

NORTH McHENRY CORRIDOR AGREEMENT

This Agreement is made and entered into in the City of Modesto, County of Stanislaus, State of California, this 8th day of December, 1998, by and between the City of Modesto, (hereinafter "City"), and the County of Stanislaus, a political subdivision of the State of California, (hereinafter "County").

This Agreement is made with reference to the following recitals:

WHEREAS, City and County desire to create a model of cooperation and revenue sharing in the north McHenry corridor as shown on (Exhibit A) that may be applied in other urban areas located in the Modesto General Plan Area, as shown on Exhibit C; and

WHEREAS, City and County desire to remove impediments to business so that businesses may capitalize on business opportunities without being affected by jurisdictional financial concerns; and

WHEREAS, both City and County have an interest in maximizing sales in the north McHenry corridor (Exhibit A) and in promoting the area as an emerging regional sales center; and

WHEREAS, businesses seeking locations should not become entangled in disputes between City and County over revenue allocations and jurisdictional boundaries; and

WHEREAS, City and County fiscal incentives and revenue distribution should encourage a compact pattern of land development; and

WHEREAS, neither City or County should promote land use policies that impose fiscal losses on the other; and

WHEREAS, City and County desire to promote the Cities and County visioning process by advancing the following principles:

- A. Achieving equitable revenue allocations that will remove fiscal considerations from land use decisions; and
- B. Encouraging compact urban development that promotes redevelopment of blighted areas, promotes "in fill" development of vacant and under-utilized land and encourages the development of affordable housing; and

A. The following revenues received by the City and County from property and businesses within the McHenry corridor (Exhibit A) shall be totaled for the 1997/1998 fiscal year:

- i. Bradley-Burns Sales Tax (both City and County)
- ii. Property Tax (both City and County)
- iii. City levied business and mill tax
- iv. City levied utility tax

B. The percentage of pooled revenues in 6.A. above contributed by the City and County in the 1997/1998 fiscal year shall be calculated pursuant to the formula utilized in (Exhibit B).

C. For the 1998/1999 fiscal year and thereafter, to reimburse for cost of providing services, the following distributions shall be made:

- i. The City shall receive the percentage of the pool of revenues calculated in 6.B. above pursuant to the formula utilized in (Exhibit B).
- ii. The County shall receive the percentage of the pool of revenues calculated in 6.B. above pursuant to the formula utilized in (Exhibit B).
- iii. As sub-area 2 in the McHenry corridor (Exhibit A) is annexed to the City, a percentage of the revenues determined in accordance with the procedures illustrated in (Exhibit B) shall shift from the County to the City to cover increased costs of service only.

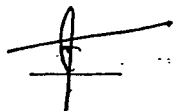
D. Distributions under 6.C. above shall be made quarterly.

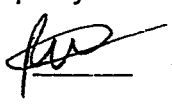
E. The amounts listed in paragraph A. above and the calculations in paragraphs B. and C. above shall be certified by both the City's Finance Director and the County's Auditor-Controller.

F. Immediately upon the execution of this Agreement, the City's Finance Director and the County's Auditor-Controller shall meet and confer in good faith to develop a set of administrative guidelines in order to implement the revenue sharing contemplated by this paragraph (6). Said guidelines shall include, among other things, provisions which address how and when revenue information is to be

knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any subsequent breach.

13. UNILATERAL TERMINATION OR BREACH OF AGREEMENT BY CITY. Both parties agree that it would be impractical and extremely difficult to estimate damages which the County may suffer in case of unilateral termination or breach of paragraphs 5 and 6 of this Agreement by the City. Therefore, County and City agree that a reasonable estimate of the total net detriment that County will suffer in case of City's unilateral termination or breach of this Agreement will be the loss of all taxes that are generated within the territory known as the McHenry corridor as shown on (Exhibit A), attached and incorporated herein. As the County's sole and exclusive remedy (whether at law or equity), the City shall pay to the County an amount equal to all of the tax revenue generated within the McHenry corridor from the date of the City's unilateral termination of this Agreement or breach of this Agreement for a time up to and including the date that a subsequent agreement is executed between the City and County that addresses the allocation of all taxes that are generated within the McHenry corridor. All the taxes as described in this paragraph shall be the full, agreed and liquidated damages for breach of this Agreement by City and all other claims for damages or other remedies are expressly waived by County. Payment of all the taxes generated within the McHenry corridor immediately after City's unilateral termination or breach of this Agreement is not intended as a forfeiture or penalty, but is intended to compensate County for the loss of benefits which otherwise would inure to the County as consideration for this Agreement and for its lost opportunity. Upon unilateral termination or breach of this Agreement by City neither party shall have any further rights or obligations under the terms of this Agreement, except for the right of the County to collect an amount equal to all the taxes generated within the McHenry corridor as liquidated damages. The liquidated damages provisions of this paragraph shall only apply in the event there is a breach of the provisions of paragraphs 5 and 6 of this Agreement or a unilateral termination of the agreement by either party.

City's Initials: 

County's Initials: 

14. UNILATERAL TERMINATION OR BREACH OF AGREEMENT BY COUNTY. Both parties agree that it would be impractical and extremely difficult to estimate damages which the City may suffer in case of unilateral termination or breach of paragraphs 5 and 6 of this Agreement by the County. Therefore, County and City agree that a reasonable estimate of the total net detriment that City will suffer in case of County's unilateral termination or breach of this Agreement will be the loss of all the tax revenue that is generated within the territory known as the McHenry corridor as shown on (Exhibit A), attached and incorporated herein. As the City's sole and exclusive remedy (whether at law or equity), the County shall allow the City to retain all of the taxes generated within the McHenry corridor from the date of the County's unilateral termination of this Agreement or breach of this Agreement for a time up to and including the date that a subsequent Agreement is executed between the City and County that addresses the allocation of the taxes that are generated within the McHenry corridor. The taxes as described in this paragraph shall be the full, agreed and liquidated damages for breach of this Agreement by County and all other claims for damages or other remedies are expressly waived by City. Allocating the taxes generated within the McHenry corridor to the City immediately

iii. After the filing of the claim, response, and counterclaim, no further claims or counterclaims may be made except on motion to the arbitrator.

C. Appointment and Powers of Arbitrator.

i. If the parties are unable to agree on the choice of an arbitrator within twenty (20) days from service of the notice and demand for arbitration, then any party may request from JAMS a list containing at least ten (10) names of available arbitrators, accompanied by their resumes, if available. Each party shall have ten (10) days from mailing of the list in which to cross off the names of not more than four (4) arbitrators they deem objectionable, number the remaining names to indicate the order of preference and return the list to JAMS. If a party does not return the list within ten (10) days, then all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on the lists of all parties, and in accordance with the designated order of mutual preference, JAMS shall invite an arbitrator to serve. If acceptable arbitrators are unable to serve, or if for any other reason the appointment cannot be made from the submitted lists, then JAMS shall have the power to make the appointment from among other retired judges on the panel, without the submission of any additional list.

ii. Subject to section F of this paragraph (15), the arbitrator shall have full power to make such regulations and to give all orders and directions as he or she shall deem just and appropriate, not only in respect to the matters, disputes and claims submitted for decision, but also with respect to the mode and times of executing and performing any of the acts, deeds or other matters which may be directed to be done or awarded.

iii. The arbitrator shall have the authority and power to request the production of any books or records in the possession or control of any of the parties, and to order that any party in the meantime shall have access to and be permitted to inspect and take copies of all or any of the same relating to the matters in dispute.

iv. Subject to section F of this paragraph (15), the arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Agreement, including, but not limited to, injunction relief and/or specific performance.

d. There shall be an early and prompt designation of expert witnesses who may be called upon to testify at the arbitration hearing. Their depositions and all other discovery shall be allowed only upon a showing of good cause.

iii. Judicial rules relating to the order of proof, the conduct of the hearing and the presentation and admissibility of evidence shall not be applicable in this proceeding. Any relevant evidence, including hearsay, shall be admitted by the arbitrator if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.

iv. The arbitration hearing shall be conducted in Modesto, California, unless the parties agree upon another location. The arbitrator shall fix the time for hearing and provide each party with at least fifteen (15) days written notice thereof.

v. Any party may be represented by counsel in the arbitration.

vi. To the extent possible, the arbitration shall be scheduled on consecutive days from 9:00 a.m. to 5:00 p.m., with a one (1) hour lunch break. The award shall be made by the arbitrator on or before thirty (30) days after final submission of all matters.

vii. Subject to section F of this paragraph (15), rendering the award, the arbitrator shall set forth the reasons for his or her decision. The arbitrator shall follow the substantive law and the rules of equity of the State of California, including the provisions of California law dealing with arbitration as they exist at the time of the arbitration except to the extent such provisions are inconsistent with this Agreement. The arbitrator may grant any remedy or relief that the arbitrator determines to be just and reasonable, according to the applicable laws and within the scope of this Agreement, including, but not limited to, specific performance. The arbitrator may also reserve jurisdiction over the parties after rendition of the award for purposes of enforcing or implementing the award and may conduct any supplemental proceedings which the arbitrator deems necessary or desirable in that regard.

EXHIBIT-B

Total Developed Acreage in Subarea 1= 60.446	38.596 acres of regional commercial and 21.85 acres of local commercial.
Total Developed Acreage in Subarea 2= 77.87	62.14 acres of regional commercial and 15.73 acres of local commercial. Mobile home park of 26.9 acres not included.
Total UnDeveloped Acreage in Subarea 2= 132.72	84.15 acres of regional commercial and 48.57 acres of local commercial

Estimated cost of direct services for developed acreage in Subarea 2= \$300,000	Estimate based on analysis of City/County Fiscal Impact Model.
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Estimated cost of direct services for Subarea 2 if completely developed= \$811,314	Proration of service costs for developed area to total buildout
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Estimated total revenues of Subarea 1 and 2 at complete buildout= \$5,741,509	Projection of revenues in Subarea 1 and 2 to reflect buildout of Subarea 2 with additional business and utility tax levied in Subarea 2 as a result of annexation.
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Percentage equivalent of direct service costs for Subarea 2 to total revenues at buildout=	14.13% Direct service costs at buildout to estimated total revenues at buildout.
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Percentage equivalent of direct service costs in Subarea 2 to total revenues from existing development =	10.70% Proration of existing direct service costs to existing total revenues
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Reduction in percentage distribution to the County per 10 acres of annexation in Subarea 2=	0.59% Percentage results from averaging two percentage reductions above and prorating over total acreage to be annexed.
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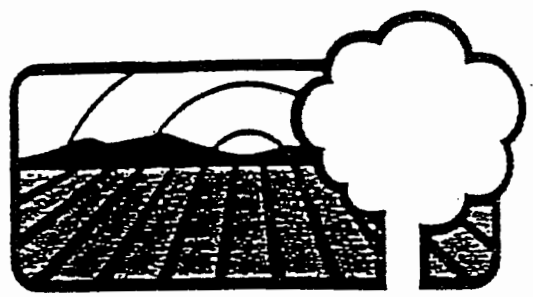
Reduction in percentage distribution to the County for full annexation of Subarea	12.42% Percentage results from averaging two percentage reductions above.
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Date: 11/23/98 Time: 2:38:12 PM

From: Charles A. Long To: Pat Foran

CORRESPONDENCE 4

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CITY of MODESTO

Mayor and City Council
(209) 571-5169 FAX (209) 571-5152

801 11th Street, P. O. Box 642, Modesto, CA 95353
[TDD (209) 526-9211 Hearing and Speech Impaired only]

August 11, 1998

Chairman Blom and
Members of the Board of Supervisors
County of Stanislaus
1100 H Street
Modesto, CA 95354

Subject: Community Plan Updates Within Stanislaus County

Honorable Chairman and Members of the Board:

The Modesto City Council has authorized me to provide certain comments to your Board, as you consider updates for various Community Plans. At the outset, we are committed to offer a collaborative approach to the planning for these Community Plans. The City believes that this collaboration will ensure success for the long-term benefits to future residents of both the City and the County.

The Salida Community Plan area is within the City's General Plan boundary, so the City will be particularly concerned about any changes contemplated by the County for Salida. The City would like to be assured by Stanislaus County that the Community Plan Updates, Salida in particular, will not adversely affect the ability of the City of Modesto to implement our General Plan or impose burdens on existing infrastructure without mitigation measures.

To that end, following are those issues which deserve particular attention by your staff and your consultant team:

1. Infrastructure Issues

The Community Plan Updates should not require the construction of infrastructure which is duplicative of that provided by Modesto, such as sewer, water, drainage, etc.

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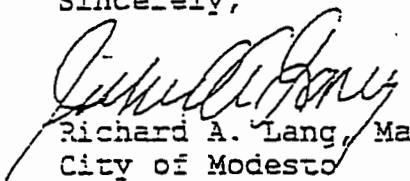
County similar technical assistance to prepare the appropriate analysis which could serve to streamline subsequent development process. In addition, the City would also benefit by receiving additional environmental analysis such that we could keep our Master EIR up to date.

Please keep us apprised of the progress of your Community Plan Update process, by adding the following City staff to your Community Plan Update Mailing List:

- Ed Tewes, City Manager
- Phil Testa, Community Development Director
- Pat Foran, Strategic Planning Manager
- Brian Smith, Principal Planner

In closing, I want to thank the County leaders for your diligence in this effort, and to reiterate our offer to assist your staff and consultants in any way we can. The future of our entire region will benefit greatly from this collaborative approach.

Sincerely,



Richard A. Lang, Mayor
City of Modesto

BRS/RAL:sfl
 cc: Reagan Wilson, Stanislaus County Chief Executive Officer
 Ron Freitas, Stanislaus County Director of Planning and
 Community Development

City of Modesto/County Long Term Issues
Section III

Mutual Commitments to work together on Long Term Issues:

1. **Time Frame for Perfecting Mutual Commitments:** The City and County commit to work together to develop strategies, agreements and policies concerning the following long term issues for consideration by the City Council and Board of Supervisors in 1999. During this period of negotiation, the parties agree to consult with each other on any potential land use action that could be construed as undermining this effort.
2. **Economic Development:** The City and County will work jointly with SCEDCO and other business representatives to develop a program of public and private initiatives to improve the business climate in the Modesto general plan area.
3. **Collaboration on Industrial/Commercial Job Development Opportunities:** The City and County will jointly develop strategies for maximizing the industrial/commercial development in the City's Sphere of Influence area.
4. **Countywide Industrial Development:** The City and County working with other communities will jointly develop policies that capitalize on market opportunities to increase the economic viability of the 99 corridor consistent with the Cities/County Visioning process.
5. **Compactness of Development:** City and County will coordinate their respective General Plans to create specific policies to accomplish the following objectives:
 - a. Both the City and County recognize the same Urban Limit Lines
 - b. Encourage infill development
 - c. Encourage annexation of County islands
 - d. Create through zoning compact, initial use land development opportunities
6. **Preservation of Agricultural Land:** City and County will work together with the private sector to establish a non-profit Farmlands and Open Space Preservation Trust and the City will develop an agreement in its general plan consistent with the goals of the Cities/County Visioning process.
7. **Cooperation to Achieve Countywide Tax Sharing:** City and County both are committed to the principle that situs distribution of sales taxes creates incentives for a competitive relationship among jurisdictions that encourages urban sprawl and premature development of agricultural land. The City and County will jointly work with the other cities in Stanislaus County to attempt to achieve a sales tax formula acceptable to all cities and the County that make location decisions for major sales tax generators jurisdictionally neutral and encourages job development activities that improve the underlying economic strength of the entire County.