

RESOLUTION NO. 2000 – 17

A RESOLUTION OF THE
CITY COUNCIL OF THE CITY OF ELK GROVE
AGREEING TO A TAX SHARING AGREEMENT
BETWEEN THE COUNTY OF SACRAMENTO AND THE CITY OF ELK GROVE

WHEREAS, the tax sharing language in the text of Sacramento County Resolution 99-1044 and the language in the text of the Tax Sharing Agreement identified as Exhibit C in Resolution 99-1044 are different, inconsistent and confusing as to precisely what the City of Elk Grove's obligations are as they relate to sharing of property and other taxes; and

WHEREAS, the City Council of the City of Elk Grove understands the tax sharing obligation set forth in subsection 9.p. of Sacramento Local Agency Formation Commission Resolution LAFC 1207 to be the agreed to and controlling language, and with that understanding;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove that the Mayor of the City of Elk Grove shall execute a Tax Sharing Agreement on behalf of the City of Elk Grove.


PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 1st day of July, 2000, by the following vote:

AYES: Cooper, Soares, Leary, Scherman, Briggs

NOES: 0

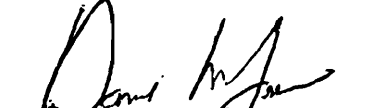
ABSENT: 0

ABSTAIN: 0




Mayor, City of Elk Grove

ATTEST:



City Clerk, City of Elk Grove

APPROVED AS TO FORM:



City Attorney, City of Elk Grove

EXHIBIT C

TAX SHARING AGREEMENT BETWEEN THE COUNTY OF SACRAMENTO AND THE CITY OF ELK GROVE

This Tax Sharing Agreement ("Agreement") is made and entered into between the County of Sacramento ("County"), a political subdivision of the State of California, acting through its Board of Supervisors, and the City of Elk Grove ("City"), a municipal corporation, acting through its electorate.

RECITALS

A. A Petition for the proposed incorporation of the City has been submitted and approved by the Sacramento Local Agency Formation Commission ("LAFCO") pursuant to the Cortese-Knox Local Reorganization Act of 1985. Government Code §56845 prohibits LAFCO from approving a proposed incorporation unless it finds that the revenue currently received by the County which, but for the operation of Government Code §56845, would accrue to the City is substantially equal to the expenditures currently made by the County for the services that will be assumed by the City. Notwithstanding this prohibition, Government Code §56845 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 §56844.

B. 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.

C. 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 §56845, 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. As a means of mitigating the negative financial impact of the proposed incorporation on the County's general fund, LAFCO has conditioned the proposed incorporation on the sharing of property and transient occupancy tax revenue for a period of twenty-five (25) years

D. The City's sharing of its 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. In the absence of such tax sharing, the City would receive a revenue windfall by having the benefit of all current County revenue without any concomitant responsibility for the funding of County-wide services. The resulting revenue windfall would allow the City to provide a higher level of municipal services to its residents, while the County would be forced to reduce either County-wide services or municipal services within the remaining unincorporated area, or a combination thereof. In either event, the enhanced services enjoyed by City residents

would occur at the expense of County-wide service recipients or unincorporated area residents who would suffer a reduction in such services.

F. The County has not opposed LAFCO's approval of the proposed incorporation subject to LAFCO's imposition of appropriate conditions to mitigate the adverse fiscal impact that the incorporation would otherwise have on the County. LAFCO has done so in the form of the previously referenced tax sharing condition. In order to provide the County with additional legal assurance that the City will comply with its obligation to share its tax revenue as required by the terms and conditions of the City's incorporation, this requirement has also been separately memorialized in the form of this Agreement which is specifically authorized by Government Code §56845. While the County has negotiated the terms and conditions of this Agreement with the incorporation proponents, the incorporation proponents have no authority to bind the City. In recognition of this absence of authority on the part of the incorporation proponents, this Agreement is being submitted to the electorate for approval as a part of the incorporation ballot measure.

G. This Agreement is entered into by the parties in recognition of the various uncertainties relating to the application of Government Code §56845 in the context of individual incorporation proposals. The proponents of the City's incorporation have objected generally to any revenue neutrality payments, and specifically to any concept of sharing a fixed percentage of the City's revenue or having the any payment obligation extend beyond a period of ten (10) years. The County, on the other hand, has taken the position that the annual revenue payment obligation should continue indefinitely and should reflect the percentage of revenue currently collected from within the boundaries of the proposed City that is used to provide municipal services within the City. This

Agreement represents a compromise between those competing positions and is intended to resolve all issues between the City and the County with respect to the application of the requirements of Government Code §56845 to the incorporation of the City. In specific reliance on this Agreement, the County has elected not to challenge LAFCO's approval of the incorporation proposal, or the sufficiency of the environmental documentation certified by LAFCO in connection with such approval, or to seek to fully mitigate the fiscal impact of the City's incorporation in the form of a larger share of the City's tax revenue for an indefinite period of time.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the City and the County agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.

2. **Sharing of Property Tax Revenue.**

(a) Beginning in fiscal year 2000-01 and continuing through fiscal year 2024-25, the City and the County shall share the City's portion of all secured and unsecured ad valorem property taxes levied and collected pursuant to state law within the City's corporate limits ("City property tax revenue") according to the percentages set forth in the following chart:

	Fiscal	County	City
Year	Year	Share	Share
1	2001	90%	10%
2	2002	90%	10%
3	2003	90%	10%
4	2004	90%	10%
5	2005	90%	10%
6	2006	85%	15%

7	2007	85%	15%
8	2008	85%	15%
9	2009	85%	15%
10	2010	85%	15%
11	2011	80%	20%
12	2012	80%	20%
13	2013	80%	20%
14	2014	80%	20%
15	2015	75%	25%
16	2016	75%	25%
17	2017	75%	25%
18	2018	75%	25%
19	2019	70%	30%
20	2020	60%	40%
21	2021	50%	50%
22	2022	40%	60%
23	2023	30%	70%
24	2024	20%	80%
25	2025	10%	90%

(b) All costs and expenses associated with the collection, administration and interest-earning capabilities of the City property tax revenue shall be shared by the City and the County in accordance with the same percentages as the underlying property taxes. The County's share of the City property tax revenue shall be allocated by the County's Director of Finance directly to the County.

3.- **Redevelopment Projects.** The City's property tax revenue shall not include any proportion of the percentage share of tax increment revenue from the project area which the City may be entitled to receive pursuant to Health and Safety Code Section 33607.5(a)(2) or any amount the City may receive pursuant to Health and Safety Code Section 33670(a).

4. **Transient Occupancy Tax Revenue.** In addition to the City property tax revenue allocated to the County pursuant to Section 2 above, the County shall receive,

beginning July 1, 2000, and continuing through June 30, 2025, all transient occupancy tax revenue collected within the City from businesses that were, as of July 1, 1998, required to collect and pay to the County, transient occupancy tax on business operations within the City. The County's share of the City's transient occupancy tax revenue shall be remitted to City on a quarterly basis. Such quarters shall commence on July 1, October 1, January 1 and April 1 of each fiscal year. The County's share of the City's transient occupancy taxes shall be disbursed to the County within forty-five (45) days of the end of each quarter.

5. **Modification of Tax Sharing Provisions.** The tax sharing provisions set forth in this Agreement 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 in this Agreement 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 Local Government Reorganization Act of 1985 (Health & Safety Code §§56000, *et seq.*) as it existed in May 18, 1999, is modified.

6. Procedure For Modifying Tax Sharing Provisions.

a) If either party believes that one of the triggering factors set forth in Section 5 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.

b) 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.

c) **Mediation Period.** 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.

d) 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 to implement the process of resolution of the dispute by general reference under Code of Civil Procedure §638. This agreement by the parties shall constitute and be construed to be an agreement 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.

e) 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.
- f) 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.

g) 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.

7. **Annexations.** Any taxes generated by land or other property added to the City, by virtue of any annexation or other change of organization governed by the procedures set forth in Government Code Section 56000 *et seq.*, or any successor statute, shall not be subject to this Agreement.

8. - **Invalidity of Agreement.** The City's tax sharing obligation is set forth both in this Agreement and in the terms and conditions of the City's incorporation adopted by LAFCO. If this Agreement is invalidated or otherwise rendered unenforceable in whole or in part, such invalidity or unenforceability shall not in any manner affect the validity or enforceability of the terms and conditions imposed by LAFCO in connection with its approval of the City's incorporation proposal.- The City shall continue to be subject to the tax sharing requirements imposed by LAFCO as part of the terms and conditions of the

City's incorporation; however, under no circumstances shall this Tax Sharing Agreement be construed to be a different or separate obligation from that set forth in the LAFCO conditions found in Sacramento LAFCO Resolution 1207.

9. **Term.** Subject to the approval of the Board of Supervisors and the approval of electorate of the City as part of the incorporation proposal, this Agreement shall become effective upon the effective date of the City's incorporation and shall remain in effect until all obligations hereunder have been satisfied. The Agreement shall be executed on behalf of the City by its Mayor immediately upon the City's incorporation becoming effective.

10. **Amendments.** This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties hereto. The Board of Supervisors shall have the authority to approve amendments to this Agreement on behalf of County. The City Council shall have the authority to approve amendments on behalf of the City.

11. **Entire Agreement.** This Agreement together with the revenue neutrality conditions found in Sacramento LAFCO resolution 1207, constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

12. **Notices.** Any notice, demand, request, consent, or approval that either party hereto may, or is required to, give the other shall be in writing and shall be deemed to have been received three (3) days after being deposited in the United States mail, first class

postage prepaid and addressed to the County Executive, if directed at the County, or to the City Manager, if directed to the City. Either party hereto shall have the right to serve any notice by personal delivery, and change the address at which it will receive such communications by giving fifteen (15) days advance notice to the other party.

Dated: 6-16-99

Pursuant to City of Elk Grove Resolution 2000-17 the City of Elk Grove hereby agrees to the tax sharing obligation set forth in section 9.p. of Sacramento Local Agency Formation Commission Resolution LAFC 1207

COUNTY OF SACRAMENTO, a political subdivision of the State of California

By Muriel T. Johnson
Chairperson, Board of Supervisors

CITY OF ELK GROVE,
a municipal corporation

Dated: July 1, 2000

By Jim Clever
Mayor, City of Elk Grove

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