

CITY OF YUBA CITY
STAFF REPORT

Date: May 18, 2021
To: Honorable Mayor & Members of the City Council
From: Administration
Presentation By: Dave Vaughn, City Manager

Summary:

Subject: Bogue-Stewart Master Plan – Master Tax Exchange Agreement with Sutter County

Recommendation: Adopt a Resolution approving the Bogue Stewart Master Plan – Master Tax Exchange Agreement with Sutter County

Fiscal Impact: Full buildout of the Bogue Stewart Master Plan area is expected to result in net revenues to the City and County

Purpose:

To adopt a Master Tax Exchange Agreement for the Bogue Stewart Master Plan area so that properties within the area may annex into the City.

Background:

The Bogue Stewart Master Plan (BSMP) guides the orderly development of 741.5 acres located along the southern edge of Yuba City (Attachment 1). The BSMP provides for a mix of residential and commercial uses, parks and recreational sites, and public facilities.

On November 12, 2020, the Sutter Local Agency Formation Commission (LAFCO) approved an amendment to the City's Sphere of Influence to include the BSMP area. There is also currently one application for annexation for Newkom Ranch. In order for properties within the BSMP area to annex into the City, State law requires both jurisdictions to approve a Resolution authorizing an agreement for sharing of revenues generated in the annexation area before LAFCO can determine an annexation application complete. These agreements are typically referred to as a Master Tax Exchange Agreement (MTEA).

The City started discussions with Sutter County regarding a MTEA in 2017, but earnest discussions did not begin until after the City designated a Council Sub-Committee comprised of Mayor Boomgaarden and Vice Mayor Shaw in May 2019 and Sutter County designated a Board of Supervisors Sub-Committee comprised of Supervisors Flores and Conant.

Analysis:

Through a series of meetings and discussions, the City and County representatives have agreed to the terms shown in Table A, contingent upon City Council and County Board of Supervisors approval.

Table A: MTEA Terms

	Sutter County	City of Yuba City
Property Tax Split	68%	32%
Sales Tax Split ¹	10%	90%

¹ – County shall continue to receive all Existing Sales Tax Revenue until the Transition Sales Tax Event, which is when the annual Sales Tax Revenue from the Annexation Area exceeds a total of \$950,000, then all Sales Tax Revenue will be consolidated and will then be allocated 90% to City and 10% to County. All Sales Tax Revenue includes existing sales tax revenue, sales tax revenue generated by new businesses within the Annexation Area and Transient Occupancy Tax.

² – In addition to the amount noted as the “Estimated Net Revenues” for the County, the City would contribute an additional \$385,360 for the Sheriff’s Department.

The draft MTEA is provided as Attachment 2 and addresses the allocation and distribution of both property tax and sales tax revenues, establishment of a separate property tax rate area, circumstances to modify property tax allocation, and other general terms. Of special note is that the MTEA includes a clause requiring the parties to discuss and consider any change in state law that impacts either party under the fiscal impact model upon which the agreement relies.

It is expected that the Sutter County Board of Supervisors will consider the MTEA at their May 25th meeting.

Fiscal Impact:

Full buildout of the BSMP area is expected to result in estimated net revenues of approximately \$907,000 to the County and \$573,000 to the City.

Alternatives:

Do not approve the MTEA and either stop negotiations with the County, resulting in all annexation applications being stalled indefinitely, or direct staff to negotiate different terms.

Recommendation:

Adopt a Resolution approving the Bogue Stewart Master Plan – Master Tax Exchange Agreement with Sutter County.

Attachments:

1. BMSP Land Use Plan
2. Resolution
 - a. Master Tax Exchange Agreement

Prepared by:

/s/ Diana Langley

Diana Langley
Public Works Director

Reviewed By:

Finance

City Attorney

Submitted by:

/s/ Dave Vaughn

Dave Vaughn
City Manager

SM

SLC by email

ATTACHMENT 1

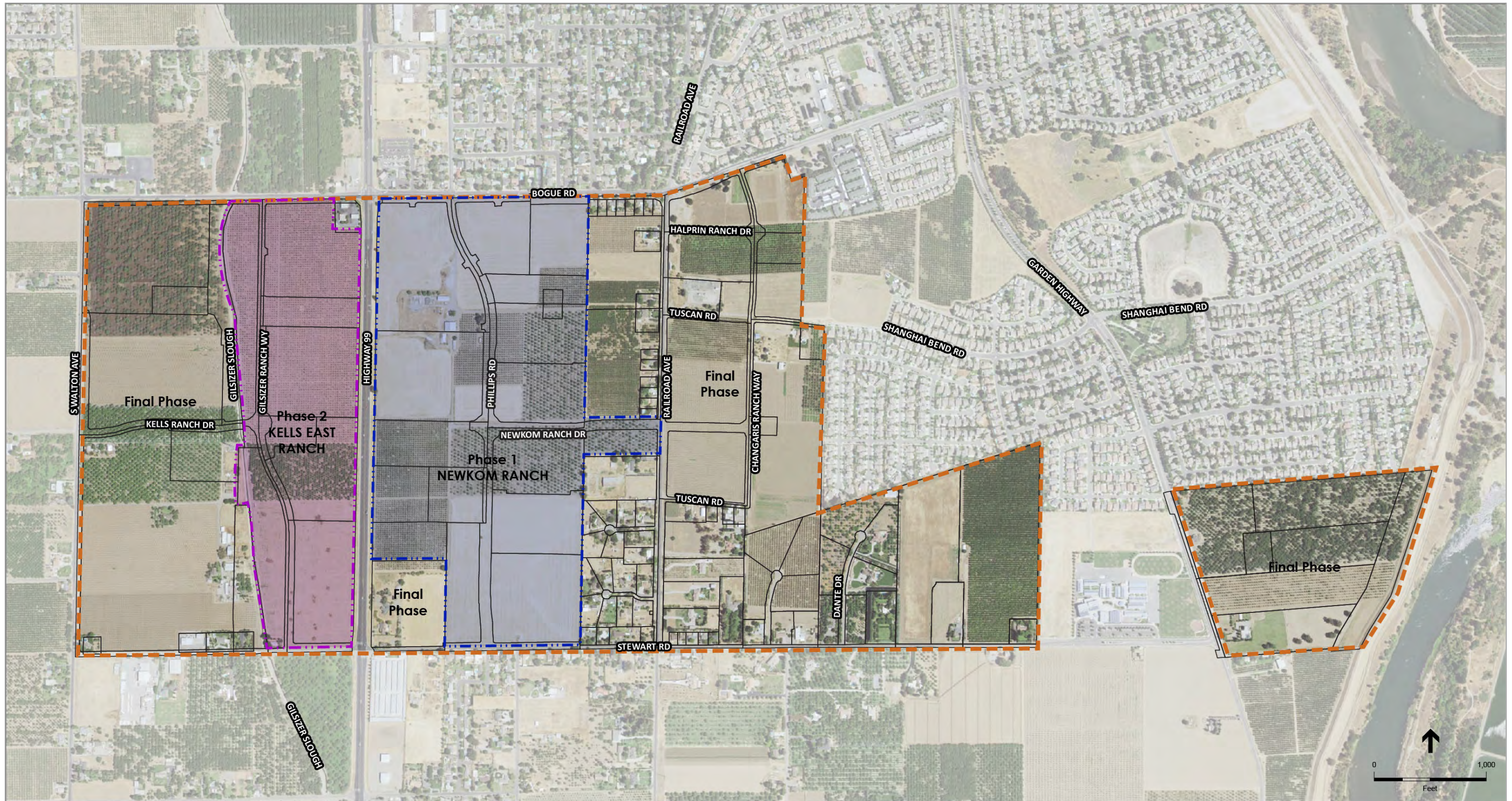


Figure I-2: BSMP Phase Areas

ATTACHMENT 2

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING THE BOGUE STEWART MASTER PLAN MASTER TAX EXCHANGE
AGREEMENT WITH SUTTER COUNTY**

WHEREAS, the City of Yuba City (City) has approved a master plan for the area known as the Bogue Stewart Master Plan area; and

WHEREAS, Sutter County (County) will retain countywide service responsibilities and transfer responsibility for municipal services to the City; and

WHEREAS, County and the City have negotiated a property and sales tax agreement to support services to be provided by each jurisdiction upon annexation; and

WHEREAS, the Sutter Local Agency Formation Commission (LAFCO) requires a resolution authorizing the agreement between the City and the County as to sharing of taxes generated in the annexation area, prior to consideration of the annexation by LAFCO.

NOW, THEREFORE, BE IT RESOLVED the City Council hereby approves the attached property and sales tax sharing agreement pertaining to annexation of the Bogue Stewart Master Plan annexation area and authorizes the Mayor to sign the agreement on behalf of the City.

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 18th day of May 2021.

AYES:

NOES:

ABSENT:

Marc Boomgaarden, Mayor

ATTEST:

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY:

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment(s):

A. Bogue Stewart Master Plan Master Tax Exchange Agreement

EXHIBIT A

**TAX EXCHANGE
AGREEMENT BETWEEN
COUNTY OF SUTTER AND THE CITY OF YUBA CITY
RELATING TO THE BOGUE STEWART MASTER PLAN
ANNEXATION**

This TAX EXCHANGE AGREEMENT ("Agreement") is made and executed in duplicate this ____ day of _____ 2021 by and between the COUNTY OF SUTTER, a political subdivision of the State of California ("COUNTY"), and the CITY OF YUBA CITY, a California municipal corporation ("CITY").

RECITALS

A. By adoption of Resolution No. _____ on _____, 2021, the CITY has applied to the Sutter County Local Agency Formation Commission ("LAFCO") for a sphere of influence amendment and reorganization, which includes the annexation of approximately 700 acres to the CITY, [or will file an application with LAFCO requesting its approval of the annexation of approximately 740 acres of real property] known as the Bogue Stewart Master Plan to CITY ("BSMP").

B. On June 6, 1978, the voters of the State of California amended the California Constitution by adding Article XIII A thereto which limited the total amount of property taxes that could be levied on property by local taxing agencies having such property within their territorial jurisdiction to one percent (1%) of full cash value.

C. Subsequently, the California Legislature added Section 99 to the California Revenue and Taxation Code, which requires a city seeking to annex property to its incorporated territory and a county affected by such annexation to agree upon an exchange of property taxes derived from such property and available to the county and city following annexation of the property to the incorporated territory of the city.

D. COUNTY and CITY wish to work together to develop a fair and equitable approach to the sharing of revenues from the statewide one percent (1%) ad valorem tax imposed and collected as authorized by the Revenue and Taxation Code in order to encourage sound urban development and economic growth.

E. COUNTY and CITY find it necessary to cooperate with each other to maintain and improve the quality of life throughout Sutter County, including within the CITY, and deliver needed or desirable services in the most timely and cost-efficient manner to all COUNTY and CITY residents.

F. COUNTY recognizes the need for orderly growth within and adjacent to the CITY, and for supporting appropriate annexations by CITY.

G. Section 99 of the California Revenue and Taxation Code authorizes a county and city to execute a property tax transfer agreement for the exchange of property tax revenues between a county and city in connection with the annexations of property located in the unincorporated territory of a county to the incorporated territory of a city.

H. COUNTY and CITY after negotiations have reached an understanding as to a rate of exchange of property tax revenues to be made pursuant to Section 99 of the California Revenue and Taxation Code, and herein describe limited circumstance in which the COUNTY and CITY will share sales tax revenues, in connection with the annexation of the BSMP to the CITY.

I. COUNTY and CITY also desire to set out the parameters for exchange of sales taxes generated in the BSMP.

J. The provisions of Article XIII, Section 29(b) of the California Constitution authorize a county and city to enter into a contract to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the local sales and use tax law, provided that the ordinance or resolution approving the contract is approved by a two-thirds (2/3) vote of both the City Council and the Board of Supervisors.

K. This Agreement memorializes the understanding between the COUNTY and CITY and constitutes an enforceable property tax transfer agreement, under Section 99 of the California Revenue and Taxation Code

In consideration of the exchange of tax revenue, as provided for in this Agreement, and for other good and valuable consideration, the sufficiency of which is acknowledged by the parties, the COUNTY and CITY agree as follows:

TERMS

Section 1. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) “Annexation Area” or “BSMP” shall mean that portion of the unincorporated area of COUNTY known as the Bogue Stewart Master Plan, and is generally bounded by Bogue Road to the north, West Feather River Levee (boundary is 30 feet from landside levee toe), and the Feather River to the east, Stewart Road to the south, and South Walton Avenue to the west, as depicted in Exhibit A to this Agreement. The Annexation Area includes approximately 742 acres, and generally consists of the following designations: 463.5 acres Residential, 43.9 acres Commercial, 8.6 acres Office, 55.8 acres Business, Technology & Light Industrial, 84.2 acres Parks, Recreation & Open Space, 27.5 acres Public Facilities, and 58 acres Roads and Circulation, as further described in the Bogue Stewart Master Plan.

(b) “Annexation Date(s)” shall mean the date specified by the Sutter Local Agency Formation Commission consistent with the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (California Government Code § 56000 et seq.) as the effective date of the BSMP Annexation for any phase or portion of the Annexation Area that results in a BSMP Annexation.

(c) “BSMP Annexation” shall mean the annexation of the Annexation Area, or any portion thereof, to the CITY, as delineated in Sutter Local Agency Formation Commission Application Control Number “_____”, the annexation of which to CITY is subsequently approved and completed by the Sutter Local Agency

Formation Commission as provided for in the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (California Government Code § 56000 et seq.).

(d) “ERAF” shall mean the Educational Revenue Augmentation Fund, the mechanism enacted in July of 1992 by the State Legislature to shift local tax revenues from cities, counties, and special districts to a State-controlled fund used to meet minimum funding requirements for school and community college districts.

(e) “Existing Sales Tax Revenues” shall mean the Sales Tax Revenues generated by those existing businesses (or subsequent businesses) located at the addresses shown on Exhibit “A”.

(f) “Party” shall mean either COUNTY or CITY and “Parties” shall mean both COUNTY and CITY.

(g) “Property Tax Revenue” shall mean revenue from “ad valorem real property taxes on real property”, as said term is used in Section 1 of Article XIII A of the California Constitution and more particularly defined in subsection (c) of Section 95 of the California Revenue and Taxation Code, that is collected from within the Annexation Area, is available for allocation to the City and the County, and is currently allocated to the County General Fund, CSA G Allocation and Special Road Fund Allocation.

(h) “Sales Tax Revenue” shall mean revenue from the sales, transaction, and use taxes from businesses levied and received by the CITY pursuant to the one percent (1.00%) “Bradley-Burns Uniform Local Sales and Use Tax Law” that is collected within the Annexation Area and distributed by the California Department of Tax and Fee Administration on a quarterly basis.

(i) “Transition Event” shall refer to the quarter when the annual Sales Tax Revenue from the Annexation Area exceeds a total of Nine Hundred Fifty Thousand Dollars (\$950,000).

Section 2. General Purpose of Agreement. The general purpose of this Agreement is:

- (a) to devise an equitable exchange of Property Tax Revenue between COUNTY and CITY as required by Section 99; and
- (b) to fairly allocate Sales Tax Revenue collected within the Annexation Area.

Section 3. Allocation of Tax Revenues. The COUNTY and CITY shall exchange Property Tax Revenue and Sales Tax Revenue as to the Annexation Area as follows:

(a) Allocation of Property Tax Revenues. On and after the Annexation Date, the COUNTY and CITY shall exchange Property Tax Revenue as follows:

- (i) From the County’s original allocation of the one percent (1%) General Property Tax levy in the Annexation Area, the COUNTY shall receive sixty-eight percent (68.00%) and the CITY shall receive

thirty-two percent (32.00%) of the of the available thirty-five point seventy-seven percent (35.77%) in Property Tax Revenue (pre-ERAF Property Tax Revenue). The County Auditor shall take such allocation and apply the ERAF percentage applicable to each Party such that each Party will receive the net distribution based on that Party's applicable ERAF percentage.

- (ii) From the CSA G allocation, the County Auditor shall apply the existing CSA G ERAF rate and remit net revenues entirely to CITY.

From the Special Road Fund, the County Auditor shall apply the existing Special Road Fund ERAF rate and remit net revenues entirely to CITY.

- (iii) The following table provides an illustration of the allocation methodology:

Item	County	City
County General Fund Allocation		
Pre-ERAF	35.77%	
City-County Split	68.00%	32.00%
Net Allocation	24.95%	10.82%
ERAF Rate	44.63%	18.41%
Post-ERAF Allocation	13.47%	9.34%
CSA G Allocation		
Pre-ERAF	6.00%	
City-County Split	0.00%	100.00%
ERAF Rate	14.17%	
CSA G Net Allocation	0.00%	5.15%
Special Road Fund Allocation		
Pre-ERAF	1.10%	
City-County Split	0.00%	100.00%
ERAF Rate	10.78%	
Road Fund Net Allocation	0.00%	0.98%

(b) Allocation of Sales Tax Revenues. On and after the Annexation Date, COUNTY shall continue to receive all Existing Sales Tax Revenue until the Transition Event. Following the Transition Event, all Sales Tax Revenues (including Existing Sales Tax Revenue,

Sales Tax Revenue generated by new businesses within the Annexation Area and Transient Occupancy Tax) will be consolidated and, in the interest of administrative ease, will then be allocated ninety percent (90%) to CITY and ten percent (10%) to COUNTY with no additional restrictions. Once the Transition Event occurs, this adjusted allocation is conclusive and final, irrespective of future fluctuations in Sales Tax Revenues. Actual exchange of Sales Tax revenues will be effective the quarter after the Transition Event occurs.

Section 4. Distribution of Sales Tax Revenue. CITY shall distribute to the COUNTY the COUNTY'S share of the Sales Tax Revenue as set forth in Section 3 within one hundred and twenty (120) calendar days of the end of each fiscal year ending June 30.

Section 5. Establishment of Separate Property Tax Rate Area. County will work with the County Auditor to establish a separate property tax rate area for the Annexation Area prior to allocation and distribution of property tax under this Agreement and will report to City the actual amount of property tax revenues from the separate tax rate area for the Annexation Area available for allocation and distribution pursuant to this Agreement.

Section 6. Exchange by County Auditor. COUNTY and CITY further agree that all of the exchanges of Property Tax Revenue required by this Agreement shall be made by the County Auditor.

Section 7. No Opposition. In consideration of the exchange of tax revenue provided for in this Agreement, COUNTY agrees not to oppose the BSMP Annexation before the Sutter Local Agency Formation Commission.

Section 8. Dispute Resolution. In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved within 60 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either Party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California.

Section 9. Circumstances to Modify Property Tax Allocation. COUNTY and CITY agree to discuss and consider an update to the City/County fiscal impact model ("Model") if either Party believes there has been a significant State action which has the effect of altering the fiscal outcomes that this Agreement was intended to provide. For purposes of this provision, the term State action includes action by the State of California, or action by the voters or judiciary.

- (a) If the Parties agree there has been a significant change, the Parties agree to update the Model and share equally in the cost of the same. If the Parties determine the updated Model necessitates changes to this Agreement, the Parties will bring and recommend approval of the agreed-to amendments to the respective legislative bodies, each of which has the final decision on any updates to the Model and amendments to this Agreement.
- (b) If the Parties cannot reach an agreement on the need to update the Model, or on whether there has been significant change necessitating an update to the Model, or on the nature of the modifications to the

Model in response to a significant change, the COUNTY and the CITY shall mutually select a fiscal expert consulting firm to analyze and informally mediate the dispute. The Parties agree to participate in good faith in mediation. If after the informal mediation process the parties still cannot reach agreement, the Parties may request the fiscal expert consulting firm make final recommendations but recognize that such recommendations are advisory and not binding to either party. The COUNTY and the CITY will bear equally the cost of the services of the expert consultant and mediation.

Section 10. Mutual Defense of Agreement. If the validity of this Agreement is challenged in any legal action by a party other than COUNTY or CITY, then COUNTY and CITY agree to defend jointly against the legal challenge and to share equally any award of costs, including attorney's fees, against COUNTY, CITY, or both.

Section 11. Waiver of Retroactive Recovery. If the validity of this Agreement is challenged in any legal action brought by either CITY or any third party, CITY hereby waives any right to the retroactive recovery of any CITY Property Tax Revenues, COUNTY hereby waives any right to the retroactive recovery of any Sales Tax Revenues, exchanged pursuant to this Agreement prior to the date on which such legal action is filed in a court of competent jurisdiction. The remedy available in any such legal action shall be limited to a prospective invalidation of the Agreement.

Section 12. Modification. The provision of this Agreement and all of the covenants and conditions set forth herein may be modified or amended only by a writing duly authorized and executed by both the COUNTY and CITY.

Section 13. Reformation. COUNTY and CITY understand and agree that this Agreement is based upon existing law, and that such law may be substantially amended in the future. In the event that a significant State action could alter the fiscal outcome of the Model, Parties agree to utilize Section 9 of this Agreement. In all other events where an amendment of state law renders this Agreement invalid or inoperable, in whole or in part, then COUNTY and CITY shall renegotiate the Agreement in good faith to implement the intent of this Agreement.

Section 14. Effect of Tax Exchange Agreement. This Agreement shall be applicable solely to the BSMP Annexation and does not constitute either a master tax sharing agreement or an agreement on property tax exchanges which may be required for any other annexation to the CITY.

Section 15. Entire Agreement. With respect to the subject matter hereof only, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever between COUNTY and CITY except as otherwise provided herein.

Section 16. Notices. All notices, requests, certifications, or other correspondence required to be provided by the parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail to the respective parties at the following addresses:

COUNTY

County Administrator
County of Sutter

CITY

City Manager
Yuba City

Notice by personal delivery shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three days after mailing, whichever is earlier.

Section 17. Approval, Consent, and Agreement. Wherever this Agreement requires a Party’s approval, consent, or agreement, the Party shall make its decision to give or withhold such approval, consent, or agreement in good faith, and shall not withhold such approval, consent, or agreement unreasonably or without good cause.

Section 18. Construction of Captions. Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify, or interpret this Agreement.

Section 19. Incorporation by Reference. Exhibit A, attached hereto, is incorporated into this Agreement by this reference.

Section 20. Effectiveness of Agreement. The Parties acknowledge that this Agreement shall not become effective unless the ordinance or resolution approving the contract is approved by a two-thirds (2/3) vote of both the City Council and the Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the County of Sutter, State of California, on the date set forth above.

<p>(SEAL)</p> <p>ATTEST: _____</p> <p>Clerk of the Board of Supervisors</p> <p>Approved as to form:</p> <p>_____</p> <p>County Counsel</p> <p>(SEAL)</p> <p>ATTEST: _____</p> <p>City Clerk</p> <p>Approved as to form:</p> <p>_____</p> <p>City Attorney</p>	<p>COUNTY OF SUTTER, a political Subdivision of the State of California</p> <p>By: _____</p> <p>County Administrator</p> <p>CITY OF YUBA CITY</p> <p>By: _____</p> <p>Mayor</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

