

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Supervisor John Tavaglione

SUBMITTAL DATE: January 11, 2010

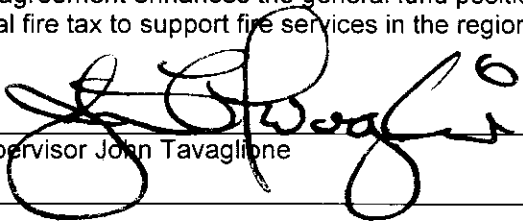
SUBJECT: Amended and Restated Eastvale Incorporation Revenue Neutrality Agreement

RECOMMENDED MOTION: That the Board of Supervisors approve the attached amended and restated revenue neutrality agreement necessary to remediate the net financial losses to the county that will result if LAFCO approves incorporation of community of Eastvale.

BACKGROUND: As reported to the Board in October 2009, LAFCO is processing an application for incorporation of the community of Eastvale. State law prohibits LAFCO from approving incorporation if the base year net revenue impact on the county is negative, unless mitigating terms and conditions are negotiated with the county. The Board approved such a tax sharing agreement on October 20, 2009.

The attached amended and restated revenue neutrality agreement, which supersedes the agreement approved October 20, 2009, allows Eastvale to pay its revenue neutrality obligation to the County in the form of structural fire tax to the extent necessary to satisfy its obligation. In addition, it adds a provision for Eastvale to pay the County any additional surplus fire reserves to support regional fire services, which includes mutual aid. This agreement does not fully mitigate the impact of the incorporation on the County. Payment received in the form of structural fire tax cannot be applied directly to the County general fund, and therefore this amended and restated agreement will likely reduce general purpose revenues received from the City for County general fund use.

Board action on this item today is necessary so the agreement is in place before the LAFCO hearing on January 21, 2010, at which the Eastvale incorporation will be heard. The agreement enhances the general fund position of Eastvale, and assists in remediating the County's loss of structural fire tax to support fire services in the region.



Supervisor John Tavaglione

FORM APPROVED COUNTY COUNSEL
BY PAMELA J WALLS
DATE

 Policy
 Policy
 Consent
 Consent
Department Recommendation:
Per Executive Office:

Prev. Agn. ref. 09/29/09 #3.13
10/06/09 #3.5
10/20/2009 #3.72

Dist. 2nd

AGENDA NO. **3.25**

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AMENDED AND RESTATED
REVENUE NEUTRALITY AGREEMENT
BY AND BETWEEN
THE COUNTY OF RIVERSIDE AND
THE CITY OF EASTVALE

THIS AMENDED AND RESTATED REVENUE NEUTRALITY AGREEMENT (“Agreement”) is entered into on January 12, 2010, by and between THE COUNTY OF RIVERSIDE, a subdivision of the State of California (“County”), the undersigned petitioner(s) (the “Chief Petitioners”) and upon incorporation, THE CITY OF EASTVALE, a municipal corporation (“City”) (hereinafter the “Parties”).

1. RECITALS. This Agreement is entered into with reference to the following facts:

- 1.1. On September 22, 2008, Jeffrey DeGrandpre on behalf of the Eastvale Incorporation Committee (collectively the “Chief Petitioners”) submitted an application proposing incorporation of the community of Eastvale (the “Incorporation”), which was certified by the Local Agency Formation Commission (“LAFCO”) on September 14, 2009.
- 1.2. On October 20, 2009, the County and the Chief Petitioners entered into a Revenue Neutrality Agreement; however, since that date, additional information came to light that led the Parties to agree on the necessity of amending and restating that agreement under the additional terms and conditions herein. This Agreement is intended to supersede the Agreement between the County and Chief Petitioners dated October 20, 2009.
- 1.3. Government Code Section 56815(a) states the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies; and that it is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.
- 1.4. Government Code Section 56815(b) currently states that LAFCO shall not approve a proposal that includes an incorporation unless it finds the following two quantities are substantially equal: (1) revenues currently received by the local agency transferring the affected territory which, but for the provisions of this section, would accrue to the local agency receiving the affected territory; and, (2) expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for services that will be assumed by the local agency receiving the affected territory.
- 1.5. Government Code Section 56815(c) states that, notwithstanding Section 56815(b), LAFCO may approve a proposal that includes an incorporation if it finds either of the following: (1) the county and all of the subject agencies agree to the proposed transfer; or, (2) the negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.
- 1.6. Pursuant to Government Code Section 56800, LAFCO caused to be prepared by contract funded by the Chief Petitioners a Comprehensive Fiscal Analysis of the proposed Incorporation (the “CFA”) as the basis for determining fiscal feasibility and for revenue neutrality negotiations between the County and the Chief Petitioners. The CFA includes projections of revenue generated within the Incorporation area, the present and projected costs of services performed by the County that would

1 transfer to the City in the event of incorporation, and the base year net costs of statutory services that
2 would remain the responsibility of the County.

3 1.7. Based on a careful review of the CFA, the County and the Chief Petitioners mutually conclude that in
4 the event of incorporation the revenue transferring to the City would be greater than the net cost of
5 services to be transferred, and consequently that the Incorporation would result in an negative fiscal
6 impact to the County. This Agreement creates no obligation for County services beyond those
7 required by law.

8 1.8. Pursuant to Government Code Section 56815(c), the County and the Chief Petitioners mutually agree
9 to an alternative transfer of revenue to mitigate the negative fiscal impact on the County resulting
10 from the Incorporation to a level acceptable to the County that would take effect upon incorporation
11 of the City according to the terms in this Agreement.

12 1.9. Pursuant to Government Code Section 56815(c), approval and execution of this Agreement by the
13 County, and the payments and other terms and conditions set forth herein, satisfy the requirement to
14 mitigate the negative fiscal effects of the Incorporation on the County. Without the terms and
15 conditions contained in this Agreement, LAFCO would be unable to make the required findings under
16 56815 Section (c). Therefore, this Agreement is essential to LAFCO's determinations regarding the
17 Incorporation under the Government Code Sections 56880, 56375, and 56720.

18 1.10. Approval of this Agreement is implied by an affirmative vote of the people casting votes at an
19 incorporation election held in accord with all applicable provisions of California law and shall be
20 binding on the City. The terms of this agreement shall take effect without further action by any party
21 once the County Registrar of Voters certifies election results approving the Incorporation.

22 2. DEFINITIONS. In this Agreement, unless the context otherwise requires:

23 2.1. "Fiscal Year" means July 1 through June 30.

24 2.2. Use of the word "incorporation" without capitalization means the act of incorporating, forming,
25 creating, or establishing a city with corporate powers as defined in Section 56043 of the Cortese-
26 Knox-Hertzberg Local Government Reorganization Act of 2000.

27 2.3. "Effective Date" means the date of incorporation.

28 3. REVENUE TRANSFERS.

29 3.1. Mitigation Obligation. Pursuant to Government Code Section 56815(c), the Parties understand and
30 agree that once the City incorporates, the County will continue to have ongoing obligations to provide
31 certain public services within the City. In order to mitigate the negative fiscal impact on the County
32 resulting from the Incorporation, the Parties agree the City shall pay the County a portion of its tax
33 revenues as follows:

34 3.1.1. Establish the base year County deficit amount as whatever amount is established by LAFCO in
35 their approved CFA;

36 3.1.2. Assume Net County Cost would escalate from the base year amount established by LAFCO at
37 approximately 3.5% annually;

1 3.1.3. Calculate the County's annual net financial loss as the difference between the adjusted Net
2 County Cost and amount of actual revenue for that year as reported by the City Treasurer in the
3 City's year-end financial statements, adjusted as necessary on reconciliation with the City's
4 audited annual financial report;

5 3.1.4. Calculate the annual tax revenue payment from the City to the County as the sum of the
6 County's base year net loss plus 40 percent of the net growth in the net loss over that base year
7 amount for any given year, as follows:

8
$$\text{Annual Payment} = \text{Base Year Net Loss} + ((\text{Year X Net Loss} - \text{Base Year Net Loss}) * 40\%);$$

9 3.1.5. Deferral of tax revenue payments for FY2011, FY2012 and FY2013;

10 3.1.6. Repayment of amount deferred in **ten (10) equal annual installments** beginning in FY2014;

11 3.1.7. Accrual of interest on amounts owed at a rate of **3%** compounded quarterly;

12 3.1.8. Payment of the estimated total annual amount owed, with interest, within **60 days** following
13 the end of the City's fiscal year;

14 3.1.9. Payment of reconciling adjustments within **60 days** following completion of the City's audited
15 annual financial report;

16 3.1.10. City's Mitigation Obligation under this Agreement shall extend through the end of the **30th**
17 **fiscal year** from the date of incorporation; and,

18 3.1.11. In recognition that the County general fund provides financial support for fire services in the
19 unincorporated area due to the insufficient amount of structural fire tax generated therein, the
20 County agrees to accept payment by the City toward the obligations set forth in this section 3.1
21 from City structural fire tax to the extent necessary for the City to satisfy the terms of this
22 obligation. If payment is not or cannot be made by the City from structural fire tax funds,
23 City's payment obligations under this section 3.1 will remain and shall not be reduced.

24 3.2. Mutual Aid for Regional Fire Services. In addition to the payments required to be made pursuant to
25 section 3.1 and for the purposes of continuing support of regional fire services, for any year in which
26 the City's cumulative fire reserve, derived from fire revenue exceeding operating and non-operating
27 fire expenditures, including any amounts paid to County pursuant to section 3.1 of this Agreement, is
28 more than \$500,000, City shall:

29 3.2.1. Pay to County the estimated total amount of surplus fire reserve in excess of \$500,000 in an
30 amount not less than 15 percent of City's total operating fire revenue within **60 days** following
31 the end of the City's fiscal year; and,

32 3.2.2. Pay reconciling adjustments within **60 days** following completion of the City's audited annual
33 financial report.

34 3.3. Pre-payment. The City may pre-pay amounts deferred or other amounts due as set forth in this
35 Agreement without penalty on terms mutually agreed on in writing by the City and the County.

36

1 4. DEFAULTS, DELAYS AND REMEDIES.

2 4.1. Events of Default. A default under this Agreement shall exist if one or more of the following events
3 or conditions occurs:

4 4.1.1. One Party to this Agreement knowingly makes a material false representation to the other; or,

5 4.1.2. The City or County fails to make any payment due hereunder; or,

6 4.1.3. Any other act or omission by City or County that materially interferes with the terms of this
7 Agreement.

8 4.2. Notice of Default. On discovering default by the other Parties, the City or County shall provide the
9 other Party written notice specifying the nature of the alleged default and, when appropriate, the
10 manner in which said default may be satisfactorily cured. Delay in providing notice of any default
11 shall not constitute a waiver of such default, nor shall it change the time of default. The Party in
12 default shall cure the default within **thirty (30) days** of the date of the notice or within such period of
13 time mutually agreed to in writing by the Parties.

14 4.3. Delay, Extension of Time for Performance. Either Party may request an extension of time in which to
15 perform its obligations under this Agreement if reasons beyond the control of that Party prevent, delay
16 or cause default of that Party in performing those obligations. Such reasons shall include, but not be
17 limited to acts of Nature; enactment of new conflicting federal or state laws or regulations; judicial
18 actions such as the issuance of restraining orders and injunctions; riots; strikes; or, damage to work in
19 process caused by fire, floods, earthquake, or other such casualties. If either Party seeks extension of
20 time for performance of its obligations under this Agreement, it shall, within **thirty (30) days** of the
21 commencement of the cause of the delay, provide the other Party written notice specifying the nature
22 of the delay and the length and terms of the extension of time requested. If it is agreed by both Parties
23 the delay or default is beyond the control of the Party requesting an extension of time, that extension
24 of time for such cause may be granted in writing for the period of the enforced delay, or longer as
25 mutually agreed necessary by both Parties.

26 4.4. Escrow of Taxes until Cure Accomplished. In the event the City fails to cure default on any payment
27 due under this Agreement, the County may demand the County Auditor retain in escrow any amount
28 on hand due the City pending resolution of the default.

29 4.5. Other Remedies. All other remedies at law or in equity consistent with the provisions of this
30 Agreement are available to the City and County to pursue in the event of default.

31 4.6. Institution of Legal Action. In addition to any other rights or remedies, either Party may institute
32 legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or
33 agreement set forth in this Agreement, to enjoin any threatened or attempted violation of the
34 Agreement, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions
35 shall be instituted in the Superior Court of the County of Riverside, State of California. In the event a
36 legal proceeding is commenced to enforce this Agreement, the prevailing Party shall be entitled to
37 reasonable attorneys' fees and costs from the other Party.

38 4.7. Court Actions pursuant to Government Code Section 56810(h). Should the calculation of property
39 taxes prepared pursuant to Government Code Section 56810 be modified as a result of a court action

1 brought pursuant to Government Code Section 56810 (h) to provide that a larger percentage be
2 retained by the County and a smaller percentage transferred to the City than that specified by LAFCO
3 pursuant to Government Code Section 56810 in approving the Incorporation, the County shall transfer
4 the amount of annual property tax resulting from such difference to the City for the purpose of
5 maintaining revenue neutrality pursuant to Government Code Section 56810 and this Agreement.
6 Should the calculation prepared pursuant to Government Code Section 56810 be modified as a result
7 of a court action brought pursuant to Government Code Section 56810 (h) to provide that a smaller
8 percentage be retained by the County and a larger percentage transferred to the City than that
9 specified by LAFCO pursuant to Government Code Section 56810 in approving the Incorporation, the
10 City shall transfer the amount of annual property tax resulting from such difference to the County for
11 the purpose of maintaining revenue neutrality pursuant to Government Code Section 56810 and this
12 Agreement.

13 5. AMENDMENTS.

14 5.1. Mutual Agreement. This Agreement may be modified or amended only by an instrument in writing
15 signed by County and Chief Petitioners, if before incorporation, or by both the City and the County
16 after incorporation.

17 5.2. Negotiation of Amendments. The Parties acknowledge circumstances may arise that may call for or
18 require mutual good faith negotiations for amendment of this Agreement. Without limitation due to
19 enumeration, the Parties agree to meet and confer regarding the possible mutual amendment of this
20 Agreement within **thirty (30) days** written notice by one Party to the other Party of the occurrence of
21 one or more of the following:

22 5.2.1. The passage of a statute or issuance of a legislative or executive order from a federal, state or
23 local governmental entity that materially alters the manner in which revenues to the City or
24 County are paid or allocated.

25 5.2.2. Unanticipated loss of revenue to the City by circumstances outside the City's jurisdictional
26 control, other than statute or legislative or executive order that materially alters the City's
27 anticipated revenue or materially increases services costs over those anticipated in this
28 Agreement or in the CFA.

29 5.2.3. Natural disasters that materially destroy City or County infrastructure to an extent that the
30 County's ability to provide services or the City's ability to make payments would be materially
31 impaired.

32 5.2.4. The discovery by the City or the County of any error or omission in the data utilized for
33 development of the CFA and this Agreement that materially affects the basis for the amount of
34 payments due hereunder, or the projection of future revenues and/or costs on which the payment
35 schedule was based.

36 5.3. Upon receipt of such written notice, the Parties shall, within **thirty (30) days**, hold at least one
37 meeting to negotiate in good faith a mutual amendment of this Agreement. However, nothing
38 contained herein shall require the mutual amendment of the Agreement or authorizes the unilateral
39 amendment hereof.

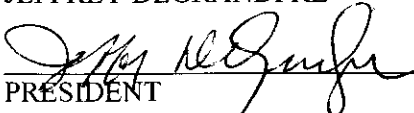
- 1 6. TERM OF AGREEMENT. Term of agreement to extend through the end of the 30th fiscal year from date
2 of incorporation.
- 3 7. MISCELLANEOUS PROVISIONS
- 4 7.1. Rules of Construction. The singular includes the plural; the masculine gender includes the feminine;
5 “shall” is mandatory; “may” is permissive.
- 6 7.2. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties
7 with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or
8 previous agreements between the County, the Chief Petitioners and the City respecting this
9 Agreement.
- 10 7.3. Incorporation of Recitals. The recitals set forth in Section 1 of this Agreement are part of this
11 Agreement.
- 12 7.4. Captions. The captions of this Agreement are for convenience and reference only and shall not
13 define, explain, modify, construe, limit, amplify or aid in the interpretations, construction or meeting
14 of any of the provisions of this Agreement.
- 15 7.5. Attorney Review. The Parties acknowledge that they have had the opportunity to consult with their
16 legal counsel regarding this Agreement and that accordingly the terms of this Agreement are not to be
17 construed against any Party because that Party drafted this Agreement or construed in favor of any
18 Party because that Party failed to understand the legal effect of the provisions of this Agreement.
- 19 7.6. Notices. Any notices required to be given under this Agreement shall be deemed to have been
20 delivered when actually received in the case of hand or overnight delivery, or **five (5) days** after
21 mailing by first class mail, postage paid.
- 22 7.7. Successor and Assigns. This Agreement shall be binding on successors and assigns. The City shall
23 be deemed a successor to Chief Petitioners and this Agreement shall be binding on the City.
- 24 7.8. Covenant of Cooperation. The County and the City shall deal with each other cooperatively in good
25 faith, and assist each other in the performance of the provisions of this Agreement.
- 26 7.9. Interpretation and Governing Law. This Agreement and any dispute arising in relation to it shall be
27 governed by and interpreted in accordance with the laws of the State of California.
- 28 7.10. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to
29 which time is an element.
- 30 7.11. Recordation. The Clerk of the Board of Supervisors shall cause a copy of this Agreement be to be
31 recorded with the Office of the County Recorder of Riverside County, California, within ten (10) days
32 following the Effective Date.
- 33 7.12. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts, each of
34 which shall be deemed an original, but all of which shall constitute one (1) Agreement, binding on the
35 Parties hereto.
- 36 7.13. Severability. If any term, covenant, condition, provision or agreement contained in this Agreement is
37 held to be invalid, void or unenforceable by any court of competent jurisdiction, the invalidity of any

1 such term, covenant, condition, provision or agreement shall in no way affect any other term,
2 covenant, condition, provision agreement and the remainder of this Agreement shall remain in full
3 force and effect.

4
5 COUNTY OF RIVERSIDE
6 MARION ASHLEY

7
8 BY: _____
9 CHAIRMAN
10 BOARD OF SUPERVISORS

CHIEF PETITIONERS
JEFFREY DEGRANDPRE


11 PRESIDENT
12 EASTVALE INCORPORATION COMMITTEE
13

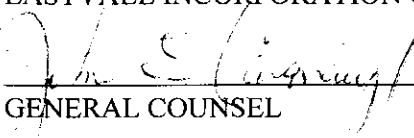
14 ATTEST:
15 KECIA HARPER-IHEM
16 CLERK OF THE BOARD

17
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19 BY: _____
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21
22

23 APPROVED AS TO FORM:
24 PAMELA J. WALLS
25 COUNTY COUNSEL

26
27 BY: _____
28 COUNTY COUNSEL

APPROVED AS TO FORM:
JOHN E. CAVANAUGH
EASTVALE INCORPORATION COMMITTEE


GENERAL COUNSEL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside }

On 1/11/10 before me, Judith R. Hamrouni, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Jeffrey Dean DeGrandpre

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Judith R. Hamrouni

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amended and Restated Revenue Neutrality Agreement

Document Date: January 12, 2010

Number of Pages: Seven

Signer(s) Other Than Named Above: John E. Cavanaugh

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jeffrey Dean DeGrandpre

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: Self

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

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