

Terms and Conditions of Revenue Neutrality Tax Sharing

County staff and the incorporation proponents have agreed to the following revenue neutrality tax sharing language:

A. Findings With Respect Fiscal Impacts of Incorporation On the County

1. Government Code §56815 provides that, “It is 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”. It goes on to provide that a LAFCO “shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

(1) Revenues currently received by the local agency transferring the affected territory that, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory. “

Notwithstanding this prohibition, Government Code §56815 authorizes LAFCO to approve a proposed incorporation if it determines that the negative fiscal impacts of the proposed incorporation on the County have been mitigated by tax sharing agreements, lump-sums payments, payments over a fixed period of time, or any other terms and conditions pursuant to Government Code §56880.

2. The County is currently responsible for providing both municipal and County-wide services within the area proposed for incorporation. These County-wide services include, but are not limited to, the operation of County jail facilities, the funding of court facilities and a portion of court operations, probation services, health and welfare services, the District Attorney's office and indigent criminal defense services. The tax revenue currently received by the County from within the area proposed for incorporation is used to fund both County-wide services and those municipal services furnished by the County within that area. While the incorporation of the City will relieve the County of the responsibility for providing municipal services to City residents, the County will continue to be responsible for County-wide services within the boundaries of the City.

3. LAFCO has determined after analyzing the relevant fiscal information that the revenue currently received by the County which, but for the operation of Government Code §56815, would accrue to the City is not substantially equal to the expenditures currently made by the County for the services that will be assumed by the City. LAFCO has specifically determined in this regard that the annual negative financial impact of the proposed incorporation on the County's general fund is \$8,669,665 using revenue and cost figures from the 2008-09 base fiscal year. LAFCO has for the prior two incorporations within the County imposed a term and condition requiring the newly incorporated city to make an annual payment to the County equal to the negative financial impact of the incorporation on the County's general fund ("revenue neutrality payment") for a period of twenty-five (25) years. LAFCO has

also provided for the revenue neutrality payment to be paid from secured and unsecured property tax revenue that would otherwise be apportioned by the Director of Finance/County Auditor to the City.

4. The City's sharing of its property tax revenue as prescribed herein is necessary to insure that the County has the funding available after the effective date of the City's incorporation to maintain County-wide services at current levels without adversely affecting municipal services in the remaining portion of the unincorporated area.

5. The total amount of the negative fiscal impact of the proposed incorporation on the County's general fund over the twenty-five year period after the effective date of the incorporation will be \$216,741,625. LAFCO recognizes that there will not be sufficient City property tax revenue to make the full \$8,669,665 annual revenue neutrality payment to the County. LAFCO further recognizes that it would be beneficial for the City to make reduced revenue neutrality payments in the early years after its incorporation to allow for the accrual of additional reserves. In order to offset the loss to the County of the full amount of the revenue neutrality payment until such time as the amount of City property tax revenue equals the amount of the full revenue neutrality payment, LAFCO has determined that it is appropriate to increase the total amount of revenue neutrality payments to \$219,000,000.

B. Property Tax Sharing Obligation

1. As a means of mitigating the negative financial impact of the proposed incorporation on the County's general fund as required by Government

Code §56815, the proposed incorporation is conditioned on the sharing of City property tax revenue in the total amount of \$219,000,000 to be paid by the City to the County as follows: (i) payments shall begin in fiscal year 2012-13 and shall continue annually until \$219,000,000 has been paid to the County; (ii) the annual payments shall be in the amount of 90% of the secured and unsecured property tax revenue that would be apportioned each fiscal year to the City absent this revenue sharing requirement; and (iii) the amount of City property tax revenue payable to the County shall be allocated by the County Director of Finance/County Auditor directly to the County as part of the property tax apportionment process.

2) The tax sharing provisions set forth herein are premised on the existing statewide structure that governs local government finances and the obligation of newly incorporated cities to mitigate the negative fiscal impacts of their incorporation on counties. The tax sharing obligations set forth herein shall be subject to modification upon any of the following occurrences:

a) A statewide structural change in the services that are required by the State to be provided by the County or the City;

b) A statewide structural change in the manner in which the above mandated services are funded;

c) The occurrence of any other event that significantly modifies how cities and/or counties generally receive, or the County specifically receives, funding;

d) Any significant modification by the State of the manner in which newly incorporated cities are funded; or

e) If the revenue neutrality structure in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Health & Safety Code §§56000, *et seq.*) as it applied to LAFCO's approval of the Petition, is modified.

3) If either the City or the County ("Parties") believes that one of the triggering factors set forth in Section 2 above has occurred, it may serve a written Notice of Reopener on the other party requesting that the City's tax sharing obligation be modified. A copy of this written request shall be provided to LAFCO, but LAFCO shall not have any role with respect to the request. The Notice of Reopener shall specify the precise manner in which the requesting party is proposing that the City's tax sharing obligation be modified and must be submitted within one (1) year of the effective date of the relevant triggering factor. If the Notice of Reopener is not served within this one (1) year period, the Parties waive any right to request a modification of the City's tax sharing obligation based on that particular triggering factor.

a) The Parties shall have sixty (60) days after service of the Notice of Reopener as a Negotiation Period in which to attempt to reach mutual agreement on an appropriate modification to the City's tax sharing obligation. If the Parties are unable to reach such a mutual agreement within this sixty (60) day Negotiation Period, the City and County shall comply with the dispute resolution procedures set forth below. In doing

so, the Parties shall conform to the timeline prescribed therein measured from the date of service of the Notice of Reopener.

b) If, upon the completion of the Negotiation Period, no modification to the City's tax sharing obligation is agreed upon by the City and the County, the City and the County shall mutually select a mediator, funded in equal portions by each party, to perform mediation for a period of not to exceed thirty (30) days. If the City and the County cannot mutually select a mediator, each shall select a mediator of its choosing. Those two mediators shall then select a neutral mediator, who shall be the mediator.

c) If, upon the completion of the Mediation Period, no mutually acceptable agreement has been reached by the City and the County, the Parties shall mutually commence an action in the California Superior Court for the exclusive purpose of implementing the process of resolution of the dispute by general reference under Code of Civil Procedure §638. This term and condition shall constitute and be construed to be an agreement between the Parties to reference under Code of Civil Procedure §638. The parties shall select a referee under Code of Civil Procedure §§638 and 640, funded in equal portions by the parties, to conduct a judicial reference with the City and the County for a period of not to exceed 30 days. If the City and the County cannot mutually select a referee, each shall select a mediator of its choosing. Those two mediators shall then select a referee, who shall be the referee.

d) The provisions of Code of Civil Procedure Section 1283.05 are made expressly inapplicable to the Negotiation and Mediation Periods and/or the reference proceedings conducted pursuant to this section. However, discovery shall be permitted for the reference proceeding only, but, pursuant to Code of Civil Procedure §2021, discovery during the reference proceeding shall be subject to the following limitations:

i) Discovery shall be limited in time to the 45 days before the date of the commencement of the reference hearing;

ii) Discovery shall be limited in scope to disclosure of information to be presented at the reference hearing; and

iii) Discovery shall be accomplished by the disclosure duties as contemplated by Federal Rule of Civil Procedure, Rule 26, which initial disclosure shall occur on the 45th day before the date of commencement of the reference hearing, or on some other date mutually agreed upon by the Parties.

e) On the day that the reference proceeding hearing commences and as a part of each Parties' case in chief, the City and the County shall each present to the referee its last and best offer with respect to the City's tax sharing obligation. The referee must make his or her decision within the confines of the two offers presented by the Parties. The reference proceeding contemplated herein shall be conducted pursuant to CCP §§638 *et seq.* and the decision by the referee must be reported as set forth in CCP §643 and it must stand as the decision of the court as set

forth in CCP §644. The only review of the referee's decision shall be to determine if the referee's decision is within the confines of the two offers presented by the Parties. The referee is free to fashion his or her decision within the confines of the two offers presented by the Parties. However, if the referee's decision does not stay within the confines of the two offers presented by the Parties, the referee's decision shall be null and void and subject to judicial review. The Parties expressly agree to preserve their appellate rights pursuant to CCP §645, as limited herein.

f) Proceedings under these dispute resolution procedures shall be concluded no more than 150 days after the service of the Notice of Reopener, unless one or more of the periods specified herein is extended by the mutual written agreement of the City and the County, but in no event may the proceedings under these dispute resolution procedures be extended for a cumulative period of more than one (1) year after the service of the Notice of Reopener.