

MASTER COMMERCIAL AND INDUSTRIAL AGREEMENT FOR
TAX TRANSFER UPON ANNEXATION

This agreement ("Agreement") is between the CITY OF HOLLISTER (herein called "CITY") and the COUNTY OF SAN BENITO (herein called "COUNTY"). Each is referenced herein as a "party" and together, they are referenced as the "Parties."

RECITALS:

- A. Following the adoption of Proposition 13 in 1978, the state legislature under AB 8 established a property tax allocation formula based on past history of the various local taxing agencies.
- B. Historically, the COUNTY and CITY scrupulously had kept CITY and County tax rates low.
- C. Revenue and Taxation Code Sec 99(d) authorizes counties and cities to enter into a master property tax transfer agreements for the exchange of property tax revenues in the event of an annexation of territory to a city or other changes of organization.
- D. It is the intent of the parties to this agreement that any annexation and development of commercial and/or industrial property, or property being annexed for this purpose, shall be fiscally neutral to the CITY and COUNTY, and that to the maximum extent authorized by law, CITY and COUNTY shall use their best efforts to ensure that commercial or industrial property annexed pursuant to this agreement shall, upon development, provide or generate sufficient revenue over the long term to maintain adequate levels of public services.
- E. This agreement applies only to the annexations of commercial industrial/manufacturing and mixed use property, and property in direct support of relevant development thereof such as associated roads, parks, open space, drainage areas, etc. (hereinafter "Annexation"). Properties annexed for residential development are subject to the Master Tax Sharing Agreement for residential annexations that may be in effect at the time of annexation.
- F. This agreement is prospective and only applies to annexations and annexed properties processed under the provisions of this agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

- 1. RECITALS: CITY and COUNTY agree that the foregoing recitals are true and correct and incorporate them into this Agreement by reference.
- 2. DEFINITIONS: The following definitions shall apply to this Agreement.
 - (a) "Base Property tax" shall mean those property tax revenues specified as being subject to allocation in Rev. & Tax. Code section 96(a) and 96(d) and Rev. & Tax. Code section 97 and for the fiscal years after the initial year in which property taxes are allocated for a jurisdictional change under this Agreement, the annual property tax increment for the prior fiscal year shall be included in the base for the succeeding year. Notwithstanding the foregoing, "base property tax"

shall not include any property tax revenues allocated any County Service Area, Community Facilities Districts or other entity, other than the County of San Benito, that receives a portion of the 1% property tax authorized by Article XIII A of the California Constitution, in an area to be annexed. Those revenues shall be allocated as provided by State law.

(b) "Annual property tax increment" shall mean those property tax revenues specified in Rev. & Tax. Code section 96.5. Annual property tax increment shall include revenues accruing due to the increase in assessed valuation for the preceding fiscal year because of changes of ownership and new construction and because of the inflation adjustment authorized by Section 27(b) of Article XIII A of the California Constitution.

(c) "Proceedings" shall mean as specified in Government Code section 56067.

(d) "Affected territory" shall mean as specified in Government Code section 56015 to the extent the proceeding involves annexation to the CITY.

(e) "County Obligation Release" shall mean an agreed written and recorded administrative process whereby the CITY can confirm that all annexation, development, or other obligations under this agreement (e.g. fees, permits, clearances, etc.) due the county have been met prior to the CITY issuing approvals, permissions, or permits in relation to the annexed property.

(f) "All Revenue" is defined as all revenue from whatever source, including but not limited to any property tax (including "base property tax" and "annual property tax increment") post ERAF distribution, any other type of tax, sales tax, transaction and use tax, district tax, transient occupancy taxes, parcel tax, document transfer tax, assessment, fee or charges, development agreement revenue, and any other revenue source which now exist or be imposed in the future. "All Revenue" shall not include any tax or fee which may not be legally shared, such as a special tax or impact fees collected for a designated purpose. "All Revenue" shall also be defined to include fees to the extent that they may legally be shared between the City and the County, and any other revenue of any type which may be legally shared pursuant to this agreement, including but not limited to revenue derived from developer agreements. All revenue allocations shall occur after the distribution of the Education Revenue Augmentation Fund, "Post-ERAF". "Post-ERAF" shall be calculated and determined at the time of annexation utilizing prior year's jurisdictional property tax ERAF shift distribution and percentage. The County's property tax to be exchanged is the County's portion of the AB8 division, identified by the Auditor as "General Fund" or "T/C 10". The allocation of all other AB8 recipients shall not be affected, and specifically, the County shall retain the AB8 State Fire Contract and CSAs allocation, if any. The Property tax to be exchanged shall be both "Base Property Tax" and "Annual Property Tax Increment."

g) A mixed-use project shall be subject to this agreement unless mutual parties request prior to the time of annexation that a project-specific tax agreement be negotiated. In such case, the Master Tax Agreement may no longer be used for that annexation and new terms and conditions will be negotiated for a specific project.

3. TERM:

- (a) This agreement shall be in effect for twenty years from the date of the last party executes this agreement, unless both parties mutually agree to withdraw.
- (b) Upon the occurrence of a mutual decision to terminate the agreement both parties will provide a minimum of thirty (30) days written Notice of their intent to terminate the terms and conditions of the agreement. Termination shall take place thirty (30) days after mutual Notice.
- (c) Impact of Termination on Annexed Property Allocations: Following termination, any property annexed under this agreement shall remain under the allocation provisions of the agreement at the time the property was annexed in perpetuity unless specifically changed in the future by mutual action among the parties to the agreement. This includes the revenue sharing provisions of the agreement, which shall also survive termination of this agreement, and shall remain in perpetuity unless specifically changed in the future by mutual action among the parties to the agreement.

4. APPLICABLE JURISDICTIONAL CHANGES:

- (a) The jurisdictional change governed by this agreement are all those local agency boundary changes defined in Revenue and Taxation Code section 95(e) as jurisdictional changes, occurring during the applicable period of this agreement, where the COUNTY is the affected county and the CITY is the affected city, and the land to be annexed is, in any portion, commercial, industrial/manufacturing or mixed use, or is planned/designated for later use for such purposes (see "Change of Zoning"). This master tax agreement applies to commercial industrial/manufacturing, and mixed use annexations only, and those properties subject to the "Change of Zoning" clause below.
- (b) If the CITY annexes property under this agreement, and the property is later zoned or used for residential use, including the residential portions of mixed-use developments, it shall remain subject to the terms and conditions of the this agreement, but the residential portion of the property shall also be subject to the "Additional Amount" provisions of the most recent Residential Master Tax Agreement, incorporated herein by this reference, for any residential units which are constructed. industrial/manufacturing or commercial uses-
- (c). "Change of Zoning". This agreement also pertains to the annexation of land, which is pre-zoned, planned, or designated for industrial/commercial/mixed use after annexation to the City.
- (d) Notwithstanding any other provision to the contrary, if annexation of any property is initiated in any manner other than by CITY application, this agreement is not applicable to that property and a separate annexation agreement shall be required prior to LAFCO consideration.
- (e) Boundary changes involving a city incorporation or formations of special districts are to be excluded from this agreement.

5. ALLOCATIONS AND PAYMENTS:

(a) For any jurisdictional change for which the allocation of taxes is made under this agreement, the following allocations shall be made:

(i) CITY shall receive 70% and COUNTY shall retain 30% of “All Revenue” from the annexed area.

(ii) The parties agree that development agreements shall be written to ensure that all revenue received from a developer are for unassigned (general fund) purposes so that such revenue may be shared between the agencies. If a donation of personal or real property, or improvements, or any other item of financial worth, is specified to be provided by the development agreement, the party entering into the Development Agreement shall ensure that the other party to this agreement also benefits in a ratio set forth herein (70% City/30% County). The parties will work together cooperatively and take all reasonable and necessary steps to obtain this objective.

(b) Exchange by County Auditor. The Parties agree that all of the exchanges of Property Tax Revenue required by this Agreement as set forth above shall be performed by the County Auditor in the customary time and manner for such exchanges based on other similar agreements with local jurisdictions. County agrees that upon the City’s request and own expense, the City may have its independent auditors examine and certify the division of property tax revenue.

(c) City shall distribute to County each fiscal year, pursuant to the percentages specified above for “All Revenue” received by the City generated in the annexed area. City shall remit to County its share of Sales and Use Tax Revenues on an annual basis following its final receipt of such revenues from the State Board of Equalization for the fiscal year and within 90 days of receipt of the specific sales tax data for the Annexation Area. Any other revenue subject to this agreement shall be accounted for and distributed at least annually. City agrees that upon the County’s request, the County may have its independent auditors examine and certify to the County the amount of Sales and Use Tax Revenues and “All Revenue” generated on annexed parcels within the Annexation Areas.

7. COUNTY OBLIGATION RELEASE:

(a) The CITY and COUNTY shall establish mutually agreeable written administrative procedures to ensure that the COUNTY is noticed of the issuance of building permits and COUNTY confirms County Obligation release prior to processing properties at various points under this agreement. The administrative procedure will specify at what points in the process release of County Obligation confirmations are required.

(b) The CITY will ensure County obligation release is obtained and confirmed in accordance with the approved administrative procedure prior to processing the function or step where the release is required.

8. NOTICES: Notices to the CITY or COUNTY shall be in writing and mailed or personally delivered as follows:

San Benito County Board of Supervisors
c/o County Administrative Officer
481 Fourth Street
Hollister, CA 95023

With a copy to:
County Counsel
481 Fourth St., 2nd Floor
Hollister, CA 95023

Hollister City Council
c/o City Manager
375 Fifth Street
Hollister, CA 95023

With a copy to:
City Attorney
375 Fifth Street
Hollister, CA 95023

9. NEGOTIATED AGREEMENT: It is agreed and understood by the parties hereto that this agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this agreement within the meaning of Civil Code Section 1654.

10. ADDITIONAL PROVISIONS.

(a) Except as expressly stated herein, there is no intended third party beneficiary of any right or obligation assumed by the parties.

(b) Time is of the essence of each and every provision of this Agreement.

(c) Obligations stated under this agreement shall survive termination of this agreement as to land annexed during the term of this agreement.

(d) The captions appearing at the commencement of the paragraphs hereof, and in any subdivision thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

(e) The waiver by CITY or COUNTY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein. No term, covenant or condition of this Agreement shall be deemed to have been waived by CITY or COUNTY unless in writing signed by one authorized to bind the party asserted to have consented to the waiver.

(f) Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action.

(g) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(h) This Agreement does not affect any other Property Tax Agreement between the parties pursuant to Revenue & Taxation Code section 99.

(i) This instrument contains the entire Agreement between CITY and COUNTY with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments shall be effective and binding only if made in writing and executed by CITY and COUNTY.

(j) Amendment. 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 the Parties.

(k) Reformation. The Parties understand and agree that this Agreement is based upon existing California law and that such law may be substantially amended in the future. In the event California law is amended and this Agreement is rendered invalid or otherwise substantially affected in a manner that denies either party the full benefit of its terms, the Parties agree to renegotiate the Agreement in good faith with the goal of reaching a new arrangement that as closely as possible approximates the arrangement set forth herein.

(l) Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument, it being understood that all parties need not sign the same counterpart. In the event that

any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original signature. An electronic signature shall create a valid and binding obligation of the party executing with the same force and effect as if such electronic signature were a hard copy or original signature pursuant to Civil Code section 1633.7.

(m) Entire Agreement. This Agreement constitutes the entire agreement between the County and City and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

(n) The City and the County further covenant to cooperate with one another in all respects necessary to ensure the successful consummation of the actions contemplated by this Agreement, and each will take all actions within its authority to insure cooperation of its officials, officers, agents and employees.

(o) Mutual defense of the Agreement. If the ability to enter into 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.

(p) Indemnification Regarding Use of Money. Both the CITY and COUNTY agree to hold harmless, defend and indemnify each other in the event that there is a challenge to the receipt or use of funds distributed pursuant to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date set forth above.

COUNTY OF SAN BENITO

CITY OF HOLLISTER

Bea Gonzales, Chair

Ignacio Velazquez, Mayor

ATTEST:

ATTEST:

Jenifer Frechette, Clerk of the Board

Christine Black, City Clerk