

COUNTY OF LAKE RESOLUTION NO. _____

CITY OF LAKEPORT RESOLUTION NO. _____

**JOINT RESOLUTION AND AGREEMENT BY COUNTY OF LAKE AND CITY OF LAKEPORT
CONCERNING TAX EXCHANGE FOR THE SOUTH LAKEPORT ANNEXATION**

BE IT RESOLVED by the Board of Supervisors of the County of Lake (“County”) and the City Council of the City of Lakeport (“City”) that they make and approve this joint resolution and agreement (“Agreement”) as follows:

1. Recitals.

1.1. The County and City recognize that City residents are residents of both the City and County and that those residents rely on both the City and County for important local government services. The parties desire to work together collaboratively to provide the quality services desired by residents in both the City and those in the unincorporated area.

1.2. On August 19, 2019, the City of Lakeport filed an application with the Lake County Local Agency Formation Commission to annex approximately 136.78 acres south of the current City limits.

1.3. LAFCo Executive Officer is prohibited by law from issuing a certificate of filing for any such application until the City and County determine, pursuant to Revenue and Taxation Code section 99, the amount of tax revenue to be exchanged between and among the local agencies whose service areas or responsibilities will be altered should a change of organization or reorganization be approved. City and County are the two local taxing agencies whose service areas and responsibilities would be altered should there be an annexation of territory to the City. The parties acknowledge that annexation of territory to the City would not impact the service area or responsibility of any special district.

1.4. California Constitution article XIII, section 29(b) and Government Code sections 55700 to 55707 authorize counties and cities to enter into agreements to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or any successor statute, that is collected for them by the state. State law requires that any sales/use tax exchange agreement be approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract.

1.5. Pursuant to Government Code section 55704, County and City find and determine that one or more retailers have been established, or will be established, in the Annexation Area and that consumers residing in both City and the unincorporated area of the County are, or will be, purchasing tangible personal property from such retailers. The parties therefore have determined that equity requires that the Sales Tax Revenue from retailers within the Annexation Area be distributed an apportioned in a fair and just manner to both parties pursuant to this Agreement.

1.6. County and City, after negotiations, have reached an understanding regarding the exchange of various taxes and other matters relating to annexations to City. The parties enter into this Agreement pursuant to Constitution article XIII, section 29(b), Government Code sections 55700 to 55707, Revenue and taxation Code section 99, and other applicable law.

2. Definitions.

2.1. “Annexation Area” means the territory of land south of the current City limits as described in the City’s application to LAFCo for annexation dated August 19, 2019. Attachment 1 to this Agreement includes a map of the Annexation Area.

2.2. “Effective Date” has the meaning set forth in section 3.

2.3. “Fiscal year” means any year commencing on July 1 of any calendar year and ending on June 30 of the subsequent year.

2.4. “LAFCo” means the Lake County Local Agency Formation Commission.

2.5. “Property Tax Revenue” means the revenue from ad valorem taxes on real property within the meaning of California Constitution article XIII A, section 1 and Revenue and Taxation Code section 95(c) that is levied and collected from within the Annexation Area.

2.6. “Sales Tax Revenue” means the revenue from the local sales and use taxes levied and received by City pursuant to the Bradley-Burns Uniform Local Sales and Use Tax (within the meaning of Government Code section 55702) that is levied and collected within the Annexation Area, net of administrative fees imposed by the State of California, as reported on an annual basis by the City’s sales tax consultant. Sales Tax Revenue does not include revenue levied and collected by City pursuant to the City’s Transactions and Use Taxes approved by City voters as Measure I in 2004 and Measure Z in 2016 or any other local City transactions and use tax the voters of the City have adopted or will adopt.

3. Effective Date. This Agreement shall become effective on the date of the filing of the statement of boundary change for the Annexation Area with the State Board of Equalization pursuant to Government Code sections 54902 and 57204.

4. Exchange of Property Tax Revenue. This exchange of Property Tax Revenue shall commence the first fiscal year following the date the new Tax Rate Area(s) appear on the State Board of Equalization’s Tax Rate Area Chart. County and City shall exchange Property Tax Revenue as follows:

4.1. Property Tax Revenues generated in the Annexation Area that formerly accrued to the County Road Fund, including both current revenues and future growth, will accrue to the City.

4.2. Property Tax Revenues generated in the Annexation Area that formerly accrued to the County General Fund, including both current revenues and future growth, will be split between the City and County according to the following ratios:

City of Lakeport:	34.7%
County of Lake General Fund:	65.3%

4.3. The County Auditor-Controller shall adjust the allocation of Property Tax Revenues in the Annexation Area pursuant to the terms of this Agreement and the requirements of California law.

5. Exchange of Sales Tax Revenues.

5.1. City will calculate and remit to the County its share of Sales Tax Revenues from the Annexation Area in three time periods, as defined herein:

5.1.1. Period One: Period One commences on the Effective Date and ends on June 30 of the fifth fiscal year following the fiscal year in which the Water Infrastructure Project is substantially complete, as defined in section 6.3. For example, if the Water Infrastructure Project is substantially complete in the fall of 2023, Period One will end on June 30, 2029.

5.1.2. Period Two: Period Two commences on July 1 immediately following the conclusion of Period One and ends on June 30 of the tenth fiscal year thereafter. In the given example, Period Two would end on June 30, 2039.

5.1.3. Period Three: Period Three commences on July 1 immediately following the conclusion of Period Two. In the given example, Period Three would commence on July 1, 2039.

5.2. City will calculate and remit to the County its share of Sales Tax Revenues from the Annexation Area as follows:

5.2.1. During Period One: City shall remit to the County's 80% of all Sales Tax Revenues no later than 120 days following the conclusion of each fiscal year in Period One.

5.2.2. During Period Two: City shall remit to the County Sales Tax Revenues no later than 120 days following the conclusion of each fiscal year in Period Two based on the following formulas:

5.2.2.1. For fiscal years in which Sales Tax Revenues *are greater than* Sales Tax Revenues during the final fiscal year of Period One, the City shall remit to the County an amount equal to the County's share of Sales Tax Revenues in the final fiscal year of Period One plus half of cumulative growth in Sales Tax Revenues for the Period Two fiscal year at issue when compared to the final fiscal year of Period One.

5.2.2.2. For fiscal years in which Sales Tax Revenues *are less than or equal* to Sales Tax Revenues during the final fiscal year of Period One, City shall remit to the County 80% of all Sales Tax Revenue for the Period Two fiscal year at issue.

5.2.3. During Period Three: Within 120 days following each fiscal year of Period Three, City shall remit to the County 80% of all Sales Tax Revenues, not to exceed the greater of:

5.2.3.1. An amount equal to the County's share of Sales Tax Revenues in the final fiscal year of Period Two; or

5.2.3.2. The value of an amount equal to the County's share of Sales Tax Revenues for the first full fiscal year following the Effective Date of annexation compounded annually at a 1% rate of interest through the final fiscal year of Period Two.

5.3. Attachment 2 to this Agreement provides a sample calculation of the County's share of Sales Tax Revenues. The sample calculation is intended to demonstrate the City's and County's intended methodology; the dates and amounts shown are examples and actual dates and amounts will vary.

5.4. The City will provide sufficient supporting documentation to the County along with each annual payment for the County to verify the calculations provided. Supporting documents will include appropriate schedules from the City's third-party sales tax consultant or equivalent. The City and County agree to meet as needed to ensure that the correct geographic boundaries are included and supporting documentation is sufficient.

5.5. If Transactions and Use Taxes received by the City pursuant to Measures I and Z decline by at least the following percentages in any one fiscal year, for reasons which are not the direct result of discretionary action by the City, and that do not have a comparable impact on Sales Tax Revenues (for example, changes to the application of Measures I and Z on point of sale transactions, voter repeal of Measure I and/or Z, or any other change that does not similarly impact Sales Tax Revenues), the parties shall take the associated actions. This section shall not apply to decreases in revenues from Measures I and Z that result from economic conditions that similarly reduce Sales Tax Revenues.

5.5.1. 20%: The County will offset the City's revenue loss in an amount equal to 50% of the City's revenue loss compared to the preceding fiscal year prior to the decline described in this section up to an amount that is less than or equal to 50% of the County's share of Sales Tax Revenues for the fiscal year at issue.

5.5.2. 50%: The City and County agree to promptly meet and confer regarding adjustments to the sales tax sharing provisions in the Agreement such that the City and County will continue to receive a proportion of revenues substantially similar to the allocation of all sales and transactions and use tax revenue described in this Agreement.

6. Transportation Improvement and Water Infrastructure Projects.

6.1. City and County recognize that completion of the Transportation Improvement and Water Infrastructure Projects will provide critical services to the Annexation Area and that time is of the essence. The “Transportation Improvement Project” means the South Main Street and Soda Bay Widening and Bike Lanes Project. The “Water Infrastructure Project” means the City water main line extension to serve the Annexation Area and make municipal water service available to all properties within the Annexation Area that pay to connect. City and County will coordinate on all aspects of the projects and work toward project completion without unnecessary delay. To the extent feasible but without resulting in unnecessary delays, the Transportation Improvement Project and the Water Infrastructure Project may be constructed simultaneously.

6.2. Transportation Improvement Project. To help ensure efficient coordination and management of the Transportation Infrastructure Project, City and County will enter into a Memorandum of Understanding addressing City and County roles and responsibilities for the Transportation Improvement Project, including funding responsibility and allocation.

6.2.1. The County is currently planning to construct the Transportation Improvement Project, which is currently in the design phase and funded primarily with regional transportation funds.

6.2.2. Subject to and upon execution of the Memorandum of Understanding described in section 6.2, the City will reimburse the County for the following costs related to the Transportation Improvement Project that are mutually agreeable to the parties:

6.2.2.1. Reasonable right-of-way acquisition costs that are not paid by non-County funding sources. The City and County will work together to actively seek additional funding sources for right-of-way acquisition.

6.2.2.2. Reasonable project design and construction costs that are not paid by non-County funding sources. The project construction budget is currently primarily funded by regional and state funds administered by the Lake Area Planning Council. The City and County will work together to actively seek additional funding sources for project construction.

6.2.3. The City and County will work together to actively seek additional funding sources for project construction.

6.2.4. Notwithstanding sections 6.2.2.1 and 6.2.2.2, the City will not reimburse the County for County staff time or County overhead costs charged to the project.

6.3. Water Infrastructure Project. The City will fund, design, and construct the Water Infrastructure Project. For purposes of section 5.1.1 of this Agreement, the Water

Infrastructure Project is substantially complete when the water main line in the Annexation Area is installed, pressurized, and available for connection by property owners.

7. Wastewater Collection and Treatment. Currently, the County owns and operates a sanitary sewer system in the Annexation Area and the wastewater is treated by the City under the terms of an agreement dated September 12, 1995, as subsequently amended, between the Lake County Sanitation District (LACOSAN) and the City. Attachment 3 provides a map of the service area. The City and County agree that the agreement between LACOSAN and the City for the provision of wastewater treatment services currently serves the community. Additionally, there are parcels currently served by LACOSAN under the terms of the 1995 agreement that are outside the Annexation Area. Annexation and transfer of service responsibility for portions of the service area to the City could render services to the remaining area fiscally unviable. City and County agree to negotiate in good faith a long-term solution that is both financially feasible and effective for residents and businesses in the entire service area. The City and County agree that, if the collection system is transferred to the City, parcels that are outside the Annexation Area may be served by the City, pursuant to Government Code section 56133. Neither party will unreasonably oppose LAFCo's approval of an out of area service agreement under Government Code section 56133.

8. Other Obligations and Limitations.

8.1 The Annexation Area shall include the road right of way for lands adjacent to and abutting County territory subject to any existing County easements and prescriptive easements. City will be responsible for accepting all roadways in the Annexation Area that were previously County maintained roads into the City's maintained mileage list reported to the State.

8.2. City and County acknowledge that implementation of this Agreement is subject to the completion of LAFCo proceedings to approve the City's application for annexation and that these proceedings include the opportunity for property owners and voters in the Annexation Area to support or oppose the annexation. City and County agree to work together, and with LAFCo staff, to communicate with property owners and voters and ensure the annexation proceedings are conducted effectively and without unnecessary delay.

9. Audit. Either party may, at any time, request that an independent auditor review the Sales Tax Revenue distributed to County or Property Tax Revenue distributed to City using agreed upon procedures. The party requesting such a review shall be solely responsible for the costs of the audit. The auditor shall be jointly selected by County and City. If the review discloses that a party received less revenue than it should have received under this Agreement, then City or County will make any adjustments required as a result of the findings within 60 days of receipt of the findings or such other time period as agreed to by the parties. The adjustment shall be in the form of a payment from the overpaid party to the underpaid party consistent with the findings or other such remedy as agreed to by the parties. The scope of any review and repayment obligation under this section shall be limited to the latest three completed fiscal years. If a party disagrees with the findings, then it may pursue declaratory relief or other appropriate legal proceeding to review the findings.

10. Reformation. City and County understand and acknowledge that this Agreement is based on existing law at the time of the Agreement and that such law may be amended in the future. In the event of an amendment of state law, other than as described in section 5.5, that renders this Agreement invalid or inoperable or that denies a party the full benefit of this Agreement, in whole or in part, then County and City agree to enter into good faith negotiations to arrive at a new equitable tax sharing agreement consistent with the intentions of the parties in this Agreement.

11. General Provisions.

11.1. County authorizes the Chair of its Board of Supervisors and County Clerk to sign this Agreement on behalf of the County. City authorizes its Mayor and City Clerk to sign this Agreement on behalf of the City.

11.2. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except (a) those other documents that are expressly referenced in this Agreement and (b) County-City annexation-related tax sharing agreements that predate the date of this Agreement.

11.3. The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

11.4. The waiver at any time by any party of its rights with respect to any matter arising in connection with this Agreement shall not be deemed a waiver with respect to such matter or any other matter in this Agreement, unless waived in writing signed by one authorized to bind the party to be charged with the waiver.

11.5. If any part of this Agreement is held to be void, invalid, illegal, or unenforceable, then the remainder of this Agreement shall be void and unenforceable unless the parties mutually agree in writing that such provisions shall remain effective and enforceable.

11.6. The parties, in order to carry out and give full effect to this Agreement, each shall use all reasonable efforts to provide such information, execute and deliver such further instruments and documents and take such actions as may be reasonably requested by the other party, so long as not inconsistent with the provision of this Agreement and not involving the assumption of obligations or liabilities different from, in excess of, or in addition to those expressly provided for in this Agreement.

11.7. This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both parties. Amendment requires approval of resolutions adopted by the governing body of each party.

11.8. The parties may not assign their rights, interests, obligations, or duties under this Agreement without the express written consent of the other party.

11.9. This Agreement may be executed in counterparts, including counterpart facsimiles, each of which shall be deemed an original and all of which together shall be deemed a fully executed original Agreement.

11.10. Any notice, demand, invoice, or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows:

County:

County Administrative Officer
255 North Forbes Street
Lakeport, CA 95453

City:

City Manager
225 Park Street
Lakeport, CA 95453

Any party may change its address by notifying the other party in writing of the change of address.

[Signature Pages to Follow]

PASSED, ADOPTED AND APPROVED by the Board of Supervisors of the County of Lake on the _____ day of _____, 2022, by the following two-thirds vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

By: _____
_____, Chair
Board of Supervisors

_____, Clerk of the Board of Supervisors

Approved as to form:

_____, County. Counsel

PASSED, ADOPTED AND APPROVED by the City Council of the City of Lakeport on the _____ day of _____, 2022, by the following two-thirds vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

By: _____
_____, Mayor
City Council

_____, City Clerk

Approved as to form:

_____, City Attorney