



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** March 26, 2013
From: Frank Robinson, Town Manager **Item No:** 5
Town Manager's Office
Subject: RATIFY EXISTING AGREEMENT FOR SETTLEMENT OF PROPERTY
TAX ADMINISTRATION FEE PER DIRECTION OF THE APPLE
VALLEY TOWN COUNCIL

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council ratify the existing agreement for settlement of property tax administration fee.

SUMMARY:

At the Town Council Meeting of March 12, 2013, the Town Council during Closed Session discussions took action regarding an agreement between the County of San Bernardino and the Town of Apple Valley. This agreement pertains to the Property Tax Administration Fee charged to the Town of Apple Valley for services rendered.

The Town Council authorized the Town Manager to sign an agreement on behalf of the Town Council approving a voluntary compliance agreement on this subject matter. The agreement has been signed by the Town Manager and forwarded to the County of San Bernardino for execution. Staff recommends that the Town Council ratify this action by affirmative vote.

**PROPERTY TAX ADMINISTRATION FEE
RELEASE AND SETTLEMENT AGREEMENT**

This Release and Settlement Agreement (“Agreement”) is made by and between the County of San Bernardino (“County”) and Town of Apple Valley [insert name of city or town] (“City”), (individually “Party” or collectively the “Parties”).

This Agreement shall be effective at the time that the last party to this Agreement executes same and provides proof of that signing to the Parties to this Agreement (the “Effective Date”).

I. RECITALS

A. A dispute arose between the County and the City regarding the amount of property tax administration fees (“PTAF”) charged to City by the County and County officers, beginning in fiscal year 2006-07, pursuant to various provisions of the Revenue and Taxation Code. The City contended that the County charged more for PTAF than the statutory mandate allows, whereas the County contended that it charged PTAF within its statutory authority (the “PTAF Dispute”).

B. This same dispute exists on a statewide level between other California counties and many cities located within those counties’ territory as well as between the County and other cities located in this County.

C. On November 19, 2012, the California Supreme Court issued a decision in *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707 resolving the PTAF Dispute. In the decision, the court held that the method used by counties to calculate PTAF is improper. As a result, the County has implemented the *City of Alhambra* decision

for the current (2012-13) and future fiscal years, for the calculation of PTAF.

D. In accordance with the Supreme Court decision, the *City of Alhambra* case is currently on remand (Los Angeles Superior Court Case No. S185457) to the trial court. The County expects that during the remand proceedings, the Superior Court will resolve the following issues: (i) the extent of the retroactive application of the *City of Alhambra* decision; (ii) the applicable Statute of Limitations; (iii) the interest rate, if any, due on any refunds, and; (iv) whether refunds for past years are subject to various claims-filing requirements (“PTAF Issues”). The Parties acknowledge that resolution of these remaining PTAF Issues through the court system could take many years. Any and all liability and damages resulting from these remaining PTAF Issues, and any and all amounts owed by the County to the City pursuant to the *City of Alhambra* decision for fiscal years 2006-07 through 2011-12, are referred to herein as “County PTAF Liability”.

E. The Parties desire to avoid the additional expense, delay and uncertainty that would result from the continuing litigation over the PTAF Issues and have agreed to settle amicably said dispute and any underlying claims and litigation between them including the County PTAF Liability, rather than engage in protracted and costly litigation.

II. SETTLEMENT TERMS

A. SETTLEMENT PAYMENT. The County, in consideration of the performance of this Agreement by City, shall pay to City and City accepts the total sum of \$ 571,635.77 (the “Settlement Amount”) in full satisfaction of the County PTAF Liability and full resolution of the PTAF Dispute, as set forth in Exhibit “A”. The Settlement Amount shall be paid by County to City within thirty (30) calendar days after the Effective Date, except that if City has filed a lawsuit against the County then payment

will be made within thirty (30) calendar days after the Dismissal Date, as defined in subparagraph B., below. The payment shall be made by warrant or electronic funds transfer, in accordance with existing payment protocols between County and City. If the City wants to change existing payment protocols with the County then the City shall timely provide to County such information as may be necessary for the remittance of this payment, no later than ten (10) calendar days after the Effective Date.

B. DISMISSAL OF CLAIM AND LAWSUIT, IF ANY. (i) On the Effective Date of this Agreement, if City has filed any claim with the County pertaining to the PTAF Dispute or the County PTAF Liability, such claim shall be deemed settled and released in accordance with this Agreement. (ii) Within fifteen (15) calendar days of the Effective Date of this Agreement, if City has filed any lawsuit pertaining to the PTAF Dispute or the County PTAF Liability, City shall take all necessary steps to dismiss the lawsuit with prejudice, and shall provide to County a file-stamped copy of such dismissal. The date of the County's receipt of the City's proof of dismissal shall be the "Dismissal Date".

C. MUTUAL RELEASES. Each and every Party to this Agreement, on behalf of that Party, and its representatives, trustees, predecessors, successors, assigns, affiliates, subrogors, subrogees, assignees, assignors, subsidiaries, agents, employees, servants, officers, elected official, directors and attorneys ("Releasers") release every other Party to this Agreement and every other Parties' representatives, trustees, predecessors, successors, assigns, affiliates, subrogors, subrogees, assignees, assignors, subsidiaries, agents, employees, servants, officers, elected officials, directors and attorneys ("Releasees") from any and all disputes, damages, actions, causes of action, suits, rights, demands, controversies, entitlement to equitable relief, liabilities, fees, costs, interest and

any other claims, of any nature whatsoever, known or unknown, suspected or unsuspected, whether in tort or in contract or statutory or under any other theory, arising out of, in connection with or relating in any way to the PTAF Dispute and/or the County PTAF Liability.

D. RELEASE OF UNKNOWN CLAIMS / WAIVER OF CIVIL CODE SECTION 1542. Each Party to this Agreement expressly, voluntarily and knowingly waives and relinquishes all rights arising out of, in connection with or relating in any way to the PTAF Dispute or the County PTAF Liability to which it or its Releasors would be entitled now or at any time hereafter under section 1542 of the Civil Code, as against the other Parties to this Agreement and their Releasees, and does so understanding and acknowledging the significance of such specific waiver. Section 1542 of the Civil Code provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Initials



Initials

E. ATTORNEYS' FEES AND COSTS. The Parties to this Agreement will each bear their own attorneys' fees and other costs and expenses arising in any way from the PTAF Dispute and/or the County PTAF Liability. To the extent that any Party seeks to enforce this Agreement and a court finds that the position taken by the opposing Party was "without substantial justification," then attorneys' fees for enforcement of the Agreement shall be allowable.

F. COMPROMISE. This Agreement is the result of a compromise and settlement of disputed claims, and nothing set forth in it shall be deemed or construed as an admission of any liability by any of the Parties to any of the other Parties or the Releasees.

G. MUTUAL DRAFTING. The Parties, having mutually drafted this Agreement, agree that no Party to the Agreement will be deemed to have been the primary author of this Agreement or any portion of it. The Parties therefore agree that section 1654 of the Civil Code, and other legal principles or laws that call for the construction of ambiguous or uncertain terms against the drafting party shall not apply or be invoked for any purpose whatsoever.

H. NO ASSIGNMENT. The Parties have not assigned any of the claims, demands, or causes of action that are released and discharged under this Agreement.

I. COUNTERPARTS. This Agreement may be executed in several counterparts and by fax copies and, as so executed, will constitute one agreement, binding on the Parties to this Agreement, notwithstanding that such Parties are not signatories to the original or the same counterparts.

J. WARRANTIES OF COMPREHENSION, CONSENT AND AUTHORITY. Each person executing this Agreement warrants that he or she comprehends the terms of this Agreement, and further warrants that he or she is executing this Agreement freely on the advice of the undersigned counsel and that, if signing on behalf of an entity, he or she has the right and authority to execute the Agreement on that entity's behalf.

K. INTEGRATED AGREEMENT. This Agreement is the final expression of the Parties' agreement with respect to the settlement of the PTAF Dispute and the County

PTAF Liability and supersedes all prior written or oral communications between the Parties. The Parties cannot amend, alter, modify, or otherwise change this Agreement, except by a writing executed by all Parties hereto and expressly stating that it is an amendment to this Agreement. The Parties will make no claim, and waive any right they now have or may have, based upon any alleged oral alteration, oral amendment, or oral modification, except as set forth expressly in a written amendment executed as provided in this paragraph.

L. SEVERABILITY. If any provision of the Agreement is held invalid, the remainder of the Agreement shall nevertheless remain in full force and effect in all other circumstances, so long as the essential purpose of the Agreement can still be achieved by both sides to the settlement embodied in this Agreement.

M. BREACH. The Parties agree that this Agreement shall be deemed breached and a cause of action accrued thereon immediately upon the commencement by any Party of any action or proceeding contrary to the terms of this Agreement. In any such action or proceeding this Agreement may be pleaded as a defense, or may be asserted by way of counter-claim or cross-complaint.

N. MISTAKE. The Parties fully understand and declare that if the facts under which this Agreement is executed are found hereafter to be different from the facts now believed by them to be true they assume the risk of such possible differences in facts and hereby agree that this Agreement shall be, and will remain, effective, notwithstanding such differences in facts.

O. INCORPORATION OF RECITALS. The Recitals to this Agreement, stated above, are hereby incorporated herein and made a part hereof.

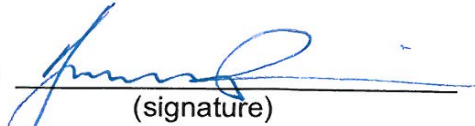
IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates shown below.

DATED: _____

CITY OF Town of Apple Valley
(name of City or Town)

APPROVED AS TO FORM:

City Attorney

By: 
(signature)

Frank W. Robinson
(type or print name)

Its: Town Manager
(type or print title)

DATED: _____

COUNTY OF SAN BERNARDINO

By: _____
Gregory C. Devereaux
Chief Executive Officer

APPROVED AS TO FORM
JEAN RENE BASLE
COUNTY COUNSEL

By: _____
Kevin L. Norris
Deputy County Counsel

Doc # 2A777985

EXHIBIT "A"

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PTAF RELEASE AND SETTLEMENT AGREEMENT

**Property Tax Administrative Fee for
Fiscal Years 2006-07 through 2011-12**

Entity: TOWN OF APPLE VALLEY

Tolling Agreement: Yes

Amounts:

Fiscal Year 2006-07	\$59,715.89
Fiscal Year 2007-08	\$115,894.11
Fiscal Year 2008-09	\$104,641.68
Fiscal Year 2009-10	\$107,007.17
Fiscal Year 2010-11	\$92,422.01
Fiscal Year 2011-12	\$91,954.91
Total	\$571,635.77