-4.16 and PF-4.27.

**PF-4.12 General Plan Designations Within City UDBs**

On land that is within a CACUDB, but outside a city's incorporated limits, the County may maintain General Plan land use designations that are compatible with the city's adopted General Plan.

**PF-4.13 City Design Standards**

Where the Board of Supervisors finds that it is consistent with General Plan objectives to approve development within the UDBs of incorporated cities, the County may require the project to substantiate sufficient water supply and meet the County adopted city development standards of the city in question.

**PF-4.14 Compatible Project Design**

The County may ensure proposed development within CACUABs is compatible with future sewer and water systems, and circulation networks as shown in city plans.

**PF-4.15 Coordination with Cities on Development Proposals**

The County shall ensure that urban development only take place in CACUDBs if one of the following has occurred:

1. The adjacent city does not consent to annex the property for development purposes (as evidenced through pre-zoning, development agreements, etc.); it shall be conclusively presumed that a city has not consented if it has not submitted an annexation proposal to LAFCo within six months from the date a request to annex is submitted to the city; or
2. Annexation is not possible under the provisions of State law, but it is determined by the County that development of the site does not constitute incompatible development.

**PF-4.16 Revenue Sharing**

As an incentive for directing urban growth into cities when applications are proposed within the CACUDBs, the County shall promote revenue sharing as an element of negotiation whenever:

1. A city updates its General Plan and requests the County to update its CAC General Plan.
2. When establishment or amendment to Spheres of Influence are proposed.



Tulare County General Plan

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3. Annexations are proposed by cities, or joint development or redevelopment projects are proposed by any city and the County.

As an additional incentive for directing urban growth into cities, any city proposing changes to a CAC General Plan or other County land use regulations shall pay to the County its cost in considering and implementing such proposal.

**PF-4.17 Cooperation with Individual Cities**

The County may use the policies set forth under this goal (PF-4A: Cities: Continued) to work with individual cities to further manage development within that CACUDB or CACUAB to the extent that the financial needs of the County are met and the County's ability to provide facilities and County services used by all of the residents in the County and cities is enhanced. The County and Cities will establish a working committee to facilitate the policies identified in this section 4A.

**PF-4.18 Future Land Use Entitlements in a CACUDB**

The County may work with an individual city to limit any General Plan amendments to change the land use designations of any parcel or any amendments to the County zoning ordinance to add uses to a current zoning classification or change the zoning district designation of any parcel within a CACUDB except as follows:

1. This policy will not apply to amendments or changes to a County unincorporated UDB, Hamlet Development Boundary (HDB), including where the boundary line may increase an outward expansion of the overlap area with a CACUDB area that is not coterminous to the city's Urban Development Boundary/Sphere of Influence (UDB or SOI), or to any General Plan amendment adopting a new County unincorporated UDB, an HDB, or Planned Community, County Corridor development nodes will not be located inside a city's UDB or SOI unless mutually agreed by the City and County.
2. This policy will not apply where the General Plan land use designation or the zoning district classification of a particular parcel is inconsistent with an existing special use permit, or legal non-conforming use.
3. As determined by the RVLP checklist, the County shall encourage beneficial reuse of existing or vacant agricultural support facilities for new businesses (including non-agricultural uses), and for which the city cannot or will not annex as per PF-4.24.
4. This policy will not apply where the effect of the amendments to the General Plan land use designation or of the rezoning is to designate or zone the parcel to an agricultural designation or zone except where the effect of the amendment creates a less intensive agricultural designation or zone.
5. This policy will not apply where amendments to the General Plan land use designations or the zoning classifications apply only to that portion of a CACUDB that is overlapped (where exterior UDB's are coterminous) by a County unincorporated UDB, Hamlet Development Boundary (HDB), or Corridor Plan area.
6. This policy will not apply where amendment to the General Plan land use designation or the zoning classification is required to bring the County regulations into compliance with more restrictive State or Federal statutes or regulations.
7. This policy will not apply where amendments to the Zoning Ordinance are part of a comprehensive modernization or restructuring of the processes or procedures set out in the Zoning Ordinance or part of a comprehensive update to the text of the zoning classifications to bring the Zoning Ordinance procedures and text into consistency with the General Plan update. [This comprehensive modernization, restructuring or update



## 2. Planning Framework

would not include any rezonings outside that allowed in this policy. However, revision of processes and procedures and simplification of existing ordinances may occur.]

8. This policy would not apply to a comprehensive update of a CAC General Plan, including rezoning there under, in cooperation with the affected city.
9. This policy would not apply where the County has worked with the city to identify and structure a mutually acceptable alternative General Plan land use designation or zoning classification.

### **PF-4.19 Future Land Use Entitlements in a CACUAB**

As an exception to the County policies that the Rural Valley Lands Plan (RVLP) does not apply within CACUDBs and is only advisory within CACUABs, the County may work with an individual city to provide that no General Plan amendments or rezonings will be considered to change the current land use designation or zoning classification of any parcel within a CACUAB unless appropriate under the requirements of the Rural Valley Lands Plan (RVLP) or similar checklist or unless the County has worked with the city to identify and structure an acceptable alternative General Plan land use designation or zoning classification. This policy will not apply to amendments or changes to a County unincorporated UDB, Hamlet Development Boundary (HDB), or Corridor Plan area boundary line, including where the boundary line may increase an overlap area with a CACUDB area, or to any General Plan amendment adopting a new UDB, an HDB, or Corridor Plan area that may fall within a CACUDB area. This policy shall not apply within a County unincorporated UDB, an HDB, or Corridor Plan area where that area overlaps a CACUAB area. Development of County corridor development nodes in an affected city's UAB would only occur after the County has provided written consultation and has allowed for a reasonable timed response from the affected city prior to decision making and before the adoption of the Corridor Plan. New development in a city's UAB would be subject to adopted plan lines and setback standards. Adopted facility plans and legally adopted General Plans will be considered during the development review process. Small "stand alone," non urban projects which are defined as residential projects of four or fewer lots or non-residential projects smaller than two acres do not need city standards but shall respect city utility and street master plans for setbacks. Large urban-style projects include residential projects of five or more lots averaging less than one acre per lot and non-residential projects two acres or larger will use uniform urban development standards, financing mechanisms, consent to annexation, application of reciprocal development impact fees and city streets/utility setbacks/disclosure requirements unless the County and the city have identified and structured acceptable alternatives that will reasonably ensure that these projects should conform to city development standards upon future annexation.

### **PF-4.20 Application of the RVLP Checklist to Control Development in a CACUDB**

As an exception to the County policies that the Rural Valley Lands Plan does not apply within CACUDBs, the County may work with an individual city to provide that the requirements of the RVLP or similar checklist will apply to applications for special use permits (including special use permits for the expansion of a non-conforming use), variances considered under Government Code § 65906, or to the extent allowed by law, divisions of land within a CACUDB except in those areas that overlap with a County unincorporated UDB, an HDB, or Corridor Plan area. Such a special use permit, variance, or division of land will be reviewed in light of impacts on such regional concerns as water and sewage disposal availability and preservation of transportation and utility corridors as well as compliance with any County adopted urban or city development standards and with the city's General Plan policies as reflected in the CAC General Plan.



Tulare County General Plan

**PF-4.21 Application of the RVLP Checklist to Control Development in a CACUAB**

As an exception to the County policies that the Rural Valley Lands Plan is only advisory within CACUABs, the County may work with an individual city to provide that the requirements of the RVLP will apply to applications for special use permits (including special use permits for the expansion of a non-conforming use), variances considered under Government Code § 65906, or to the extent allowed by law, divisions of land within a CACUAB except in those areas that overlap with a County unincorporated UDB, an HDB, or Corridor Plan area. Such a special use permit, variance, or division of land will be reviewed in light of impacts on such regional concerns as water and sewage disposal availability and preservation of transportation and utility corridors.



*Also see Part II-Policy RVLP-1.4: Determination of Agriculture Land and Section 1.3: Rural Valley Lands Plan Criteria and Evaluation Matrix.*

**PF-4.22 Reuse of Abandoned Improvements in a CACUDB**

In accordance with other policies in this General Plan, the County may work with a city to provide that any alternative land uses within a CACUDB not otherwise allowed under a particular zoning classification but which are allowed by County policies due to the existence of abandoned structures or improvements with no other available, viable economic uses on the parcel will be reviewed in light of impacts on such regional concerns as water and sewage disposal availability and preservation of transportation and utility corridors. For agricultural related uses, reoccupation and/or expansion is limited not to exceed 20% of the site and/or building square footage subject to special use permit with city consultation. Conversion to non-agricultural uses requiring a zone change is limited not to exceed 20% of the site and/or building square footage or as mutually agreed upon by the city and County. Any expansions are subject to a special use permit.

**PF-4.23 Reuse of Abandoned Improvements in a CACUAB**

In accordance with other policies in this General Plan, the County may work with a city to provide that any alternative uses within a CACUAB not otherwise allowed under a particular zoning classification but which are allowed by County policies due to the existence of abandoned structures or improvements with no other available, viable economic uses on the parcel will be reviewed in light of impacts on such regional concerns as water and sewage disposal availability and preservation of transportation and utility corridors expansion or re-occupation will require irrevocable consents to annex, and accommodation for setbacks and other standards for future streets and utilities. The RVLP will be used to determine if non-agricultural use is appropriate.

**PF-4.24 Annexations to a City within the CACUDB**

In addition to the County's current policies on development within a CACUDB, the County may work with a city to provide that urban development projects within a city's Sphere of Influence (SOI) as set by the Tulare County Local Agency Formation Commission will be referred to the affected city for consideration of annexation in accordance with, but not limited to, the following concepts:

1. Urban development projects, to which the referral policy applies, would be those projects for which a discretionary permit is required. Any urban development project not subject to special use permit requirements would still comply with County adopted city development standards, CAC General Plans and zoning and any County adopted city long-range infrastructure plan.
2. The referral would, at least, be subject to the requirement that the city inform the County within three (3) months that it is or is not able and willing to commence annexation



## 2. Planning Framework

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proceedings to accommodate the project; or the city is willing and able to commence annexation proceedings, the County would not take action to approve the project unless the applicant has submitted a completed application for annexation and city fails to take action on such application within six months;

3. If the affected city is not willing or able to commence annexation proceedings, approval by the County of the project would be conditioned on conformance with County adopted city development standards, County Adopted City General Plans and zoning and any County adopted city long-range infrastructure plan adopted.
4. The County may, as part of this policy, require a consent to future annexation be recorded concurrent with approval of the project special use permit for development within the County.

### **PF-4.25 Sphere of Influence Criteria**

In addition to the County current policies on annexations and city growth lines, the County may work with one or more cities to propose criteria to the Tulare County Local Agency Formation Commission (LAFCo) for use in the adoption of city Sphere of Influence (SOI) lines consistent with the concept that the SOI is a twenty year city growth boundary including the city's "communities of interest" as defined by LAFCo, and that an affected city should seek approval of amendment by LAFCo of its current SOI lines to reflect such criteria. Communities of interest not included within the SOI may be considered and included in a fifty year growth boundary. If such a criteria is adopted, the County, as a city SOI is brought into compliance with such criteria, may consider amendment of its general plan to make the CACUDB identified in the County general plan, to the extent appropriate, consistent or conterminous with the LAFCo adopted SOI.

### **PF-4.26 City 50 Year Growth Boundaries**

In addition to the County current policies on city boundary lines, the County may work with one or more of the cities to propose that LAFCo consider the adoption of a fifty year growth boundary for each city and to propose criteria to LAFCo for adoption of that boundary. If LAFCo adopts fifty year growth boundaries consistent with such criteria, the County may consider amendments to its general plan to make the CACUAB, to the extent appropriate, consistent or conterminous with the city's LAFCo adopted fifty year growth boundary.

### **PF-4.27 Impacts of Development within the County on City Facilities and County Facilities**

The County may work with a city to consider the adoption, imposition and collection for payment to the city pursuant to agreement Development Impact Fees within the CACUDB, as may be proposed by the city from time to time to offset the impacts of development in the County on city facilities. Reciprocally and under the same conditions, the city will consider the collection of Development Impact Fees within the city to offset the impact of development within the city on County facilities.

## Attachment B

- a) With respect only to future annexations of property outside the City's **SOI** as next updated and approved through **LAFCO**, the City agrees to pay the County eight (8) percent of any transient occupancy tax ("**TOT**"); and an increased three (3) percent of General Sales Taxes (which excludes any locally adopted sales tax overrides all of which goes to the adopting respective City), for a total of eight (8) percent including the five (5) percent Bradley-Burns provision, generated in any areas outside of the new **SOI** described in the body of the **Agreement**, unless the City and County agree to a different boundary, once that area is annexed, in accordance with the requirements of the State Franchise Tax Board through the use of a pass-through agreement executed between the City and Tulare County. For example, on a \$100 per night hotel/motel stay, the City would charge a 10% **TOT**, or \$10; the County's 8% share of the \$10 would be \$.80. Similarly, on a \$100 purchase of taxable goods, the City's current General Sales Tax share of the sale is 1%, or \$1.00, of which the County currently receives 5%, or \$0.05; under this agreement the County's share would be increased to 8%, or \$0.08, which is an increase of 3%, or \$0.03.
- b) To clarify, the pass-through agreement referred to in subsection (a) is a ministerial act to implement this provision of this **Agreement**. To further clarify, the **SOI** referred to in subsection (a) is the **SOI** proposed by the City and supported by the County as described in the body of the **Agreement** and next adopted by **LAFCO** unless the City and County mutually agree on another boundary line either as set out in a final settlement agreement or renegotiated in the future.
- c) The provisions of the Master Property Tax Sharing Agreement will not be subject to this **Attachment**. Additionally, the parties agree that any other revenue sharing conditions that may be imposed by **LAFCO** regarding future annexations concerning sales tax and transit occupancy tax will be satisfied by the provisions of this **Agreement**. All future annexations shall be subject to the 1978 Master Property Tax Agreement except as provided in Section X, subsection (b) of the **Agreement**.



## Attachment C

### Settlement of Redevelopment Litigation

1. The terms and provisions of this attachment shall become operative on the **Date of Execution of the Agreement**, except that the County shall not be required to make the one-time transfer of \$750,000 to City unless and until the **Redevelopment Litigation** and the **General Plan Litigation** are dismissed with prejudice.

2. In the event any Redevelopment Property Tax Trust Fund ("RPTTF") monies attributable to the area added to the Porterville Redevelopment Project No. 1 by the **2010 Amendment** ("Amendment Area") are used or otherwise diverted from passthrough to the County, the County fire fund or the County library fund (collectively, the "County Entities") for payment of any "enforceable obligations" (as defined in Health & Safety Code Section 34171(d)) of the Successor Agency to the Porterville Redevelopment Agency ("Successor Agency"), then the City will make a payment to the County in the amount of the **Amendment Area RPTTF** that would have been paid to the **County Entities** but for the payments made for the **Successor Agency's** enforceable obligations.

3. Nothing in the **Agreement** shall prevent the City, the **Successor Agency**, or any other entity that may be formed pursuant to law, from creating new obligations payable from tax revenues (including without limitation a tax increment or **RPTTF**) derived from the **Amendment Area** if and to the extent the creation of such obligations is permitted by law, now or in the future (collectively, "**New Amendment Area Obligations**"). Further, the City shall have no obligation to pay or reimburse the **County Entities** for **Amendment Area RPTTF** monies used to pay such **New Amendment Area Obligations**. The **Agreement** shall have no effect whatsoever on the area included within the Porterville Redevelopment Project No. 1 prior to the date the **2010 Amendment** was adopted ("**Original Project Area**") or the distribution or use of any tax revenues or **RPTTF** monies generated from the **Original Project Area**.

4. In consideration for such action by the City, the County offers to assist in the elimination of blight within the City and its sphere of influence as follows:

5. The County will enter into on-going discussions and cooperate with the City in seeking remedies to the challenges facing disadvantaged communities within the **CACUDB for Porterville** as it may be amended from time to time.

6. The County and City will take the steps necessary for the County to make a one-time transfer of \$750,000 from Tulare County's Southern California Edison's Tariff Rule 20A Allocation to the City for an Underground Utility District (no City match required) provided that the City's Underground Utilities District shall meet the criteria for use<sup>1</sup> of these funds as established by Southern California Edison, the allocation is used within 10 years, and the City will hold harmless and indemnify the County from any other liability arising out of this project.

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<sup>1</sup> According to information from Southern California Edison, these monies cannot be used to reimburse the local agency for staff time and administration costs to form the required underground utilities district. Consequently, the offer to the City excludes these costs.

7. Except as provided in the **Agreement**, each Party will bear its own attorneys' fees and costs in implementing the provisions in this Attachment.



## Attachment D

### Consideration of Development Impact Fees

#### Reciprocal Consideration:

Pursuant to the conditions set out below, the City agrees to work with the County to consider the adoption, imposition and collection for payment to the County pursuant to agreement Development Impact Fees within the City to offset the impact of future development within the City on County facilities. Reciprocally and under the same conditions, the County will work with the City to consider adoption, imposition and collection for payment to the City pursuant to agreement Development Impact Fees within the County Adopted City Urban Development Boundary for Porterville (CACUDB for Porterville), as may be proposed by the City from time to time to offset the impacts of development in the County on City facilities.

#### Effect of Adoption, Non-Adoption.

Should the City on behalf of the County or the County on behalf of the City (County/City) adopt the proposed Development Impact Fee(s), the respective agency shall be deemed to have waived any claim, pursuant to CEQA or otherwise, that development within the jurisdiction is creating or will create impacts related to facilities addressed by the Nexus Study (described below) and no further mitigation will be required.

Should the County/City not adopt the development impact fee(s) as identified in the Nexus Study within 60 days of the County/City submittal of the fee and supporting documentation to the County/City and the fee does not become effective within 30 days of adoption by the County/City, the County/City may pursue appropriate remedies for impacts from new, site specific development projects, through CEQA or otherwise available by law.

#### Process for the consideration of proposals.

- a) The County will work with the City and the City will work with the County to consider the adoption, imposition and/or collection for payment to the County and/or the City pursuant to an agreement for Development Impact Fees within the City and/or the CACUDB for Porterville, as may be proposed and adopted by the City or County from time to time to offset the impacts of development on County and/or City facilities. To the extent allowed by law, the same type impact fees proposed by the Party for collection in the other Party's jurisdiction will be equal to or be consistent with the impact fees the Party collects in its own jurisdiction.
- b) Each Party may propose, provide evidence to support (including the nexus study), pay the other Party's costs of consideration and adoption (including but not limited to staff time, notice and hearing costs), and negotiate and enter into a fee participation agreement with the other Party. The proposing Party will hold harmless, defend and indemnify the other Party in any challenge to that Party's adoption or collection of Development Impact Fees on behalf of the proposing Party.
- c) The proposing Party agrees to take all steps necessary to comply with, and assist the collecting Party in complying with, the Mitigation Fee Act. As required by the Mitigation Fee Act, Chapter 5, Government Code sections 66000 et seq., the nexus study provided by the proposing Party will identify the purpose of the fee and identify the use to which the fee is to be put, including the public facilities to be financed.

- d) To further clarify this process and ensure good faith, independent review, the parties agree to the following terms and conditions or any alternative terms and conditions as the parties may negotiate and mutually agree to in the future:

The County and City mutually agree to solicit the Tulare County Council of Government (TCAG) to facilitate the review and discussions regarding a Tulare County Public Facilities Impact Fee Study. The TCAG Board has authorized the TCAG Staff to act as the facilitator among the County, cities, and other interested parties relating to the Tulare County Public Facilities Impact Fee Study (also referred to herein as the "Public Facilities Fee Study" or "Nexus Study"). The TCAG Board has authorized TCAG to pursue a Regional Transportation Impact Fee study on behalf of Tulare County and City Members. The Regional Transportation Impact Fee study is not a part of this settlement agreement.

TCAG Staff, in coordination with Tulare County Staff and Tulare County's consultant, will schedule meetings with city representatives and other interested parties to review the Draft Public Facility Fee Report. These meetings are intended facilitate discussions and provide exchange of information as to the methodology and source of documentation relating to the conclusions of the Nexus Study.

TCAG Staff will host these meetings at the TCAG conference room located at 100 Church Street, Visalia, CA or other designated location.

The facilitation process will be as follows:

1. Tulare County submits Public Facilities Fee Study to TCAG Staff, City, and other interested parties for their information and review.
2. TCAG Staff schedule meeting(s) with county staff, county consultant, City, and other interested parties.
3. County Staff and Consultant prepare presentation materials, methodology utilized for the proposed public facility needs and proposed fee and distributes prior to the scheduled meeting by TCAG Staff.
4. TCAG Staff facilitates the scheduled meeting and agenda. County Staff and County Consultant present the information and responds to questions. Questions raised at the meetings will be responded to in writing where needed. Should future research be needed to respond to questions raised, County Staff will research and provide responses to TCAG Staff. TCAG Staff will assist in solidifying the issues and upon receipt of the research materials shall facilitate a meeting to insure that the concerns identified are appropriately discussed.

Where diverse opinions are identified and not resolved at the committee level, TCAG Staff shall refer the issues to the TCAG Board for review and a non-binding recommendation to the Board of Supervisors for their direction.

5. Steps 1 through 4 will be repeated until all sections of the Public Facilities Fee Study have been reviewed and discussed.

6. Upon conclusion of all meetings, TCAG Staff in conjunction with County Staff and County Consultant prepare a report of findings and recommendations that:
  - a. summarizes the questions raised during the review process;



- b. provide responses to each question raised;
- c. provide report(s) relating to additional research conducted;
- d. provide report that addresses the conclusions to the research that needed additional investigation; and
- e. provide report to the TCAG Board for their consideration.

7. The TCAG Board will consider taking action to refer the report and their recommendations to the Board of Supervisors.

8. Where a city proposes a Regional Fee, the process noted above may be followed or an alternative process as may be mutually agreed to between the County and the City.

9. Such fee amounts may be adopted by the County or by a City by resolution(s), provided the authorizing ordinance or other authority under law so provides.

## Attachment E

### Cooperative Process Between City of Porterville and Tulare County Relative to Implementation of Cooperative Policies of the Tulare County General Plan

The City and the County have agreed to the establishment of a working committee to meet and develop procedures to ensure cooperation, consultation, and coordination consisting of City and County representatives with delegated authority to act on-behalf of their entity. The following is the cooperation, consultation, and coordination process agreed upon by the City and County.

1. **Establishment of Coordination Committee.** The City and County hereby form a working committee to be called the Porterville Area Coordination Committee ("**Committee**") comprised of the Community Development Director and Community Development Manager of the City of Porterville and the RMA Director and Assistant Director Planning Branch of Tulare County, or their designees. Because the **Committee** members will receive mailed or e-mailed materials and to ensure every member gets these materials, any changes in designees may be made only by letter or e-mail copied to all **Committee** members.
2. **Projects/Actions Subject to Cooperative Process.** This cooperative process will apply to the City and County when considering approval of projects within or policy amendments that affect land within the County-Adopted City Urban Development Boundary ("**CACUDB**") or County-Adopted City Urban Area Boundary ("**CACUAB**") as may be amended from time to time. The City will be proposing a Sphere of Influence ("**SOI**") modification based upon the City's 2008 General Plan Update and it is anticipated to take until approximately the end of December 2014 to complete the process. The City and County agree that in the interim, coordination and application of this cooperative agreement will apply to the City's UDB, as approved by the City Council on January 21, 2014 and UAB, as identified in the City's 2030 General Plan. Should the **SOI** modification not occur in this time period, or any written extension to the time period (which shall not be unreasonably withheld), this cooperative agreement will apply only to the County's adopted UDB and UAB. The **Committee** may develop a list of proposal types or categories that do not need to go through the cooperative process
3. **Coordination - Preliminary Meeting.** Upon receipt of a preliminary development project and/or proposed policy amendment subject to this process, the City and/or the County shall provide preliminary project information to all **Committee** members and shall notify the **Committee** members of such proposal. The **Committee** members shall be invited to attend the project review meeting



and shall be provided an opportunity to participate in the project review and discussion, including, if appropriate, any discussion of development criteria.

4. **Coordination - Initiation of Cooperative Process.** Within ten (10) working days of the City or County receiving a development application or other request for approval of a project/action subject to the cooperative process, the City or County will send via e-mail to each member of the **Committee** information about the proposed project/action on a form similar to the City of Porterville's Consultation Process or County RMA's Project Review Consultation Notice as appropriate. This information will include the project description, project plans and/or exhibits, other supporting documents as may be appropriate, and any proposed policy language amendments.

5. **Coordination - Committee Meeting.** Within ten (10) working days or as mutually agreed by the County or City initiating the cooperative process, the **Committee** shall meet to discuss any concerns the City or County may have with the proposed project/action. The **Committee** meeting may be waived upon mutual agreement of both parties.

6. **Written Comments.** If any member of the **Committee** has comments on or concerns about the proposed project/action's impacts on the City or County, he or she shall provide these comments/concerns in writing to the other members of the **Committee** within five (5) working days following the **Committee** meeting. The County and/or the City agrees to fairly consider in good faith the comments of the **Committee** members in deciding whether to recommend approval, conditional approval, or disapproval of the project.

7. **Complex Projects/Actions.** If a majority of **Committee** members agree, the **Committee** may extend for a reasonable time period, the cooperative process for individual projects/actions, e.g., large scale and/or more complex projects/actions.

8. **Adjusting Cooperative Process.** The cooperative process may be adjusted upon mutual agreement of the City and County. Any such adjustment shall be confirmed via email or other written format by both parties and may include additional meetings, discussions, and negotiations. This process does not replace the public notification process for discretionary permits, nor the CEQA notification process when applicable.

9. **Dispute Resolution.** If the City Community Development Director or the RMA Director believe that the **Committee** is or will be unable to resolve any concerns or issues on any specific project arising during this cooperative process, the Director will involve the City Manager or County Administrative Officer respectively who will then contact their counterpart in an effort to informally resolve any concerns or issues.

Where the City or County is unable to resolve the concerns raised by the other entity, the City Manager and County Administrative Officer must discuss and attempt to resolve the issues of concern prior to the public hearing process on any specific proposal or project. If this informal process does not resolve the concerns, the City or County may raise its concerns or issues on any specific project during the public hearing process before the County or City.



# ATTACHMENT F

## City of Porterville

- 1 Newcomb-Castle Island
- 2 Maston-Baker Island & Grand View Gardens DUC
- 3 Cobb Island
- 4 Johns Island
- 5 North Main Island
- 6 Highland 1 Island
- 7 Lime Island
- 8 Mulberry-Main Island & Mulberry Island DUC
- 9 G-Henderson Island
- 10 Main 1 Island
- 11 Olive-Conner Island (part of East Porterville DUC)
- 12 Cemetery Island (part of East Porterville DUC)
- 13 Isham-Leggett Island (part of East Porterville DUC)
- 14 River-Leggett Island (part of East Porterville DUC)
- 15 Pettis-SR190 Island (part of East Porterville DUC)
- 16 Tract 44 Island (part of East Porterville DUC)
- 17 Gibbons-Plano Island
- 18 Airport-Newcomb Island
- 19 Prospect-Roby Island (part of Roby Island DUC)
- 20 Necomb-Roby Island (part of Roby Island DUC)
- 21 Beverly-Grand DUC
- 22 East Porterville DUC
- 23 A&A MHP DUC
- 24 South Porterville DUC
- 25 Porterville Trailer Park DUC
- 26 Shady Grove MHP DUC
- 27 Tract 77
- 28 Tracts 24/41 DUC
- 29 Tracts 66/90/127 DUC (Nanceville)

### Legend

- Streets
- County Island
- Island & DUC
- DUC
- Added Areas
- City

0 0.25 0.5 1 Miles

