

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

629



FROM: Executive Office

SUBMITTAL DATE:
May 13, 2013

SUBJECT: Second Amended and Restated Eastvale Incorporation Revenue Neutrality Agreement

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached second amended and restated revenue neutrality agreement, and
2. Direct the Executive Office and County Counsel to return to the Board with a resolution to revise the property tax allocation factor for the City of Eastvale.

BACKGROUND: LAFCO is prohibited by Government Code §56815(b) from approving an incorporation proposal unless it finds revenues and expenditures "substantially equal" unless all parties agree to the proposal's fiscal effects, or a mitigation agreement endorsed by the parties. The mitigation agreement can include the following: tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to §56886.

Continued on Page 2


TINA GRANDE
Principal Management Analyst

FORM APPROVED COUNTY COUNSEL

BY Dale A. Gardner DATE 5/15/13

Departmental Concurrence

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

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

C.E.O. RECOMMENDATION: **APPROVE**
BY: 
George A. Johnson
County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

Dep't Recomm.:
Per Exec. Ofc.:

BACKGROUND continued: On October 20, 2009 (Item 3.72), the Board of Supervisors approved a mitigation agreement in the form of a tax sharing agreement between the proponents of the Eastvale Incorporation and the County of Riverside. On January 12, 2010 (Item 3.25), the Board of Supervisors approved an amended and restated revenue neutrality agreement.

The City of Eastvale incorporated on October 1, 2010. Subsequent to the incorporation an error was found in the way the consultant interpreted data submitted by the county on Proposition 172, which was used by the cityhood proponent's consultant to develop the Comprehensive Fiscal Analysis (CFA). The calculations for revenue neutrality agreements are based on the CFA. As a result of this misinterpretation, the previous revenue neutrality agreements erroneously reported the deficit to the county as \$946,142. The city requested that the revenue neutrality agreement be reopened and renegotiated. The terms of the agreement allowed for this request. The county entered into negotiations with the city and agreed that an error was made on how Proposition 172 revenue was factored into the calculation. Consequently, the city and the county agree the recalculation of the net loss to the county based on state guidelines should be \$384,351. This amount now becomes the established Base Year County Deficit, upon which the revenue neutrality agreement is based.

The attached second amended and restated agreement has been changed to reflect the recalculation. In addition, in order to simplify the agreement for all parties, the deficit now shall increase year-over-year by the Consumer Price Index (CPI) instead of a calculation based upon revenue growth. The deferral of annual payments for FY 2012/13 remains. Interest on the deferred amounts and any future amounts not paid timely shall be based on the twelve month average of the County Treasurer's quarterly interest apportionment ratio, to be calculated in January of each year.

The agreement still includes a provision with regard to mutual aid for regional fire services. However, it now also includes renegotiated and clarifying language as to the amount the city will contribute. As with the previous agreement, the city may use structural fire tax revenue to pay its revenue neutrality obligation to the county; however, they may only pay half of the revenue neutrality obligation using structural fire tax. To enable the city to accumulate sufficient capital with which to build a second fire station, this second amended and restated agreement relieves the city from paying to the county the surplus fire revenue accumulated during the first three years following incorporation.

The term of the agreement remains as 30 years from the date of incorporation. County Counsel has approved the agreement as to form.

The same error with respect to Proposition 172 revenue affects the City's property tax allocation factor used by the Auditor Controller to determine the amount of property tax revenues to be allocated to the city. Consequently, the city and county mutually agree the city's property tax allocation factor should be adjusted so that the city's property tax allocation is increased and the county's decreased by a corresponding amount. The correction will be retroactive, and the amount is estimated to be approximately \$600,000 for the two years. The Executive Office will bring back a resolution to the Board to effect that correction with the exact amount on June 4, 2013.

1 SECOND AMENDED AND RESTATED
2 REVENUE NEUTRALITY AGREEMENT
3 BY AND BETWEEN
4 THE COUNTY OF RIVERSIDE AND
5 THE CITY OF EASTVALE
6

7 THIS AMENDED AND RESTATED REVENUE NEUTRALITY AGREEMENT (“Agreement”) is
8 entered into on _____, _____ 2013, by and between THE COUNTY OF RIVERSIDE, a subdivision
9 of the State of California (“County”), and THE CITY OF EASTVALE, a municipal corporation (“City”)
10 (hereinafter the “Parties”).

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

12 1.1 On September 22, 2008, Jeffrey Grandpre on behalf of the Eastvale Incorporation Committee
13 (collectively the “Chief Petitioners”) submitted an application proposing incorporation of the
14 community of Eastvale (the “Incorporation”), which was certified by the Local Agency Formation
15 Commission (“LAFCO”) on September 14, 2009.

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

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

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

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

39 1.6 Based on careful review of the CFA, including County records utilized in the preparation of the CFA
40 relating to revenue projections for the area included in the Incorporation, and projected costs of law

1 enforcement, road maintenance and other County services transferred to the City, and the costs
2 retained by the County, it was concluded that Incorporation results in revenue being transferred to the
3 City greater than the net cost of services transferred; consequently, the Incorporation results in a
4 negative fiscal impact to the County. County and the City mutually agree upon the terms herein to
5 mitigate the fiscal impacts of the Incorporation on the County to a level acceptable to the County.
6 This Agreement creates no obligation for County services beyond those required by law.

7 1.7 Pursuant to Government Code Section 56815(c), the County and the Chief Petitioners mutually agreed
8 to an alternative transfer of revenue to mitigate the negative fiscal impact on the County resulting
9 from the Incorporation to a level acceptable to the County that would take effect upon incorporation
10 of the City according to the terms in this Agreement.

11 1.8 On October 20, 2009, the County and the Chief Petitioners entered into a Revenue Neutrality
12 Agreement (“Original Agreement”). However, subsequent to that date additional information came to
13 light that led the Parties to agree on the necessity of amending and restating that agreement, and on
14 January 12, 2010, the County and Chief Petitioners entered into an amended and restated agreement
15 which superseded the Original Agreement (“Amended and Restated Agreement”).

16 1.9 On June 8, 2010, the citizens living in the Eastvale area of the unincorporated portion of the County of
17 Riverside voted in favor of Incorporation effective October 1, 2010.

18 1.10 Subsequent to Incorporation, further information came to light that led the Parties to agree on the
19 necessity of further amending and restating that agreement. Consequently, the City and County wish
20 to modify the Amended and Restated Agreement under additional terms and conditions herein. This
21 Second Amended and Restated Agreement is intended to supersede both the Original Agreement
22 dated October 20, 2009, and the Amended and Restated Agreement dated January 12, 2010.

23 1.11 Pursuant to Government Code Section 5681(c), approval and execution of the 2nd Amended and
24 Restated Agreement by the County, and the payments and other terms and conditions set forth therein,
25 satisfied the requirement to mitigate the negative fiscal effects of the Incorporation on the County.
26 Without the terms and conditions contained in that Agreement, LAFCO would have been unable to
27 make the required findings under 56815 Section (c). Therefore, the 2nd Amended and Restated
28 Agreement was essential to LAFCO’s determinations regarding the Incorporation under the
29 Government Code Sections 56880, 56375, and 56720.

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

31 2.1 “Fiscal Year” means July 1 through June 30.

32 2.2 Use of the word “incorporation” without capitalization means the act of incorporating, forming,
33 creating, or establishing a city with corporate powers as defined in Section 56043 of the Cortese-
34 Knox-Hertzberg Local Government Reorganization Act of 2000.

35 2.3 “Effective Date” means the date of incorporation.

36 3. PAYMENT.

37 3.1 Mitigation Obligation. Pursuant to Government Code Section 56815(c), the Parties understand and
38 agree that when the City incorporated, the County continued to have ongoing obligations to provide

1 certain public services within the City. In order to mitigate the negative fiscal impact on the County
2 resulting from the Incorporation, the Parties agree the City shall pay the County an annual payment, as
3 follows:

4 3.1.1. Establish the Base Year County Deficit as the revised FY2008 Base Year amount of
5 \$384,351 as calculated in Attachment "A" attached hereto and incorporated herein as if fully
6 set forth;

7 3.1.2. The annual payment from the City to the County shall be the Base Year County Deficit of
8 \$384,351 as shown on Attachment "A" increased successively each year thereafter by the
9 year-over-year Consumer Price Index for Urban Wage Earners and Clerical Workers for the
10 Los Angeles-Riverside-Orange County region as published by the U. S. Bureau of Labor
11 Statistics in January each year, but not less than 1% nor more than 4%. City may pay up to
12 fifty percent (50%) of the mitigation fee payment from the fire fund identified in Section 3.2;

13 3.1.3. Deferral of annual payments for FY2011, FY2012 and FY2013;

14 3.1.4. Repayment of amounts deferred in Section 3.1.3 in **ten (10) equal annual installments**
15 beginning in FY2014;

16 3.1.5 Accrual of interest on both the annual mitigation payment and the deferral amounts in Section
17 3.1.3 owed but not paid and carried forward into each fiscal year shall be paid at an effective
18 annual interest rate equal to the 12 month average of the County Treasurer's quarterly interest
19 apportionment ratio, to be calculated in January each year;

20 3.1.6. Payment of the total amount owed each year, including the annual payment, payment of
21 amounts deferred, and interest, on or before **June 30** each year;

22 3.1.7. City's Mitigation Obligation under this Agreement shall extend through the **30th fiscal year**
23 from the date of incorporation ending on June 30, 2040; and,

24 3.1.8. In recognition that the County general fund provides financial support for fire services in the
25 unincorporated area due to the insufficient amount of structural fire tax generated therein, the
26 County agrees to accept payment by the City toward the obligations set forth in this section
27 3.1 from City structural fire tax to the extent necessary for the City to satisfy the terms of this
28 obligation. If payment is not or cannot be made by the City from structural fire tax funds,
29 City's payment obligations under this section 3.1 will remain and shall not be reduced.

30 3.2 Mutual Aid for Regional Fire Services. In addition to the payments required to be made pursuant to
31 section 3.1 and for the purposes of continuing support of regional fire services, for any year in which
32 the City's cumulative available fund balance derived from fire revenue exceeding operating and non-
33 operating fire expenditures, and including any amounts paid to County pursuant to section 3.1 of this
34 Agreement, is more than \$500,000, City shall:

35 3.2.1 Acquire land, build, equip and staff a second fire station in the City of Eastvale. The County
36 will not require payments from the fire fund until such time as the second fire station is
37 operational;

1 3.2.2. Once the 2nd Fire Station is operational and fully staffed, City to pay County the estimated
2 total amount of available fire fund balance in excess of \$500,000, within **60 days** following
3 the end of the City's fiscal year; and,

4 3.2.3. Pay reconciling adjustments within **60 days** following completion of the City's audited annual
5 financial report.

6 3.3. Pre-payment. The City may pre-pay amounts deferred or other amounts due as set forth in this
7 Agreement without penalty on terms mutually agreed on in writing by the City and the County.

8 4. DEFAULTS, DELAYS AND REMEDIES.

9 4.1 Events of Default. A default under this Agreement shall exist if one or more of the following events
10 or conditions occurs:

11 4.1.1. One Party to this Agreement knowingly makes a material false representation to the other; or,

12 4.1.2. The City or County fails to make any payment due hereunder; or,

13 4.1.3. Any other act or omission by City or County that materially interferes with the terms of this
14 Agreement.

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

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

33 4.4 Escrow of Taxes until Cure Accomplished. In the even the City fails to cure default on any payment
34 due under this Agreement, the County may demand the County Auditor retain in escrow any amount
35 on hand due the City pending resolution of the default.

36 4.5. Other Remedies. All other remedies at law or in equity consistent with the provisions of this
37 Agreement are available to the City and County to pursue in the event of default.

1 4.6. Institution of Legal Action. In addition to any other rights or remedies, either Party may institute
2 legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or
3 agreement set forth in this Agreement, to enjoin any threatened or attempted violation of the
4 Agreement, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions
5 shall be instituted in the Superior Court of the County of Riverside, State of California. In the event a
6 legal proceeding is commenced to enforce this Agreement, the prevailing Party shall be entitled to
7 reasonable attorneys' fees and costs from the other Party.

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

22 5. AMENDMENTS.

23 5.1. Mutual Agreement. This Agreement may be modified or amended only by an Instrument in writing
24 signed by County and City.

25 5.2. Negotiation of Amendments. The Parties acknowledge circumstances may arise that may call for or
26 require mutual good faith negotiations for amendment of this Agreement. Without limitation due to
27 enumeration, the Parties agree to meet and confer regarding the possible mutual amendment of this
28 Agreement within **thirty (30) days** written notice by one Party to the other Party of the occurrence of
29 one or more of the following:

30 5.2.1. The passage of a statute or issuance of a legislative or executive order from a federal, state or
31 local governmental entity that materially alters the manner in which revenues to the City or
32 County are paid or allocated.

33 5.2.2. Unanticipated loss of revenue to the City by circumstances outside the City's jurisdictional
34 control, other than statute or legislative or executive order that materially alters the City's
35 anticipated revenue or materially increases services costs over those anticipated in this
36 Agreement or in the CFA.

37 5.2.3. Natural disasters that materially destroy City or County infrastructure to an extent that the
38 County's ability to provide services or the City's ability to make payments would be materially
39 impaired.

1 5.2.4 The discovery by the City or County of any error or omission in the data utilized under this
2 Agreement that materially affects the basis for the amount of payments due hereunder, or the
3 projection of future revenues and/or costs on which the payment schedule was based.

4 5.3 Upon receipt of such written notice, the Parties shall, within **thirty (30) days**, hold at least one
5 meeting to negotiate in good faith a mutual amendment of this Agreement. However, nothing
6 contained herein shall require the mutual amendment of the Agreement or authorizes the unilateral
7 amendment hereof.

8 6. TERM OF AGREEMENT. Term of agreement to extend through the end of the **30th fiscal year** from date
9 of incorporation ending June 30, 2040.

10 7. MISCELLANEOUS PROVISIONS.

11 7.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine;
12 “shall” is mandatory; “may” is permissive.

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

17 7.3 Incorporation of Recitals. The recitals set forth in Section 1 of this Agreement are part of this
18 Agreement.

19 7.4 Captions. The captions of this Agreement are for convenience and reference only and shall not
20 define, explain, modify, construe, limit, amplify or aid in the interpretations, construction or meaning
21 of any of the provisions of this Agreement.

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

26 7.6 Notices. Any notices required to be given under this Agreement shall be deemed to have been
27 delivered when actually received in the case of hand or overnight delivery, or **five (5) days** after
28 mailing by first class mail, postage paid.

29 7.7 Successor and Assigns. This Agreement shall be binding on successors and assigns.

30 7.8 Covenant of Cooperation. The County and the City shall deal with each other cooperatively in good
31 faith, and assist each other in the performance of the provisions of this Agreement.

32 7.9 Interpretation and Governing Law. This Agreement and any dispute arising in relation to it shall be
33 governed by and interpreted in accordance with the laws of the State of California.

34 7.10 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to
35 which time is an element.

1 7.11. Recordation. The Clerk of the Board of Supervisors shall cause a copy of this Agreement to be
2 recorded with the Office of the County Recorder of Riverside County, California within ten (10) days
3 of execution of this Agreement by both City and County.

4 7.12. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts, each of
5 which shall be deemed an original, but all of which shall constitute one (1) Agreement, binding on the
6 Parties hereto.

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

12
13 COUNT OF RIVERSID
14 JOHN J. BENOIT

CITY
IKE BOOTSMA

15
16 BY: _____
17 CHAIRMAN
18 BOARD OF SUPERVISORS

MAYOR

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

23
24 BY: _____

25
26 APPROVED AS TO FORM:
27 PAMELA J. WALLS

APPROVED AS TO FORM:
JOHN E. CAVANAUGH

28
29 BY: 
30 COUNTY COUNSEL

CITY ATTORNEY