

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

955




FROM: Executive Office

SUBMITTAL DATE:
June 2, 2011

SUBJECT: Approval of the Net Savings Agreement by and between the City of Wildomar and the County of Riverside.

RECOMMENDED MOTION: That the Board of Supervisors approve and authorize the Chairman to sign the attached agreement with the City of Wildomar.

BACKGROUND: On July 31, 2007 (Item 3.2), the Board approved the recommended motion to allocate the net savings calculations to the proposed new cities in the areas of Menifee and Wildomar, and to give consideration to any future proposed new cities the same consideration if the incorporation was deemed revenue neutral or resulted in a reduction of net county cost. A subsequent agreement with the City of Wildomar was approved on July 15, 2008 (Item 3.12).


Tina Grande, Principal Management Analyst

FINANCIAL
DATA

Current F.Y. Total Cost: \$ 252,048
Current F.Y. Net County Cost: \$ 252,048
Annual Net County Cost: \$ 259,609

In Current Year Budget: Yes
Budget Adjustment: No
For Fiscal Year: 10/11-17/18

SOURCE OF FUNDS: General Fund

Positions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION: APPROVE

BY: 
Christopher M. Hans

County Executive Office Signature

Consent ☐ Policy ☒
Consent ☐ Policy ☒

Prev. Agn. Ref.: 3/29/11 (3.3),
7/31/07 (3.2), 7/15/08 (3.12)

District: 1

Agenda Number:

3.7

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

Dept's Recomm.:
Per Exec. Ofc.:

FORM APPROVED COUNTY CLERK
BY:  TAWNY V. LIEU
6/6/2011

RE: Approval of the Net Savings Agreement by and between the City of Wildomar and the
County of Riverside
June 2, 2011
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A legal challenge was brought against the county entitled *Ste. Marie v. County of Riverside*.
A Notice of Settlement was filed by the plaintiff on February 25, 2011.

In compliance with the terms of the settlement, the Board of Supervisors adopted Resolution
No. 2011-64 agreeing to provide sheriff services at no cost, with detailed limits and
specifications, to the City of Wildomar.

The attached agreement outlines all terms and conditions. In brief, the county agrees to
provide law enforcement service at no cost per year through FY 17/18 based on the net
savings calculation reflected in the Comprehensive Fiscal Analysis (CFA) for Wildomar. If the
sales and use tax revenue collected by the city is in excess of the projected sales and use tax
revenue projections in the CFA, then the county will reduce the amount of no cost service in
the following fiscal year by the amount in excess. The exception is with the terminating year
off-set. The city is required to submit a payment by January 31 following the terminating fiscal
year if any sales and use tax is found in excess. The final year for no cost service is FY
17/18; however, if the city ceases to contract for law enforcement services prior to FY 17/18,
then the county is no longer obligated to provide no cost service.

The City of Wildomar approved the agreement on June 8, 2011. County Counsel has
approved this agreement as to form.

**COUNTY NET SAVINGS AGREEMENT
BY AND BETWEEN THE
COUNTY OF RIVERSIDE AND
CITY OF WILDOMAR**

This COUNTY NET SAVINGS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF WILDOMAR ("City"), a municipal corporation incorporated under the laws of the State of California, and the COUNTY OF RIVERSIDE ("County"), a political subdivision of the State of California, as of the date of approval by both Parties.

RECITALS

WHEREAS, on July 31, 2007, in accordance with Government Code section 56815(c)(2), County Board Policy A-46 was amended to authorize annual revenue augmentation to the City to off-set the decrease in County costs for public services that would result from the incorporation of the City for the first ten years following incorporation; and

WHEREAS, on or about September 27, 2007, Riverside Local Agency Formation Commission approved the proposed incorporation of the City, adopted the Wildomar CFA which calculated the annual revenue augmentation to the City based on the estimated annual net savings to the County resulting from the City's incorporation, and required the County to provide annual revenue augmentation to the City consistent with the County's action taken on July 31, 2007 as reflected in the Wildomar CFA; and

WHEREAS, on October 31, 2007, a legal challenge was brought against County Board Policy A-46 and County augmentation payment in *Ste. Marie v. County of Riverside*, Riverside County Superior Court Case No. RIC 484325 ("*Ste. Marie* action"); and

WHEREAS, on June 27, 2008, the trial court in the *Ste. Marie* action denied plaintiff's motion for summary judgment and determined that County Board Policy A-46 and the augmentation payment did not constitute a gift of public funds and were authorized by law; and

WHEREAS, the City was incorporated under the general laws of the State of California effective July 1, 2008, and on July 15, 2008, the County and City entered into a County Augmentation Agreement setting forth the terms and conditions relating to County annual augmentation payments to the City for the first ten years following incorporation; and

WHEREAS, on December 12, 2008, the trial court ruling in the *Ste. Marie* action was appealed by plaintiff, and on June 18, 2010, the Fourth District Court of Appeal, in reversing the trial court's determination, held that cash may not be transferred to the City by the County in the form of augmentation payment, however, the County may agree to provide services free of charge to the City on such terms and conditions as the parties approve in accord with the provisions of Government Code section 57384(c); and

WHEREAS, on October 13, 2010, in accordance with Government Code section 57384(c), the City adopted Resolution 2010-51, requesting that the County provide law

enforcement services to the City free of charge up to the amount of the annual augmentation payment value; and

WHEREAS, pursuant to County Resolution 2011-64 adopted on March 29, 2011, the County agreed, commencing in Fiscal Year 2010/2011 and concluding in Fiscal Year 2017/2018, to provide law enforcement services through County Sheriff's Department to the City free of charge up to the amount of the annual augmentation payment shown in the Wildomar CFA for a given fiscal year reduced by the amount of actual sales and use tax revenues that exceeds the estimated sales and use tax projected for that fiscal year; and

WHEREAS, if the City ceases to contract with the County for law enforcement services prior to June 30, 2018, County Resolution 2011-64 will be deemed void and of no effect.

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties agree as follows:

1. **DEFINITIONS**

- A. "County Augmentation" means the amount approved by the County Board of Supervisors on July 31, 2007 to be paid to the City for the first ten years following incorporation as reflected in the Wildomar CFA reduced by any Excess Sales and Use Tax.
- B. "County Augmentation Agreement" refers to the County Augmentation Agreement entered into between the City and County on July 15, 2008.
- C. "County Net Savings Amount" means for a given fiscal year, the amount reflected in Table 1, County Net Savings Calculations, of Section 5.A of this Agreement for that fiscal year.
- D. "Excess Sales and Use Tax" means the amount of the sales and use tax revenue collected by the California State Board of Equalization pursuant to and defined by Part 1.5 of Division 2 of the Revenue and Taxation Code within the City for any year during the first ten years following the incorporation that exceeds the sales and use tax projected for that year in the Wildomar CFA.
- E. "Fiscal Year" means the County's fiscal year beginning July 1 and ending June 30 annually.
- F. "Parties" means the County of Riverside and the City of Wildomar.
- G. "Sales and Use Tax" means the sales and use tax revenue collected by the California State Board of Equalization pursuant to and as defined by the Bradley-Burns Uniform Local Sales and Use Tax Law contained in Part 1.5 of Division 2 of the Revenue and Taxation Code.

- H. "Sales and Use Tax Analysis" means the analysis produced by the City documenting the amount of Excess Sales and Use Tax, if any, collected within the City for the previous fiscal year, and shall include summary documentation from the California State Board of Equalization of the sales and use tax collected within the City during the previous fiscal year.
- I. "Terminating Fiscal Year" refers to the fiscal year that the City ceases to contract with the County for law enforcement services prior to June 30, 2018.
- J. "Wildomar CFA" refers to the Public Hearing Draft Comprehensive Fiscal Analysis dated April 30, 2007, as revised on August 6, 2007, for the proposed incorporation of the City of Wildomar, which was adopted by LAFCO on or about September 27, 2007.

2. PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth the mutual understandings between the Parties of the terms and conditions relating to the maximum value of law enforcement services provided without charge by the County, through the County Sheriff's Department, to the City for each fiscal year, commencing in Fiscal Year 2010/2011 through Fiscal Year 2017/2018.

3. COUNTY AUGMENTATION AGREEMENT

- A. The Parties acknowledge that the Fourth District Court of Appeal in the *Ste. Marie* action rendered the County Augmentation to the City void and unenforceable. County shall not pay any County Augmentation to the City for Fiscal Years 2010/2011 through 2017/2018.
- B. The Parties agree that this Agreement shall supersede the County Augmentation Agreement.

4. AGREEMENT FOR LAW ENFORCEMENT SERVICES

- A. The Parties acknowledge that a separate Agreement for Law Enforcement Services was entered into between the City and County, on behalf of the County Sheriff's Department, and is currently effective.
- B. If the City ceases to contract with the County for law enforcement services prior to June 30, 2018, the Parties agree that:
 - (i) City shall notify the County in writing no later than twelve (12) months prior to the date the City ceases to contract with the County for law enforcement services.

- (ii) Notwithstanding any provisions in this Agreement to the contrary, County's obligations to provide law enforcement services without charge to the City pursuant to Section 5.B of this Agreement shall immediately terminate on the date the City ceases to contract with the County for law enforcement services.

5. COUNTY OBLIGATIONS

- A. The Parties agree the amounts in Table 1, County Net Savings Calculations, herein below, are the estimated annual net savings to the County projected in the Wildomar CFA for the first ten years following the City's incorporation.

Table 1
County Net Savings Calculations

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
\$237,579	\$244,706	\$252,048	\$259,609	\$267,397	\$275,419	\$283,682	\$292,192	\$300,958	\$309,987

- B. Except as otherwise provided in Paragraph (ii) of Section 4.B and/or Section 7 of this Agreement, the County agrees to provide law enforcement services, through the County Sheriff's Department, without charge to the City commencing in Fiscal Year 2010/2011 and concluding in Fiscal Year 2017/2018, as follows:

- (i) For Fiscal Year 2010/2011, the maximum value of law enforcement services provided without charge to the City is equal to the amount in Table 1 for that fiscal year.
- (ii) Commencing in Fiscal Year 2011/2012 and concluding in Fiscal Year 2017/2018, the maximum value of law enforcement services provided without charge to the City for a current fiscal year is equal to the amount in Table 1 for that current fiscal year reduced by the amount of Excess Sales and Use Tax, if any, collected within the City in the prior fiscal year.

Example 1: If the current Fiscal Year is 2011/2012 and the amount of Excess Sales and Use Tax for the prior Fiscal Year 2010/2011 is \$100,000, the maximum value of law enforcement services provided without charge to the City for the current Fiscal Year 2011/2012 is \$159,609. The amount in Table 1 for Fiscal Year 2011/2012 (\$259,609) is reduced by the amount of Excess Sales and Use Tax for the prior Fiscal Year 2010/2011 (\$100,000).

- (iii) If the amount of Excess Sales and Use Tax collected within the City in the prior fiscal year is greater than or equal to the amount in Table 1 for the

current fiscal year, the County shall not provide law enforcements services free of charge to the City for that current fiscal year.

Example 2: If the current Fiscal Year is 2011/2012 and the amount of Excess Sales and Use Tax for the prior Fiscal Year 2010/2011 is \$300,000, the County shall not provide law enforcement services free of charge to the City for the current Fiscal Year 2011/2012. The amount of Excess Sales and Use Tax for the prior Fiscal Year 2010/2011 (\$300,000) is greater than the amount in Table 1 for the current Fiscal Year 2011/2012 (\$259,609).

6. CITY OBLIGATIONS

- A. The Parties agree the amounts in Table 2, Wildomar Sales and Use Tax Projections, herein below, are the estimated annual total sales and use tax projected in the Wildomar CFA to be collected by the California State Board Equalization within the City for the first ten years following incorporation.

Table 2
Wildomar Sales and Use Tax Projections

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
\$693,613	\$1,551,379	\$1,724,133	\$1,862,523	\$2,007,664	\$2,159,838	\$2,271,984	\$2,388,915	\$2,510,817	\$2,606,838

- B. Except as otherwise provided in Section 7 of this Agreement, the City agrees as follows:
- (i) By January 31st of each year, commencing in 2011 and concluding in 2019, the City shall provide the County a Sales and Use Tax Analysis that calculates the Excess Sales and Use Tax, if any, collected during the prior fiscal year.
 - (ii) By January 31, 2019, if the City determines any Excess Sales and Use Tax is due the County for the prior fiscal year and/or any previous fiscal year, the City shall pay the County such amount of Excess Sales and Use Tax due. The maximum amount of Excess Sales and Use Tax due to the County by the City for a given fiscal year is limited to the amount in Table 1 for that fiscal year.

Example 3: If the amount of Excess Sales and Use Tax collected within the City for Fiscal Year 2017/2018 is \$500,000 and the amount in Table 1 for that fiscal year is \$309,987, the City shall pay the County \$309,987 by January 31, 2019. The maximum amount of Excess Sales and Use Tax due

to the County by the City for Fiscal Year 2017/2018 is limited to the amount in Table 1 for that fiscal year.

7. TERMINATION OF LAW ENFORCEMENT SERVICES

If the City ceases to contract with the County for law enforcement services prior to June 30, 2018, the Parties agree as follows:

- A. For the Terminating Fiscal Year, the maximum value of law enforcement services provided by the County without charge to the City is equal to the Prorated County Net Savings Amount reduced by the amount of Excess Sales and Use Tax, if any, collected within the City in the prior fiscal year.

The term "Prorated County Net Savings Amount" means the County Net Savings Amount in Table 1 for the Terminating Fiscal Year multiplied by the prorated annual percentage that is based on the number of days in the Terminating Fiscal Year before the date the City ceases to contract with the County for law enforcement services divided by 365 days, as calculated herein below:

Prorated County Net Savings Amount for Terminating Fiscal Year				
Prorated County Net Savings Amount	=	County Net Savings Amount in Table 1 for the Terminating Fiscal Year	X	$\frac{\text{Number of days in the TerminatingFiscal Year before the date the Cityceases to contract with the County forlaw enforcement services}}{365 \text{ days}}$

Example 4: If the City ceases to contract with the County for law enforcement services on September 25, 2016 in Terminating Fiscal Year 2016/2017 and the amount of Excess Sales and Use Tax for the prior Fiscal Year 2015/2016 is \$10,000, the Prorated County Net Savings Amount for the Terminating Fiscal Year is \$70,910.65. The County Net Savings Amount in Table 1 for the Terminating Fiscal Year of 2016/2017 (\$300,958) is multiplied by the prorated annual percentage (86 days/365 days). The maximum value of law enforcement services provided without charge to the City for the Terminating Fiscal Year 2016/2017 is \$60,910.65 since the Prorated County Net Savings Amount (\$70,910.65) is reduced by the amount of Excess Sales and Use Tax for the prior Fiscal Year 2015/2016 (\$10,000).

- B. If the amount of Excess Sales and Use Tax collected within the City in the prior fiscal year is greater than or equal to the Prorated County Net Savings Amount for the Terminating Fiscal Year, the County shall not provide law enforcement services free of charge to the City for that Terminating Fiscal Year.

Example 5: If the Prorated County Net Savings Amount for the Terminating Fiscal Year 2016/2017 is \$70,910.65 and the amount of Excess Sales and Use Tax for the prior Fiscal Year 2015/2016 is greater than or equal to \$70,910.65, then the County shall not provide law enforcement services free of charge to the City for the Terminating Fiscal Year 2016/2017.

- C. If the amount of Excess Sales and Use Tax collected within the City in the prior fiscal year is greater than the Prorated County Net Savings Amount for the Terminating Fiscal Year, the City shall pay the County by the 31st of January of the Terminating Fiscal Year an amount equal to the Excess Sales and Use Tax for the prior fiscal year reduced by the Prorated County Net Savings Amount for the Terminating Fiscal Year.

Example 6: If the Prorated County Net Savings Amount for the Terminating Fiscal Year 2016/2017 is \$70,910.65 and the amount of Excess Sales and Use Tax for the prior Fiscal Year 2015/2016 is \$100,000, the City shall pay \$29,089.35 to the County by January 31, 2017 in the Terminating Fiscal Year 2016/2017. The amount of Excess Sales and Use Tax for the prior Fiscal Year 2015/2016 (\$100,000) is reduced by the Prorated County Net Savings Amount for the Terminating Fiscal Year 2016/2017 (\$70,910.65).

- D. By the 31st of January following the Terminating Fiscal Year, the City shall provide the County the last and final Sales and Use Tax Analysis that calculates the Excess Sales and Use Tax, if any, collected during the Terminating Fiscal Year.
- E. By the 31st of January following the Terminating Fiscal Year, the City shall pay the County the Prorated Excess Sales and Use Tax, if any, owed to the County for the Terminating Fiscal Year.

The term "Prorated Excess Sales and Use Tax" means the amount of Excess Sales and Use Tax collected within the City for the Terminating Fiscal Year multiplied by the prorated annual percentage that is based on the number of days in the Terminating Fiscal Year before the date the City ceases to contract with the County for law enforcement services divided by 365 days, as calculated herein below:

Prorated Excess Sales and Use Tax for Terminating Fiscal Year				
Prorated Excess Sales and Use Tax	=	Amount of Excess Sales and Use Tax for the Terminating Fiscal Year	X	Number of days in the Terminating Fiscal Year before the date the City ceases to contract with the County for law enforcement services <hr/> 365 days

Example 7: If the City ceases to contract with the County for law enforcement services on January 25, 2017 in Terminating Fiscal Year 2016/2017 and the amount of Excess Sales and Use Tax for the Terminating Fiscal Year is \$300,000, the City shall pay the County by January 31, 2018 the Prorated Excess Sales and Use Tax for the Terminating Fiscal Year in the amount of \$170,958.90. The Prorated Excess Sales and Use Tax is determined by multiplying the amount of Excess Sales and Use Tax for the Terminating Fiscal Year 2016/2017 (\$300,000) with the prorated annual percentage (208 days/365 days).

- F. Unless an earlier payment date is otherwise specified in this Agreement, the City shall pay the County the amount of any Excess Sales and Use Tax due to the County for any previous fiscal year by the 31st of January following the Terminating Fiscal Year. The maximum amount of Excess Sales and Use Tax due to the County by the City for a given fiscal year is limited to the amount in Table 1 for that fiscal year.

8. BREACH AND REMEDIES

- A. The Parties agree the City shall be in material breach for noncompliance with the terms of this Agreement, including, without limitations, if the City fails, neglects and/or refuses to timely:
 - (i) Provide a Sales and Use Tax Analysis of the prior fiscal year to the County by January 31st of each year as required by Sections 6 and 7 of this Agreement; and/or
 - (ii) Pay the amount of any outstanding Excess Sales and Use Tax due to the County as required by Sections 6 and 7 of this Agreement.
- B. Upon determination by the County that the City is in material breach of the terms of this Agreement, the County may at its sole discretion:
 - (i) Send a written notice of noncompliance to the City requiring compliance by the City within thirty (30) days from the date of the notice.
 - (ii) Suspend its obligations under Section 5 of this Agreement to provide law enforcement services without charge to the City for that and subsequent fiscal years until the breach is resolved.
- C. Nothing contained herein shall be construed to limit or restrict any legal rights and/or remedies which either party may have against the other for breach of any provisions of this Agreement.

9. DISPUTES

Should the County disagree with any Sales and Use Tax Analysis timely submitted by the City, the Parties shall meet and confer in good faith in an attempt to resolve such dispute before taking any legal action.

10. EFFECTIVE PERIOD OF AGREEMENT

This Agreement shall be effective on the date of approval by both Parties and shall remain in full force and effect until the last and final Sales Tax and Use Analysis is received by the County from the City and the City pays the County the amount of any outstanding Excess Sales and Use Tax due.

11. NOTICES

The following individuals and their successors are designated by the County and the City as their respective authorized representative for the implementation of this Agreement, and all notices and correspondences given under this Agreement shall be in writing and either delivered personally or by United States mail at the addresses set forth below or at such other addresses as the Parties may hereafter designate:

For the County: County Executive Officer
County Administrative Center
4080 Lemon Street, 4th Floor
Riverside, CA 92501

For the City: City Manager
Wildomar City Hall
23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595

All notices shall be deemed given on the date of delivery if delivered personally or on the third business day after such notice is deposited in the United States mail, addressed and sent as provided above.

12. GENERAL PROVISIONS

- A. Time is of the Essence. Time shall be of the essence of each and every term, obligation, and condition of this Agreement.
- B. Waiver of Default. The waiver by either party of any one or more defaults shall not be construed as a waiver of any other or future defaults, under the same or different terms, conditions or covenants contained in this Agreement.
- C. Governing Law and Venue. This Agreement shall be governed and construed by the laws of the State of California without regard to its conflict of laws principles. All actions and proceedings arising in connection with this Agreement shall be

tried and litigated exclusively in the state and federal (if permitted by law and a party elects to file an action in federal court) courts located in the County of Riverside, State of California.

- D. Entire Agreement. This Agreement contains the entire understanding of City and County with respect to the subject matter hereof and it incorporates all of the covenants, conditions, promises, and agreements exchanged by the Parties hereto with respect to such matter. This Agreement supersedes any and all prior or contemporaneous negotiations, agreements, or communications, whether written or oral, between City and County with respect to the subject matter of this Agreement.
- E. Amendment. No addition or alteration of the terms or conditions of this Agreement, whether by written or verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written amendment to this Agreement which is formally approved and executed by both Parties.
- F. Invalidity and Severability. If any provision of this Agreement is held by the court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
- G. Counterparts. This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one agreement binding on all the Parties to this Agreement, and each executed counterpart shall be deemed an original.

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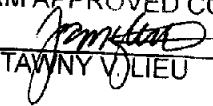
IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

Marsha Swanson, Mayor
For City of Wildomar, California

Date

Bob Buster, Chairman
Riverside County Board of Supervisors
For Riverside County, California

Date

FORM APPROVED COUNTY COUNSEL
BY:  6/6/2011
TAWNY V. LIEU DATE