

1 **SUPPLEMENTAL SETTLEMENT AGREEMENT**
2 **ELIMINATING FEBRUARY 11, 1999 CRIMINAL**
3 **JUSTICE ADMINISTRATIVE FEE INCREASE**

4 This Supplemental Settlement Agreement (hereinafter referred to as
5 "Agreement") is entered into between the COUNTY OF SAN BERNARDINO, for itself,
6 its employees, servants, representatives, officers, officials, agents and departments
7 (hereinafter referred to as "COUNTY") and the CITY OF REDLANDS
8 (hereinafter referred to as "CITY"). COUNTY and CITY are collectively referred to
9 herein as the "Parties".

10 CITY and COUNTY have previously entered into a Settlement Agreement
11 concerning payment of booking and processing fees (criminal justice administrative
12 fees pursuant to California Government Code section 29550) that was incorporated as
13 part of the judgment entered by the Sacramento County Superior Court in City of
14 Adelanto, et al. v. County of San Bernardino, Judicial Council Coordination Proceeding
15 No. 2584.

16 On January 26, 1999 the Board of Supervisors for the County of San Bernardino
17 passed and adopted a resolution to waive and eliminate the criminal justice
18 administrative fee Consumer Price Index increase scheduled to otherwise automatically
19 take effect on February 11, 1999, for all cities and towns which have previously entered
20 into a booking fee settlement agreement with the County that was incorporated as part
21 of the judgment in the above-referenced case, and which also enter into a supplemental
22 settlement agreement with the County, in which they each agree to allocate to local law
23 enforcement programs the entire amount of their savings derived from the fee
24 reduction, and to use this sum exclusively for law enforcement purposes within the
25 County of San Bernardino.

26 CITY now represents that it shall allocate to local law enforcement programs the
27 entire amount of its savings derived from the above-described fee reduction, and shall
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1 use this sum exclusively for law enforcement purposes within the County of San
2 Bernardino.

3 Therefore, COUNTY and CITY agree to the following terms and conditions:

4 1. COUNTY, in consideration of the performance of all terms of this
5 Agreement by CITY, agrees to waive in full the 1999 Consumer Price Index increase
6 referred to in section 3.c. of the Settlement Agreement between the Parties concerning
7 payment of booking and processing fees (criminal justice administrative fees pursuant
8 to California Government Code section 29550) that was incorporated as part of the
9 judgment entered by the Sacramento County Superior Court in City of Adelanto, et al.
10 v. County of San Bernardino, Judicial Council Coordination Proceeding No. 2584, that
11 would otherwise automatically take effect on February 11, 1999, provided that CITY
12 executes this Agreement prior to April 1, 1999.

13 2. In the event that CITY executes this Agreement on or after April 1, 1999,
14 COUNTY, in consideration of the performance of all terms of this Agreement by CITY,
15 agrees to waive the 1999 Consumer Price Index increase referred to in section 3.c. of
16 the Settlement Agreement between the Parties concerning payment of booking and
17 processing fees (criminal justice administrative fees pursuant to California Government
18 Code section 29550) that was incorporated as part of the judgment entered by the
19 Sacramento County Superior Court in City of Adelanto, et al. v. County of San
20 Bernardino, Judicial Council Coordination Proceeding No. 2584, that would otherwise
21 automatically take effect on February 11, 1999, with such waiver beginning and
22 effective in the month that CITY signs this Agreement.

23 3. CITY, in consideration of COUNTY agreeing to waive the 1999 Consumer
24 Price Index increase referred to in section 3.c. of the Settlement Agreement between
25 the Parties concerning payment of booking and processing fees (criminal justice
26 administrative fees pursuant to California Government Code section 29550) that was
27 incorporated as part of the judgment entered by the Sacramento County Superior Court
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1 in City of Adelanto, et al. v. County of San Bernardino, Judicial Council Coordination
2 Proceeding No. 2584, that would otherwise automatically take effect on February 11,
3 1999, agrees to allocate to local law enforcement programs the entire amount of its
4 savings derived from the above-described fee reduction, and to use this sum
5 exclusively for law enforcement purposes within the County of San Bernardino.

6 4. The Parties agree that this Agreement shall be deemed breached and a
7 cause of action accrued thereon immediately upon the commencement by either party
8 of any action or proceeding contrary to the terms of this Agreement.

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

14 6. The Parties further agree that this Agreement shall be binding upon the
15 Parties, their employees, agents, heirs, representatives, successors, assigns, officers,
16 officials, agents, and departments, and that the benefits contained in this Agreement
17 shall inure to the benefit of the Parties hereto, their employees, agents, heirs,
18 representatives, successors, assigns, officers, officials, agents, and departments.

19 7. The Parties hereto certify they have not received any representations,
20 promises, or inducements from any of the Parties hereto or from their representatives
21 other than those expressed in this Agreement. The Parties further certify that they are
22 entering into this Agreement in reliance upon their knowledge and understanding of the
23 facts, the legal implications thereof, and the liability therefore as per the advice and
24 legal counsel of their attorneys. The Parties understand and agree that this Agreement
25 is intended only to supplement the Settlement Agreement reached by the Parties with
26 respect to all matters contained therein, and entered as part of the judgment, by the
27 Hon. James T. Ford in City of Adelanto, et al. v. County of San Bernardino, Judicial
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1 Council Coordination Proceeding No. 2584. The Parties hereby affirm their
2 understanding of the terms of that Settlement Agreement as well as this Agreement,
3 and understand and agree that they are still bound by all terms of the Settlement
4 Agreement and the judgment in City of Adelanto, et al. v. County of San Bernardino,
5 Judicial Council Coordination Proceeding No. 2584, that are not expressly modified by
6 this Agreement. The Parties agree that this Agreement is a binding contract and not
7 merely a recital. The Parties further understand and agree that this Agreement may not
8 be altered, amended, modified, or otherwise changed in any respect or particular
9 whatsoever, except in writing duly executed by both Parties or their authorized
10 representatives.

11 8. COUNTY has counseled with and has been advised by Dennis Tilton,
12 Deputy County Counsel, who is an admitted member of the California State Bar, with
13 regard to this Agreement and the existing dispute, and executes this Agreement,
14 representing to CITY that there has been an opportunity for full discussion and advice
15 of counsel and that the legal effects of this Agreement have been explained to
16 COUNTY by its counsel. CITY represents to COUNTY that there has been an
17 opportunity for full discussion and advice of counsel and that the legal effects of this
18 Agreement have been explained to CITY by its counsel.

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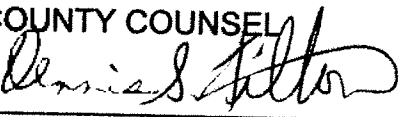
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IN WITNESS WHEREOF, the parties sign this agreement on the
respective dates indicated below.

Approved as to form:

Dated: March 24, 1999

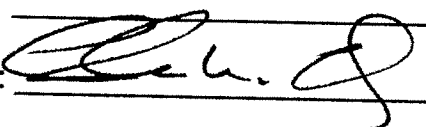
ALAN K. MARKS
COUNTY COUNSEL

By: 

DENNIS TILTON
Deputy County Counsel
Attorneys for COUNTY OF SAN BERNARDINO

Approved as to form:

Dated: 3/30/99

By: 

Attorneys for CITY OF _____

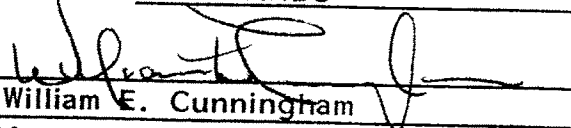
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COUNTY OF SAN BERNARDINO

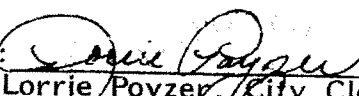
By: 
JON MIKELS
Chairman, Board or Supervisors

Dated: March 16, 1999

CITY OF REDLANDS

By: 
William E. Cunningham
Mayor

ATTEST:

By: 
Lorrie Poyzer, City Clerk

BRUNICK, ALVAREZ & BATTERSBY

PROFESSIONAL LAW CORPORATION

1839 COMMERCENTER WEST

POST OFFICE BOX 6425

SAN BERNARDINO, CALIFORNIA 92412

AREA CODE 909

TELEPHONE: 889-8301

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215 CAJON STREET
P. O. BOX 1320
REDLANDS, CALIFORNIA 92373
TELEPHONE (909) 793-0818

RECEIVED
PLEASE REFER TO

March 5, 1999

MAR 3 1999

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

CITY ATTORNEY

TO: ALL CITIES IN THE COUNTY OF SAN BERNARDINO

FROM: BRUNICK, ALVAREZ & BATTERSBY
William J. Brunick
Steven M. Kennedy

RE: City of Adelanto, et al. v. County of San Bernardino
Case No. 262309
City of Victorville, et al. v. County of San Bernardino
Case No. 262162
City of Adelanto, et al. v. County of San Bernardino
Case No. SCV 18697

Ladies and Gentlemen:

The purpose of this memorandum is to update all cities on the status of the above-referenced matters.

Booking Fees in San Bernardino County

As you will remember, on or about July 31, 1990, Senate Bill 2557 was signed by the Governor of the State of California as a non-urgency measure. Senate Bill 2557 was subsequently codified as California Government Code Section 29550, and became effective January 1, 1991.

Pursuant to Government Code Section 29550, counties were authorized to retroactively charge cities and other entities for expenses incurred after July 1, 1990, in connection with the booking or other processing of persons arrested by employees of the cities and other entities. Government Code Section 29550 requires that the amount of the fee not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, incurred in booking or otherwise processing those arrested persons.

Pursuant to the authority purportedly granted by Section 29550 of the Government Code, on or about January 14, 1991, the County of San Bernardino adopted Ordinance No. 3428, to be effective on or about February 13, 1991.

The County calculated that its booking and processing costs for FY 1990-91 were \$10,416,808. The estimated number of bookings in the County is 84,760 based on FY 1989-90 bookings. As a result, the booking fee adopted by the County pursuant to Ordinance No. 3428 is \$122.90 per booking.

On or about February 13, 1990, the County began billing the cities in San Bernardino County ("the Cities") retroactive booking fees.

The Cities thereafter sent notices of dispute regarding such payment pursuant to the provisions of Government Code Section 907. However, on or about April 9, 1991, the County unilaterally began withholding the disputed criminal justice administrative fees from certain funds which were due and owing to the Cities.

On May 14, 1991, the San Bernardino Superior Court issued a temporary restraining order, and on May 28, 1991, issued a preliminary injunction, prohibiting the County from conducting any further offsets from any sums which may be due and owing to the Cities. On or about October 17, 1991, this case was included in the Coordinated Proceeding in Sacramento challenging booking fees.

Coordinated Proceeding

You will recall that, following a hearing on or about March 27, 1992, the Coordination Court found that Government Code Section 29550 as it pertains to booking fees is valid and constitutional. However, following a hearing on or about July 10, 1992, the Coordination Court held that the Cities with pre-existing law enforcement agreements with the County ("the Contract Cities") were excluded from the operation of Government Code Section 29550. On or about September 11, 1992, the Coordination Court denied the County's motion for reconsideration of its ruling exempting the Contract Cities from the payment of any booking fees.

Thereafter, in its Order After Hearing dated March 5, 1993, the Coordination Court ordered that the issues on the scope and the amount of the booking fee be bifurcated for factual determinations. The first phase will examine the method or formula for the booking and other processing fee. The second phase, as necessary, will examine the formula as applied to the specific counties.

On June 15, 1993, the Coordination Court issued an Order providing that the issues which will be determined in Phase I of the trial are (1) what is included in booking and processing and (2) how the fee is calculated.

Trial on the first phase was held on May 23 and 24, 1994. The parties that were present were the cities and county in San Bernardino and Ventura. The following is a summary of the Coordination Court's rulings with respect to the above aspects of Phase I.

Activities

In its Order After Hearing filed April 2, 1992, the Coordination Court had established the time frame within which the booking process occurs:

"... from the time an arrested person is brought to a county detention facility through assessment to assignment to the detention facility population or release whichever occurs first."

The counties essentially contended at trial that everything that occurs during this time period should be a cost that may be included in the booking fee. The cities took a more narrow approach and identified a limited number of activities that should be deemed part of the booking process.

The Coordination Court confirmed the above time frame as setting forth the appropriate parameters during which booking takes place, but rejected the counties' argument that all activities that take place during that time period should be included in the booking fee. While the court allowed the counties to include many of the activities it sought to include, several other activities were expressly excluded in the calculation of the booking fee, including:

1. Food;
2. Bedding;
3. Chemical testing;
4. Providing public information;
5. Aviation;
6. The determination of arrestee work assignments and assignment to other details;
7. Travel unrelated to the booking process;
8. Temporary housing;

9. Construction costs;
10. Operating expenses;
11. The return of inventoried property occurring after placement in the detention facility population;
12. Medical costs (except of minor incidental in-custody treatment) and
13. All activities outside the scope of booking and other processing as previously defined by the court; that is, those which occur before arrival at the detention facility and after initial placement in the detention facility population or release.

County Counsel for Ventura County was ordered to prepare the formal judgment and circulate it to all parties for approval prior to filing with the court. Several drafts of that judgment were prepared, but we believed that none of them accurately reflected the court's rulings. As a result of this impasse, County Counsel for Ventura County submitted a proposed judgment to the court on behalf of the counties, and our office submitted a proposed judgment to the court on behalf of the cities. On August 18, 1994, Judge Ford signed our proposed order.

Calculation Methodology

The cities argued that the counties did not apply the appropriate methodology for calculating the booking fee for several reasons, including:

1. The methodology used to calculate the booking fee should be the "Specific Method" rather than the "All-Inclusive Method;"
2. The booking fee should not include any duplication of costs which have already been paid in connection with the financing of the construction of the jails;
3. The methodology used to calculate the booking fee should not include expenses for inmates;
4. The booking fee should not include any costs for services for which the cities are already contributing revenues;
5. The booking fee should not include interest or overhead;

6. The booking fee should include adjustments and abatements for grants, payments, reimbursements, and subventions; and
7. The counties must transfer appropriations limits to the cities.

Aside from ruling that inmate expenses should not be included in the booking fee, the court found the methodology issue too confusing and decided to refer it to a special master for determination and recommendation. On June 24, 1994, the court appointed William V. Brennan of the Office of the State Controller to serve as the referee. A meeting with Mr. Brennan was held on August 3, 1994, in Sacramento to discuss the manner in which the hearing will be held.

Thereafter, a hearing before the referee on the methodology issues relating to the calculation of the original booking fee was held on December 15 and 16, 1994, in Simi Valley. At the conclusion of the hearing, the referee took the matter under submission.

Although the Coordination Court issued an order on April 29, 1997, directing the referee to prepare and file a written report containing his findings and recommendations within twenty (20) days of the date thereof, we still have not yet received a ruling from the referee on the methodology issues relating to the calculation of the original booking fee.

Upon receipt of the referee's recommendation, a hearing will be held before Judge Ford on whether to accept the referee's report. Thereafter, once we receive an order from Judge Ford on methodology, Phase I of the litigation will be complete and trial on the Phase II issues involving the application of the Coordination Court's Phase I orders to each of the remaining counties in the litigation will be scheduled.

Challenge to the Increased Fee

However, in November of 1994, the County advised the Cities that the Board of Supervisors will consider the adoption of a new booking fee in the amount of \$168.20 in December of 1994. The purported reason that the proposed fee is higher is because of adjustments associated with the reopening of the Central Detention Center and updating indirect costs to reflect actual costs from fiscal year 1993-1994. Thus, the County estimates total booking and processing costs of \$12,050,720 and the total number of bookings to be 71,649.

Over objection filed on behalf of the Cities, the County approved an increase in the amount of the booking fee from \$122.90 to \$168.20 effective February 9, 1995.

Pursuant to the instructions given to our office at the City Managers' meeting on January 12, 1995, this office filed a separate action on behalf of the Cities against the County challenging its increase in the amount of the booking fee from \$122.90 to \$168.20.

On or about April 26, 1996, Judge Ford issued an order which included this new case in the Coordinated Proceeding. The County has since filed an Answer to the Cities' action and, on or about February 26, 1998, served this office with a Cross-Complaint against the Cities of Adelanto and Needles. We have entered into a stipulation with the County wherein the parties have agreed that the Answer previously filed by the Cities in the initial litigation will also apply to the Cross-Complaint in this case as well.

Settlement

Beginning in and around July of 1995, a proposed Settlement Agreement with the County was circulated to the Cities. All of the Cities except for Needles have now signed the Settlement Agreement. The terms of the Settlement Agreement have been approved by Judge Ford, and Judgment has been entered into the Coordination Court's records pursuant to the terms thereof as between the County and all of the Cities except Needles.

Under the Settlement Agreement, the fee for bookings occurring from July 1, 1990, through February 9, 1995, was established at \$104.90 per booking. However, for the Contract Cities, the fee was set at \$61.45 for bookings occurring from July 1, 1990, through December 31, 1993, and \$122.90 for bookings occurring from January 1, 1994, through February 9, 1995. The Settlement Agreement further provides that the fee for bookings occurring from February 10, 1995, through February 10, 1996, shall be \$152.00, and that the booking fee for each successive 12-month period until 2001 shall be the prior year's fee plus inflation as calculated in the 1996 edition of the Consumer Price Index for All Urban Consumers for the Los Angeles/Anaheim/Riverside area ("CPI"). Thereafter, the amount of the fee shall be the actual cost incurred by the County in performing the booking activities allowed by the Coordination Court.

However, at the request of the Cities, the County has agreed to waive the CPI increase scheduled for February 11, 1999, if the Cities participating in the Settlement Agreement agree to allocate the savings derived therefrom to local law enforcement programs. This offer has been formalized in the "Supplemental Settlement Agreement Eliminating February 11, 1999 Criminal Justice Administrative Fee Increase" enclosed herewith.

San Bernardino County Cities
March 5, 1999
Page Seven

*Sent to Mayor
3-17-99*

If the enclosed document meets with the Cities' approval, please arrange for two (2) originals thereof to be signed by each City prior to April 1, 1999, and forward both executed originals directly to Dennis S. Tilton, Deputy County Counsel for the County of San Bernardino, at the County administrative offices located at 285 N. Arrowhead Avenue, Fourth Floor, San Bernardino, California 92415-0140.

Please also be advised that under the Settlement Agreement, the County is required to furnish the Cities with adequate documentation to support its calculation of the fee. Therefore, if a city that is a party to the Settlement Agreement disputes the amount of the increase, that city may file a "written challenge" with the County pursuant to Section 4 of the Settlement Agreement.

However, since the City of Needles has not yet signed the underlying Settlement Agreement, it should continue to send timely protest letters to the County and to set aside reserves to pay for such fees at such time that it becomes necessary to do so. It is also requested that these cities contact us immediately to discuss the manner in which this office should proceed on their behalf with respect to these matters.

Lastly, we wish to express our sincere gratitude and appreciation to all of the Cities for granting us the opportunity to represent you throughout the course of this litigation.

If you have any questions or comments regarding the above, please feel free to contact us at your earliest convenience.

Enclosure