

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

504



FROM: County Executive Office

SUBMITTAL DATE:
July 7, 2010

SUBJECT: Approval of Jurupa Valley Incorporation Revenue Neutrality Agreement

RECOMMENDED MOTION: That the Board of Supervisors either:

- A. Approve and direct the Chairman to sign the attached tax sharing agreement, deemed necessary to remediate the financial impact on the county that would result from incorporation of the community of Jurupa Valley, contingent on this agreement first being approved and signed by the Board of the Jurupa Area Recreation and Parks District; or,
- B. If the Jurupa Area Recreation and Parks District Board has not first approved and signed the agreement, approve the agreement in concept.

BACKGROUND: On June 8, 2010, in Agenda Item No. 3.83, the Board of Supervisors approved in concept the framework for a tax sharing arrangement in the event the community of Jurupa Valley incorporates. LAFCO is currently processing an application for incorporation of the community of Jurupa Valley. State law prohibits LAFCO from approving incorporation if the net impact on the county is negative, unless mitigating terms and conditions are negotiated with the county.

Denise C. Harden
Denise C. Harden, Principal Management Analyst

FORM APPROVED COUNTY COUNSEL
BY: PAMELA J. WALLS
DATE: 7/8/10
Dept. of Financial Concurrence

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS: NA	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Christopher M. Hans*
County Executive Office Signature Christopher M. Hans

Consent
 Policy
 Consent
 Policy
 Dept't Recomm.:
 Per Exec. Ofc.:

Subject: Jurupa Valley Incorporation Revenue Neutrality Agreement

July 7, 2010

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The public review draft of the Jurupa Valley incorporation study comprehensive fiscal analysis dated June 2010 (Jurupa CFA) calculated a net loss to the county of \$4.2 million in the FY2008 base year, based on the county retaining responsibility for fire services within the incorporation area. In consideration of the loss of revenue in early years, and the county retaining fire services and the substantial ongoing subsidy that requires, this agreement ramps up revenue neutrality payments to the county to somewhat above that amount, and the term of the agreement is indefinite.

The June public review draft of the Jurupa CFA calculated \$19.3 million in transferrable FY2008 base year revenue in the incorporation area, and \$15.1 million in transferrable net county cost for municipal services to be taken over by the new city. Of that \$15.1 million in revenue, \$6.6 million, nearly half, is from sales tax. This represents 16.7 percent of the \$39.53 million in total sales tax received by the county in FY2008.

The difference of \$4.2 million between revenue and net cost transferred represents the balance of the county's non-transferrable net costs that remain the county's statutory responsibility in perpetuity. These include essential county responsibilities such as funding the district attorney, public defender, jails, court services, child and adult protective services, public and environmental health, and general government functions. It also includes a portion of the costs of providing fire services, for which the incorporation proponents are proposing the county retain responsibility.

The terms of the attached agreement include 100 percent deferral of the revenue neutrality payment owed to the county in the first transition year, payment of \$2.25 million in Year 2, and payment of \$1.9 million in Years 3-6, or until the sum of property and sales taxes in the incorporation area reaches \$15.84 million.

Once the sum of property and sales taxes reaches \$15.84 million, revenue neutrality payments escalate as percentages of property and sales tax revenue based on trigger amounts. When the sum of property and sales taxes reaches \$15.84 million, the county receives 16 percent of total property and sales tax revenue. At \$16.88 million, the county receives 21 percent; at \$17.94 million, the county receives 22 percent; and at \$19.03 million, the county receives 24 percent of total property and sales tax revenue.

Under this agreement, the county only receives specified amounts during the first six years. Thereafter, the county assumes risk during years of economic decline, but also may gain during years of economic growth.

The term of this agreement is indefinite. It is hoped – though cannot be guaranteed – that over time periods of growth will help offset a portion of the county general fund losses in the early years, as well as the substantial county general fund subsidy of fire services. It is currently estimated the fire subsidy will range from \$6.2 million to \$8.4 million per year within the first ten years of incorporation.

The Jurupa Valley incorporation is currently scheduled for public hearing at the July LAFCO meeting. The Executive Office recommends the Board approve the attached tax sharing agreement so it may be delivered to LAFCO in advance of the July Commission meeting.

1 REVENUE NEUTRALITY AGREEMENT
2 BY AND BETWEEN
3 THE COUNTY OF RIVERSIDE AND
4 THE CITY OF JURUPA VALLEY
5

6 THIS REVENUE NEUTRALITY AGREEMENT (“Agreement”) is entered into on July 13, 2010, by
7 and between THE COUNTY OF RIVERSIDE, a subdivision of the State of California (“County”), the JURUPA
8 AREA RECREATION AND PARKS DISTRICT (“Proponent”) and, upon incorporation, THE CITY OF
9 JURUPA VALLEY, a municipal corporation (“City”), (hereinafter the “Parties”).

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

11 1.1. On August 26, 2009, the Proponent submitted an application proposing incorporation of the
12 community of Jurupa Valley (the “Incorporation”).

13 1.2. Government Code Section 56815(a) states the intent of the Legislature that any proposal that includes
14 an incorporation should result in a similar exchange of both revenue and responsibility for service
15 delivery among the county, the proposed city, and other subject agencies; and that it is the further
16 intent of the Legislature that an incorporation should not occur primarily for financial reasons.

17 1.3. Government Code Section 56815(b) provides that LAFCO shall not approve a proposal that includes
18 an incorporation unless it finds the following two quantities are substantially equal: (1) revenues
19 currently received by the local agency transferring the affected territory which, but for the provisions
20 of this section, would accrue to the local agency receiving the affected territory; and, (2) expenditures,
21 including direct and indirect expenditures, currently made by the local agency transferring the affected
22 territory for services that will be assumed by the local agency receiving the affected territory.

23 1.4. Government Code Section 56815(c) states that, notwithstanding Section 56815(b), LAFCO may
24 approve a proposal that includes an incorporation if it finds either of the following: (1) the county and
25 all of the subject agencies agree to the proposed transfer; or, (2) the negative fiscal effect has been
26 adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of
27 time, or any other terms and conditions pursuant to Section 56886.

28 1.5. Pursuant to Government Code Section 56800, LAFCO caused to be prepared by contract funded by
29 the Proponent a Comprehensive Fiscal Analysis of the proposed Incorporation (the “CFA”) as the
30 basis for determining fiscal feasibility and for revenue neutrality negotiations between the County and
31 the Proponent. The CFA includes projections of revenue generated within the Incorporation area, the
32 present and projected costs of services performed by the County that would transfer to the City in the
33 event of incorporation, and the base year net costs of statutory services that would remain the
34 responsibility of the County.

35 1.6. Based on a careful review of the CFA, the County and the Proponent mutually conclude that in the
36 event of incorporation the revenue transferring to the City would be greater than the net cost of
37 services to be transferred, and consequently that the Incorporation would result in a negative fiscal
38 impact to the County. This Agreement creates no obligation for County services beyond those
39 required by law.

1 1.7. Pursuant to Government Code Section 56815(c), the County and the Proponent mutually agree to an
2 alternative transfer of revenue to mitigate the negative fiscal impact on the County resulting from the
3 Incorporation to a level acceptable to the County that would take effect upon incorporation of the City
4 according to the terms in this Agreement.

5 1.8. Pursuant to Government Code Section 56815(c), approval and execution of this Agreement by the
6 County, and the payments and other terms and conditions set forth herein, satisfy the requirement to
7 mitigate the negative fiscal effects of the Incorporation on the County. Without the terms and
8 conditions contained in this Agreement, LAFCO would be unable to make the required findings under
9 56815 Section (c). Therefore, this Agreement is essential to LAFCO's determinations regarding the
10 Incorporation under the Government Code Sections 56880, 56375, and 56720.

11 1.9. Approval of this Agreement by the City is implied by an affirmative vote of the people casting votes
12 at an incorporation election held in accord with all applicable provisions of California law and shall be
13 binding on the City. The terms of this agreement shall take effect without further action by any party
14 once the County Registrar of Voters certifies election results approving incorporation. The City shall
15 ratify this Agreement within thirty (30) days of the effective date of the Incorporation. This
16 Agreement shall be effective and binding on the City regardless of any failure or refusal by the City
17 Council to ratify the Agreement; however, such failure or refusal shall be deemed a breach of this
18 Agreement.

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

20 2.1. "Fiscal Year" means July 1 through June 30.

21 2.2. Use of the word "incorporation" without capitalization means the act of incorporating, forming,
22 creating, or establishing a city with corporate powers as defined in Section 56043 of the Cortese-
23 Knox-Hertzberg Local Government Reorganization Act of 2000.

24 2.3. "Effective Date" means the date of incorporation.

25 2.4. The term "sales tax" means the local general fund tax under the Bradley Burns Uniform Sales and Use
26 Tax Law commencing with Revenue and Taxation Code Section 7200, et. seq., including any
27 reimbursement amounts paid during the "revenue exchange period" as defined in Revenue and
28 Taxation Code Section 7203.1 et. seq.

29 3. REVENUE TRANSFERS.

30 3.1. Mitigation Obligation. Pursuant to Government Code Section 56815(c), the Parties understand and
31 agree that once the City incorporates, the County will continue to have ongoing obligations to provide
32 certain public services within the City. The Parties agree to establish the base year County deficit
33 amount as whatever amount is established by LAFCO in their approved CFA. In order to mitigate the
34 negative fiscal impact of the base year deficit on the County resulting from the Incorporation, the
35 Parties agree the City shall pay the County each year a portion of its tax revenues as follows:

36 3.1.1. To provide relief to the City during the start up period in Years 1-6 while transition year costs
37 are repaid, the revenue neutrality payments shall be reduced as noted below in this section.
38 Once the transition payments are concluded, or the revenue thresholds noted in this section

1 below are achieved, which ever comes first, revenue neutrality payments shall escalate in
2 accordance with the terms of this section;

3 3.1.2. In year Year 1, the transition year, **100 percent** of the revenue neutrality payment shall be
4 deferred;

5 3.1.3. In Year 2, City shall pay County the sum of two million two hundred and twenty five thousand
6 dollars (**\$2,250,000**);

7 3.1.4. In Years 3-6, City shall pay County the sum of one million nine hundred thousand dollars
8 (**\$1,900,000**) per year;

9 3.1.5. Beginning in year 7, or if the sum of property and sales taxes received by the City reaches
10 fifteen million eight hundred and forty thousand dollars (**\$15,840,000**), whichever occurs first,
11 City shall pay County **sixteen (16) percent** of the total property and sales tax revenue received
12 or accrued by City;

13 3.1.6. At the point at which the sum of property and sales taxes received or accrued by the City
14 reaches sixteen million eight hundred and eighty thousand dollars (**\$16,880,000**), City shall
15 pay County **twenty-one (21) percent** of the total property and sales tax revenue received or
16 accrued by City;

17 3.1.7. At the point at which the sum of property and sales taxes received or accrued by the City
18 reaches seventeen million nine hundred and forty thousand dollars (**\$17,940,000**), City shall
19 pay County **twenty-two (22) percent** of the total property and sales tax revenue received or
20 accrued by City;

21 3.1.8. At the point at which the sum of property and sales taxes received or accrued by the City
22 reaches nineteen million and thirty thousand dollars (**\$19,030,000**), City shall pay County
23 **twenty-four (24) percent** of the total property and sales tax revenue received or accrued by
24 City;

25 3.1.9. City shall pay County the total annual amount owed no later than **60 days** following the end of
26 the City's fiscal year;

27 3.1.10. City shall pay to County any necessary reconciling adjustments within **60 days** following
28 completion of the City's audited annual financial report;

29 3.1.11. City's obligations under sections 3.1.5 through 3.1.10 of this Agreement shall extend
30 indefinitely from the date of incorporation.

31 3.2. Fire Services. County shall retain responsibility for providing fire services within the City until the
32 City is willing to assume that responsibility from the County. County will continue to receive all
33 related fire revenue until responsibility for fire services transfers to City, recognizing that revenue
34 may not by itself completely offset the cost of maintaining existing fire service levels. County may
35 negotiate with City additional revenue sharing payments to maintain or enhance fire services. Such
36 payments may be used as a means for City to transition to assuming full financial responsibility for
37 and transfer of fire services.

1 3.3. Pre-payment. The City may pre-pay amounts deferred or other amounts due as set forth in this
2 Agreement without penalty on terms mutually agreed on in writing by the City and the County.

3 4. DEFAULTS, DELAYS AND REMEDIES.

4 4.1. Events of Default. A default under this Agreement shall exist if one or more of the following events
5 or conditions occurs:

6 4.1.1. One Party to this Agreement knowingly makes a material false representation to the other; or,

7 4.1.2. The City or County fails to make any payment due hereunder; or,

8 4.1.3. Any other act or omission by City or County that materially interferes with the terms of this
9 Agreement.

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

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

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

31 4.5. Other Remedies. All other remedies at law or in equity consistent with the provisions of this
32 Agreement are available to the City and County to pursue in the event of default.

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

1 4.7. Court Actions pursuant to Government Code Section 56810(h). Should the calculation of property
2 taxes prepared pursuant to Government Code Section 56810 be modified as a result of a court action
3 brought pursuant to Government Code Section 56810 (h) to provide that a larger percentage be
4 retained by the County and a smaller percentage transferred to the City than that specified by LAFCO
5 pursuant to Government Code Section 56810 in approving the Incorporation, the County shall transfer
6 the amount of annual property tax resulting from such difference to the City for the purpose of
7 maintaining revenue neutrality pursuant to Government Code Section 56810 and this Agreement.
8 Should the calculation prepared pursuant to Government Code Section 56810 be modified as a result
9 of a court action brought pursuant to Government Code Section 56810 (h) to provide that a smaller
10 percentage be retained by the County and a larger percentage transferred to the City than that
11 specified by LAFCO pursuant to Government Code Section 56810 in approving the Incorporation, the
12 City shall transfer the amount of annual property tax resulting from such difference to the County for
13 the purpose of maintaining revenue neutrality pursuant to Government Code Section 56810 and this
14 Agreement.

15 5. AMENDMENTS.

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

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

24 5.2.1. Within the first year following date of incorporation to address maintenance of fire service
25 levels;

26 5.2.2. At such time the City is willing to assume responsibility from the County for providing fire
27 services within the City;

28 5.2.3. The passage of a statute or issuance of a legislative or executive order from a federal, state or
29 local governmental entity that materially alters the manner in which revenues to the City or
30 County are paid or allocated;

31 5.2.4. Unanticipated loss of revenue to the City by circumstances outside the City's jurisdictional
32 control, other than statute or legislative or executive order that materially alters the City's
33 anticipated revenue or materially increases services costs over those anticipated in this
34 Agreement or in the CFA;

35 5.2.5. Natural disasters that materially destroy City or County infrastructure to an extent that the
36 County's ability to provide services or the City's ability to make payments would be materially
37 impaired; or,

38 5.2.6. The discovery by the City or the County of any error or omission in the data utilized for
39 development of the CFA and this Agreement that materially affects the basis for the amount of

1 payments due hereunder, or the projection of future revenues and/or costs on which the payment
2 schedule was based.

3 5.2.7. Upon receipt of such written notice, the Parties shall, within **thirty (30) days**, hold at least one
4 meeting to negotiate in good faith a mutual amendment of this Agreement. However, nothing
5 contained herein shall require the mutual amendment of the Agreement or authorizes the
6 unilateral amendment hereof.

7 6. TERM OF AGREEMENT. Term of agreement to extend indefinitely from date of incorporation.

8 7. MISCELLANEOUS PROVISIONS

9 7.1. Rules of Construction. The singular includes the plural; the masculine gender includes the feminine;
10 "shall" is mandatory; "may" is permissive.

11 7.2. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties
12 with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or
13 previous agreements between the County, the Proponent and the City respecting this Agreement.

14 7.3. Incorporation of Recitals. The recitals set forth in Section 1 of this Agreement are part of this
15 Agreement.

16 7.4. Captions. The captions of this Agreement are for convenience and reference only and shall not
17 define, explain, modify, construe, limit, amplify or aid in the interpretations, construction or meeting
18 of any of the provisions of this Agreement.

19 7.5. Attorney Review. The Parties acknowledge that they have had the opportunity to consult with their
20 legal counsel regarding this Agreement and that accordingly the terms of this Agreement are not to be
21 construed against any Party because that Party drafted this Agreement or construed in favor of any
22 Party because that Party failed to understand the legal effect of the provisions of this Agreement.

23 7.6. Notices. Any notices required to be given under this Agreement shall be deemed to have been
24 delivered when actually received in the case of hand or overnight delivery, or **five (5) days** after
25 mailing by first class mail, postage paid.

26 7.7. Successor and Assigns. This Agreement shall be binding on successors and assigns. The City shall
27 be deemed a successor to Proponent and this Agreement shall be binding on the City.

28 7.8. Covenant of Cooperation. The County and the City shall deal with each other cooperatively in good
29 faith, and assist each other in the performance of the provisions of this Agreement.

30 7.9. Interpretation and Governing Law. This Agreement and any dispute arising in relation to it shall be
31 governed by and interpreted in accordance with the laws of the State of California.

32 7.10. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to
33 which time is an element.

34 7.11. Recordation. The Clerk of the Board of Supervisors shall cause a copy of this Agreement be to be
35 recorded with the Office of the County Recorder of Riverside County, California, within ten (10) days
36 following the Effective Date.

1 7.12. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts, each of
2 which shall be deemed an original, but all of which shall constitute one (1) Agreement, binding on the
3 Parties hereto.

4 7.13. Severability. If any term, covenant, condition, provision or agreement contained in this Agreement is
5 held to be invalid, void or unenforceable by any court of competent jurisdiction, the invalidity of any
6 such term, covenant, condition, provision or agreement shall in no way affect any other term,
7 covenant, condition, provision agreement and the remainder of this Agreement shall remain in full
8 force and effect.

9

10 COUNTY OF RIVERSIDE
11 MARION ASHLEY

PROPONENT
ROBERT HERNANDEZ

12
13 BY: _____
14 CHAIRMAN
15 BOARD OF SUPERVISORS

PRESIDENT
JURUPA AREA RECREATION AND PARKS DISTRICT

16
17
18

19 ATTEST:
20 KECIA HARPER-IHEM
21 CLERK OF THE BOARD

22
23
24 BY: _____

25
26
27
28 APPROVED AS TO FORM:
29 PAMELA J. WALLS
30 COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT OWEN
ROBERT OWEN & ASSOCIATES

31
32 BY:  _____
33 COUNTY COUNSEL

GENERAL COUNSEL