

Appendix E

MODEL RESOLUTION BY CITY COUNCIL

**A RESOLUTION AUTHORIZING WITHDRAWAL AND ACCEPTANCE OF
TOBACCO SETTLEMENT MONIES PURSUANT TO THE
MEMORANDUM OF UNDERSTANDING**

WHEREAS the Attorney General of the State of California and representatives of a number of California Counties and Cities entered into a Memorandum of Understanding (“MOU”), which allocates a portion of settlement proceeds stemming from litigation against various manufacturers of tobacco products;

WHEREAS the City of _____ (hereinafter “the City”) wishes to receive its allocated share of settlement proceeds as provided for and set forth in the MOU;

WHEREAS the City has obtained any necessary approval to participate in the settlement under the terms and conditions memorialized in the MOU; and

WHEREAS the City has, in consideration for receiving its portion of the settlement proceeds as allocated to Cities and Counties in the MOU, executed the Agreement Regarding Interpretation of MOU and the Release, approved by the J.C.C.P. 4041 Court;

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby authorize the acceptance and deposit of the City’s portion of the settlement proceeds as allocated to Cities and Counties in the MOU.

BE IT FURTHER RESOLVED, that the City Council does hereby authorize the verification by the Office of the Attorney General of all banking information provided to effectuate the acceptance of the settlement proceeds.

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BE IT FURTHER RESOLVED, that the following officers or their successors in office shall be authorized to direct the transfer of the City's settlement funds on behalf the City:

_____	_____	_____
(NAME)	(NAME)	(NAME)
_____	_____	_____
(TITLE)	(TITLE)	(TITLE)
_____	_____	_____
(SIGNATURE)	(SIGNATURE)	(SIGNATURE)

BE IT FURTHER RESOLVED, that all notices from the Office of the Attorney General to the City regarding tobacco settlement funds shall be sent to following person/agency:

Name of Person/Agency: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

PASSED AND ADOPTED, by the City Council of the City of _____,
County of _____, State of California, this ____ day of _____, ____.

Appendix E

MODEL RESOLUTION BY COUNTY BOARD OF SUPERVISORS

**A RESOLUTION AUTHORIZING WITHDRAWAL AND ACCEPTANCE OF
TOBACCO SETTLEMENT MONIES PURSUANT TO THE
MEMORANDUM OF UNDERSTANDING**

WHEREAS the Attorney General of the State of California and representatives of a number of California Counties and Cities entered into a Memorandum of Understanding (“MOU”), which allocates a portion of settlement proceeds stemming from the litigation against various manufacturers of tobacco products;

WHEREAS the County of _____ (hereinafter “the County”) wishes to receive its allocated share of settlement proceeds as provided for and set forth in the MOU;

WHEREAS the County has obtained any necessary approval to participate in the settlement under the terms and conditions memorialized in the MOU; and

WHEREAS in consideration for receiving its portion of the settlement proceeds as allocated to Cities and Counties in the MOU, the County has executed the Agreement Regarding Interpretation of MOU and the Release, approved by the J.C.C.P. 4041 Court;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors does hereby authorize the acceptance and deposit of the County’s portion of the settlement proceeds as allocated to Cities and Counties in the MOU.

BE IT FURTHER RESOLVED, that the Board of Supervisors does hereby authorize the verification by the Office of the Attorney General of all banking information provided to effectuate the acceptance of the settlement proceeds.

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BE IT FURTHER RESOLVED, that the following officers or their successors in office shall be authorized to direct the transfer of the County's settlement funds on behalf the County:

_____	_____	_____
(NAME)	(NAME)	(NAME)
_____	_____	_____
(TITLE)	(TITLE)	(TITLE)
_____	_____	_____
(SIGNATURE)	(SIGNATURE)	(SIGNATURE)

BE IT FURTHER RESOLVED, that all notices from the Office of the Attorney General to the County regarding tobacco settlement funds shall be sent to following person/agency:

Name of Person/Agency: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

PASSED AND ADOPTED, by the Board of Supervisors of the County of _____, State of California, this ____ day of _____, _____.

Appendix F
Transfer Instructions

CALIFORNIA ACCOUNT - TOBACCO SETTLEMENT FUND
Wiring Instructions Information Form

Please complete this form and mail to the Office of the Attorney General, Tobacco Litigation Section, P.O. BOX 944255, Sacramento, CA 94244-2550

CITY/COUNTY NAME

BANK ROUTING INFORMATION

Bank Name : _____

Bank ABA Routing #: _____

Bank Account #: _____

Bank Account Name: _____

Bank Address: _____

Bank Branch #: _____

Bank Telephone #: _____ **Bank Fax #:** _____

Bank Contact Person, Title, Telephone # and E-mail Address: _____

AUTHORIZED SIGNATURES

(Signatures of two of three designated city/county officers are required)

Typed or Printed Name

Typed or Printed Name

Signature

Signature

Date: _____

Date: _____

W-9

Request for Taxpayer Identification Number and Certification

<http://www.irs.gov/pub/irs-pdf/fw9.pdf?portlet=3>

(PDF, 4 pages, 268 KB)

Click, or copy and paste the link above into your internet web browser, in order to access the W-9 form (with instructions provided).

Appendix H

Address for Agreement Section 1.B.(9) Documents

- | | |
|-----------------------|---|
| One executed original | Model Release, |
| One executed original | Agreement Regarding Interpretation of Memorandum of Understanding, |
| One executed original | Authorization and Designation of City/County Designees |
| One executed original | Transfer Instructions, and |
| One executed original | Form W-9 |

Are to be sent to the State at the following address by each City and each County:

**Tobacco Litigation Section
Local Escrow Implementation
Office of the Attorney General
PO Box 944255
Sacramento CA 94244-2550**

APPENDIX "I"
(MODEL ESCROW INSTRUCTIONS)

At such time as all events and conditions set forth in Section 3.C of the National Escrow Agreement have been satisfied and the Escrow Agent is notified to release the escrow funds to the States, the Escrow Agent shall disburse all funds held in the "California Account"¹ as follows:

1. All funds allocated to the California Account shall be credited to the following governmental entities in the following percentages:

(a) 50% of the funds allocated to the California Account at the time of release shall be credited to the State of California ("hereinafter the "State").

(b) The remaining funds allocated to the California Account at the time of release shall be credited to the Cities and Counties in the MOU Proportional Allocable Shares indicated in the following chart:

<u>City/County</u>	<u>MOU Proportional Allocable Share</u>
County of Alameda	0.038684912
County of Alpine	0.000033659
County of Amador	0.000908437
County of Butte	0.005507657
County of Calaveras	0.000967681
County of Colusa	0.000492187

¹All terms herein have the same meaning as, and are defined the same as they are defined in the California State Escrow Agreement. All definitions contained in the California State Escrow Agreement are incorporated by reference herein in these instructions

County of Contra Costa	0.024306394
County of Del Norte	0.000709475
County of El Dorado	0.003810330
County of Fresno	0.020186175
County of Glenn	0.000749939
County of Humboldt	0.003602356
County of Imperial	0.003305532
County of Inyo	0.000552852
County of Kern	0.016435785
County of Kings	0.003068617
County of Lake	0.001531178
County of Lassen	0.000834616
County of Los Angeles	0.268039045
City of Los Angeles	0.025000000
County of Madera	0.002664010
County of Marin	0.006958543
County of Mariposa	0.000432520
County of Mendocino	0.002429787
County of Merced	0.005395248
County of Modoc	0.000292681
County of Mono	0.000301088
County of Monterey	0.010755839
County of Napa	0.003349746
County of Nevada	0.002374293
County of Orange	0.072899828
County of Placer	0.005225682
County of Plumas	0.000596945
County of Riverside	0.035395529
County of Sacramento	0.031488456

County of San Benito	0.001109788
County of San Bernardino	0.042894526
County of San Diego	0.075544785
City of San Diego	0.025000000
City and County of San Francisco	0.046893906
County of San Joaquin	0.014535111
County of San Luis Obispo	0.006567395
County of County of San Mateo	0.019645843
County of Santa Barbara	0.011177653
County of Santa Clara	0.045289595
City of San Jose	0.025000000
County of Santa Cruz	0.006947596
County of Shasta	0.004446650
County of Sierra	0.000100343
County of Siskiyou	0.001316461
County of Solano	0.010294983
County of Sonoma	0.011740576
County of Stanislaus	0.011205295
County of Sutter	0.001948033
County of Tehama	0.001500755
County of Trinity	0.000395050
County of Tulare	0.009433088
County of Tuolumne	0.001465402
County of Ventura	0.020232324
County of Yolo	0.004266892
County of Yuba	0.001760926

1.000000

2. The amounts credited to the State and to the Cities and Counties pursuant to Section 1 above shall be transferred by wire transfer as follows:

(a) The amount credited to the State shall be wire transferred to the "California State General Fund."

(b) If the State has notified the Escrow Agent that a City or County has attained the status of Eligible City and/or Eligible County, all amounts credited to such Eligible City and/or Eligible County shall be wire transferred to the accounts specified by such Eligible Cities and/or Eligible Counties in the "Transfer Instructions" submitted to the Escrow Agent pursuant to section ___ of the "California State Escrow Agreement" (modeled after section 1.B.(9)(d) of the "Agreement Regarding Interpretation of Memorandum of Understanding").

(c) If the State has not notified the Escrow Agent that a City or County has attained the status of Eligible City and/or Eligible County, all amounts credited to such City and/or County shall be transferred to the "City/County Account" established pursuant to section ___ of the "California State Escrow Agreement" (modeled after section 4.B.(2)(ii) of the "Agreement Regarding Interpretation of Memorandum of Understanding"), and held by the Escrow Agent (along with any earnings thereon), separate and apart from all other funds and accounts of the Escrow Agent, the State, the Eligible Cities, Eligible Counties and the Participating Manufacturers until the Escrow Agent receives further instructions pursuant to section ___ of the California State Escrow Agreement (modeled after section 4.B.(2)(ii) of the "Agreement Regarding Interpretation of Memorandum of Understanding").

Appendix J

Mathematical Example: State as Responsible Entity Offset Recouped in One Year

Assumptions: An annual payment of \$1,000 is due to be released to the California Account. However, an Original Participating Manufacturer claims an offset of \$100 against this payment, because of a judgment obtained by the State on a released claim. The California Account therefore receives a payment of only \$900. All Cities and Counties are Eligible Cities/Counties.

Instructions: Absent other instructions, the Escrow Agent would normally divide this amount by giving \$450 to the State and \$450 to the Cities and Counties. However, pursuant to section 4.C.(2)(a)(i) of this Agreement, the State notifies the Escrow Agent and the City/County Steering Committee that the \$100 offset has occurred and that the State is the Responsible Party. The State instructs the Escrow Agent to deduct one-half of the amount of the offset (or \$50) from the State's share, and credit that amount to the City and County share. The Escrow Agent therefore transmits \$400 to the State and transmits the remaining \$500 to the Cities and Counties, pursuant to their MOU Proportional Allocable Shares. Thus all parties are returned to the same position that they would have been in if the offset had not occurred.

Step 3: Deduct ½ of the offset amount from the Responsible Entity’s Base MPAS and adjust the State Share by adding this amount to the State Share.

(a) $\text{State Share} + (\text{Offset Amount} / 2) = \text{Adjusted State Share}$

(b) Under this example, the Adjusted State Share is:
 $\$495 + (\$10 / 2) = \$500$

(c) San Francisco’s Adjusted Base MPAS is:
 $\$23.21248347 - \$5 = \$18.21248347$

Step 4: Deduct the remaining ½ of the offset amount from the Responsible Entity’s Base MPAS and adjust the Cities’ and Counties’ Base MPAS by adding their MPAS% of this amount to their respective Base MPAS.

(a) $[(\text{Offset Amount} / 2) \times \text{MPAS}\%] + \text{Base MPAS} = \text{City/County Adjusted Base MPAS}$

(b) Repeat for each City and County

(c) San Francisco’s Adjusted Base Amount is:
 $[(\$10 / 2) \times .046893906] + (\$18.21248347 - 5) = \$13.446953$

Appendix L

Mathematical Example: State as Responsible Entity Offset Not Recouped in First Year

Assumptions: An annual payment of \$1,000 is due to be released to the California Account. However, an Original Participating Manufacturer claims an offset of \$750 against this payment, because of a judgment obtained by the State on a released claim. The California Account therefore receives a payment of only \$250. The next year, the California account receives its regular annual payment of \$1,000. The applicable rate of interest pursuant to section 4.C.(1)(b) of this Agreement is assumed to be 5%. All Cities and Counties are Eligible Cities/Counties.

Instructions: Absent other instructions, the Escrow Agent would normally divide this amount by giving \$125 to the State and \$125 to the Cities and Counties. However, pursuant to section 4.C.2(b)(i) of this Agreement, the State notifies the Escrow Agent and the City/County Steering Committee that the \$750 offset has occurred and that the State is the Responsible Entity. The State instructs the Escrow Agent to deduct one-half of the amount of the offset (or \$375) from the State's share. Since this exceeds the amount of the State's share, the State instructs the Escrow Agent to credit the entire amount of its payment for the year to the City and County share, and to deduct the unreimbursed amount (\$250, plus interests as described in section 4.C.(1)(b) of this Agreement) from its next payment(s). In the first year, the Escrow Agent therefore transmits nothing to the State and distributes the entire \$250 to the Cities and Counties, pursuant to their MOU Proportional Allocable Shares. In the next year, the Escrow Agent will deduct \$250 (plus \$12.5 in interest at the hypothetical rate of 5%) from the State's share, and credit this amount to the Cities'/Counties' share. Thus the State will receive \$237.5 and the Cities/Counties will receive \$762.5. Including the money the State received directly from the Original Participating manufacturer, the two year cash flow would be as follows:

Year	State	Cities and Counties
1	\$750	\$250
2	<u>\$237.5</u>	<u>\$762.5</u>
Total:	\$987.5	\$1,012.5

Thus in effect, the State receives an advance of settlement funds in the first year, and pays this advance back to the Cities and Counties, with interest, in the second year.

Appendix M

Mathematical Example: City / County as Responsible Entity Offset Not Recouped in First Year

Assumptions: An annual payment of \$1,000 is due to be released to the California Account. However, an Original Participating Manufacturer claims an offset of \$40 against this payment, because of a judgment obtained by the City and County of San Francisco on a released claim. The California Account therefore receives a payment of only \$960. The next year, the California account receives its regular annual payment of \$1,000. The applicable rate of interest pursuant to section 4.C.(1)(b) of this Agreement is assumed to be 5%. Based on the 1990 Official United States Decennial Census, San Francisco's MOU Proportional Allocable Share is equal to 4.6893906% of the total money to be split among the Cities and Counties. The remaining Cities and Counties have a combined MOU Proportional Allocable Share of 95.3106094. All Cities and Counties are Eligible Cities/Counties.

Instructions: Absent other instructions, the Escrow Agent would normally divide the \$960 payment by giving \$480 to the State and \$480 to the Cities and Counties. San Francisco's MOU Proportional Allocable Share of \$480 would be \$22.50. However, pursuant to section 4.C.(2)(b)(ii) of this Agreement, the State notifies the Escrow Agent and the City/County Steering Committee that the \$40 offset has occurred and that San Francisco is the Responsible Entity. Since the amount of the offset exceeds San Francisco's MOU Proportional Allocable Share, the State instructs the Escrow Agent to credit the State with one-half of San Francisco's MOU Proportional Allocable Share (\$11.25), and to credit the Cities and Counties (excluding San Francisco) with the other half (\$11.25). The State further instructs the Escrow Agent to calculate San Francisco's MOU Proportional Allocable Share of the amount credited to the Cities and Counties ($\$11.25 \times .046893906 = \$.52$), and credit one-half of this amount (\$.26) to the State and one-half to the Cities and Counties (excluding San Francisco). Thus in the first year, the Escrow Agent pays nothing to San Francisco, pays \$491.51 to the State [$\$480.00 + \$11.25 + \$.26 = 491.51$], and divides 468.49 [$\$480 - 11.25 - .26 = 468.49$] among the Cities and Counties (excluding San Francisco), based on their pro rata MOU Proportional Allocable Shares. The State further instructs the Escrow Agent to deduct the unreimbursed amount [$\$40 - 22.50 - .52 = 16.98$] plus interest as described in section 4.C.(1)(b) of this Agreement from the next payment(s) due to San Francisco. In the second year, the Escrow Agent will deduct \$16.98 (plus \$.84 in interest at the hypothetical rate of 5%, for a total deduction of \$17.82) from San Francisco's share, and credit one-half of this amount (\$8.91) to the State and one-half to the to the Cities'/Counties' share, to be redistributed to all Cities and Counties (including San Francisco) based on their MOU Proportional Allocable Share. San Francisco therefore receives a payment in the second year equal to:

$$(\$500 \times .046893906) - 17.82 + (\$8.91 \times .046893906) =$$

$$(23.44) - 17.82 + (0.42) = 6.04$$

The State will receive \$508.91. The Cities and Counties other than San Francisco receive: $500 - 23.44 + 8.91 - .42 = 485.05$. Including the money that San Francisco received in the first year directly from the Original Participating Manufacturer (thereby triggering the offset), the two year cash flow would be as follows:

Year	State	San Francisco	Other Cities and Counties
1	\$491.51	\$40.	468.49
2	\$508.91	\$ 6.04	485.05
Total:	\$1,000.42	\$46.04	953.54
2 yr. av.	\$1,000.	\$46.88	953.12
Difference	+ .42	-.84	+ .42

Because San Francisco has to pay interest, it receives \$.84 less than its normal two-year allocation (which is $23.44 \times 2 = 46.88$) but it receives the bulk of its money sooner. Conversely, because the State and the other Cities and Counties are paid interest, they receive \$.42 more than their normal two-year allocation [\$1,000 for the State, \$953.12 for the other Cities and Counties], but they get less in the first year.

This is demonstrated graphically as follows:

Step 1: Divide California Payment 50/50 between the State and the Cities and Counties.

$$(a) \quad \$960 / 2 = \begin{array}{l} \$480 \text{ (State Share)} \\ \$480 \text{ (City/County Share)} \end{array}$$

Step 2: Calculate the Base MOU Proportional Allocable Shares of the Cities and Counties ("City/County Base MPAS") by multiplying the City/County Share by the MOU Proportional Allocable Share percentages ("MPAS%").

- (a) City/County Share x MPAS% = City/County Base MPAS
- (b) Repeat for each City and County
- (c) San Francisco's Base MPAS is: $\$480 \times .046893906 = \22.50907488

Step 3: Deduct 1/2 of the Responsible Entity's Base MPAS and adjust the State Share by adding this amount to the State Share.

- (a) State Share + (Responsible Entity Base MPAS / 2) = Adjusted State Share
- (b) Under this example, the Adjusted State Share is:
 $\$480 + (\$22.50907488 / 2) = \$491.25$

Step 4: Deduct the remaining 1/2 of the Responsible Entity's Base MPAS and adjust the Cities' and Counties' Base MPAS by adding their MPAS% of this amount to their respective Base MPAS.

- (a) $[(\text{Responsible Entity's Base MPAS} / 2) \times \text{MPAS\%}] + \text{Base MPAS} = \text{City/County Adjusted Base MPAS}$
- (b) Repeat for each City and County
- (c) San Francisco's Adjusted Base Amount is:
 $[(\$22.50907488 / 2) \times .046893906 + 0] = \$.5277692189091$

Step 5: Deduct 1/2 of the Responsible Entity's Adjusted Base MPAS and adjust the Adjusted State Share by adding this amount to the State Share.

- (a) Adjusted State Share + (Responsible Entity Adjusted Base MPAS / 2) = State Distribution
- (b) Under this example, the State Distribution is:
 $\$491.25 + (\$.5277692189091 / 2) = \$491.51$

- Step 6:** Calculate the Enhanced MPAS% of each City and County (except the Responsible Entity) by their proportional share of the Responsible Entity's MPAS% to their respective MPAS%.
- (a) $\text{Individual MPAS\%} / \text{Combined MPAS\% (excluding Responsible Entity)}^1 = \text{Enhanced MPAS\%}$
 - (b) Repeat for each City and County

- Step 7:** Deduct the remaining $\frac{1}{2}$ of the Responsible Entity's Adjusted Base MPAS and adjust the Cities' and Counties' Adjusted Base MPAS by adding their Enhanced MPAS% of this amount to their respective Adjusted Base MPAS.
- (a) $[(\text{Responsible Entity's Adjusted Base MPAS} / 2) \times \text{Enhanced MPAS\%}] + \text{City/County Adjusted Base MPAS} = \text{City/County Distribution}$
 - (b) Repeat for each City and County
 - (c) San Francisco's Distribution is \$0

- Step 8:** Calculate Principal owed by the Responsible Entity and begin time for interest to run on amount owed.
- (a) $\text{Offset Amount} - \text{Responsible Entity's Base MPAS} - \text{Responsible Entity's Adjusted Base MPAS} = \text{Principal Amount Owed}$
 - (b) San Francisco's Principal owed is: $\$40 - \$22.50 - \$.52 = \16.98

- Step 9:** At time of next payment by the Tobacco Industry, calculate principal and interest owed by the Responsible Entity.
- (a) $\text{Principal Owed} + \text{Interest on Principal Since Last Distribution} = \text{Offset Amount}$
 - (b) San Francisco's Offset owed at the time of the next payment is:
 $\$16.98 + \$.84 = \$17.82$

Step 10: (see following page)

¹Under this example, the Combined MPAS% is: $1 - .046893906 = .953106094$

Step 10:

Deduct the Offset Owed from the Responsible Entity's MPAS of the second year payment and divide this amount 50/50 between State and Cities and Counties. If the amount owed is less than the Responsible Entity's MPAS, then utilize redistribution methodology embodied in "Appendix K." If the amount owed is greater than the Responsible Entity's MPAS, then utilize redistribution methodology embodied in this Appendix M.

- (a) Under this example, the year two Adjusted State Share would be:
 $(\$1000 / 2) + (\$17.82 / 2) = \$508.91$
- (b) Under this example, the year two Cities' and Counties' Adjusted MPAS would be:
 $[(\$1000 / 2) \times \text{MPAS\%}] + [(\$17.82 / 2) \times \text{MPAS\%}]$
= City/County Adjusted MPAS
- (c) In year two, San Francisco would receive:
 $([(\$1000 / 2) \times .046893906] - \$17.82) + [(\$17.82 / 2) \times 0.046893906] = \6.04