

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development *KJ*

BOARD AGENDA # *D-2

Urgent Routine

AGENDA DATE May 10, 2011

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the California Health and Safety Code Section 33445 Findings as they Relate to the Stanislaus County Redevelopment Agency (RDA) Project No. 1 Public Infrastructure Projects and to Authorize the Director of the Stanislaus County Public Works Department to Enter Into an Agreement with the RDA for the Design, Engineering, and Construction of the Agency's Public Improvement Projects

STAFF RECOMMENDATIONS:

1. Find that:
 - a. As set forth in detail below, pursuant to Section 33445 of the Health and Safety Code: (1) the provision of storm drain infrastructure improvements are a benefit to the Stanislaus County Redevelopment Project Area No. 1, (2) no other reasonable means of financing improvements is currently available, and (3) the improvements will assist in the elimination of one or more blight conditions inside the Project area:

(Continued on page 2)

FISCAL IMPACT:

Approval of this item will not obligate the County General Fund in any way to cover any costs associated with implementing the Stanislaus County Redevelopment Agency's Public Improvement Projects. This item authorizes the County Public Works Department to enter into an agreement with the Agency for the design, engineering, and construction of the Agency's Public Improvement Projects. The agreement provides \$32,000,000 in funding for the Public Improvement Projects on a pay-as-you-go basis and this funding will cover all costs incurred by the County Public Works Department as a result of the agreement.

(Continued on page 2)

BOARD ACTION AS FOLLOWS:

No. 2011-285

On motion of Supervisor O'Brien, Seconded by Supervisor DeMartini
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF RECOMMENDATIONS: (Continued)

- (1) The provision of storm drain infrastructure improvements are a benefit to the Stanislaus County Redevelopment Project Area No. 1, consistent with the 2010-2014 Implementation Plan ("Implementation Plan"), staff reports, and other documents, as well as the Redevelopment Plan, adopted in March 1990 ("Redevelopment Plan"), which found that the installation of public improvements, facilities, and utilities in areas that are currently inadequately served by such improvements, facilities and utilities would attain the purposes of California Community Redevelopment Law; and
 - (2) The improvements will assist in the elimination of one or more blight conditions inside the project area, consistent with the Implementation Plan, staff reports, and other documents, as well as the Redevelopment Plan, which identifies blighting conditions within the Project, including inadequate public improvements, facilities, and utilities, and inadequate drainage; and
 - (3) No other reasonable means of financing the improvements is available to the community, as documented by the Implementation Plan and the Fiscal Year 2010-11 Capital Improvement Plan, which identifies a funding shortfall of at least \$159,530,989 for current and future unmet infrastructure needs identified throughout the County, as well as staff reports, and other documents; and
 - (4) The construction of the improvements is consistent with the Agency's adopted 2010-2014 Implementation Plan, which identifies the Empire Storm Drain project as a infrastructure project which satisfies the goals and objectives of the Redevelopment Plan, including the rehabilitation of the Project area (especially residential neighborhoods), and the elimination or reduction of certain environmental deficiencies (including nonexistent storm drainage systems).
2. Authorize the Director of the Stanislaus County Public Works Department to execute an agreement with the Stanislaus County Redevelopment Agency, upon review and approval of the agreement by County Counsel, for administration, design, engineering, environmental, and construction of the Airport Neighborhood Sewer, Empire Storm Drain, and Parklawn Neighborhood Sewer projects and any future public improvement projects identified in the Agency's Implementation Plan on a "pay-as-you-go" basis as net tax increment funding becomes available.

FISCAL IMPACT: (Continued)

Upon approval of this agreement, the County Public Works Department will budget annually based on the scope and schedule of the activities which can be undertaken given the available funding.

Approval of California Health and Safety Code Section 33445 Findings as they Relate to the Stanislaus County Redevelopment Agency (RDA) Project No. 1 Public Infrastructure Projects and to Authorize the Director of the Stanislaus County Public Works Department to Enter Into an Agreement with the RDA for Design, Engineering, and Construction of the Agency's Public Improvement Projects

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DISCUSSION:

On April 19, 2011, the Stanislaus County Redevelopment Agency authorized the Agency's Executive Director to finalize an agreement with the Stanislaus County Public Works Department in an amount not to exceed \$32,000,000 in future Capital Project fund net tax increment for the administration, design, engineering, environmental, and construction of the Airport Neighborhood Sewer, Empire Storm Drain, and Parklawn Neighborhood Sewer projects and any future public improvement projects identified in the Agency's Implementation Plan on a "pay-as-you-go" basis as net tax increment funding becomes available.

The Agency also authorized the Executive Director to submit a formal request to the Stanislaus County Board of Supervisors for the California Health and Safety Code Section 33445 findings for the Empire Storm Drain project. Section 33445 findings are required for the construction of any building, facility, structure, or other improvement that will be publicly owned, but not owned by the agency, and paid for, in full or in part, by the Agency. Section 33445 requires that the local legislative body, of the public agency owning the improvement(s), must consent to the provisions of public improvements by the Agency and must find that:

1. The public improvements are of benefit to the project area or the immediate neighborhood of the project area.
2. No other reasonable means of financing such public improvements are available to the community.
3. The agency's contribution to the cost of the public improvement or facility will assist in elimination of one or more blighting conditions in the project area.

The Agency's Project No. 1 is approximately 4,272 acres in size and is comprised of 15 sub-areas. The Empire Storm Drain project is located within the Agency's Empire sub-area (See Attachment "1"). The following is an overview of the Empire Storm Drain project:

- Empire Storm Drain Project – This project includes installation of curb, gutter, handicap returns, new street sections, and a positive storm drain collection system for the entire Empire sub-area. The project is generally bounded by "A" Street to the west, McCoy Avenue to the north, North and South Abbie Streets to the east, and South Avenue to the south. Phase 1A of the project has been completed and includes a self-contained french drain in the area generally bounded by "E" Street to the West, 2nd and Central Streets to the north, "I" Street to the east, and State Route 132 (Yosemite Boulevard) to the south. The remainder of the project is proposed to be completed in the following three phases:
 - Phase 1B – This portion of the project, located south of State Route 132 (Yosemite Boulevard) consists of the installation and connection of storm drain

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facilities, Phase 1A and 1B, to the Modesto Irrigation District's (MID) river outfall. The scope of work includes the installation of underground storm drainage, catch basins and a storm drain separator/filtration unit. This project phase is contingent upon the ability to utilize the existing MID river outfall. The utility company is currently completing the environmental review for necessary repairs to the outfall. Phase 1B will require a formal agreement between the County and the utility company for use of their facilities. Additionally, through a Proposition 218 ballot procedure vote, the community will have to approve an operations and maintenance plan and benefit assessment district to offset related infrastructure improvement and maintenance costs over the life of the improvement.

- o Phase 2 – This portion of the project is located west of the Santa Fe railroad and north of State Route 132 (Yosemite Boulevard). Preliminary engineering for this phase has been completed. The scope of work includes the installation of underground storm drain and catch basins. Environmental review and a Proposition 218 ballot procedure vote to establish a benefit assessment district are still needed.
- o Phase 3 – This portion of the project is located east of the Santa Fe railroad and north of Phase 1A. Preliminary engineering for this phase has been completed. The scope of work includes the installation of underground storm drain and catch basins. Environmental review and a Proposition 218 ballot procedure vote to establish a benefit assessment district are still needed.

A small portion of the project necessary to connect the overall storm drain system to the MID lateral and river outfall will be completed outside of the Empire sub-area. Redevelopment agencies may pay for public improvements outside the project area, so long as the Section 33445 findings are made.

The Empire Storm Drain project will provide a direct benefit to the residential portion of Empire sub-area by providing a much needed storm drain system for the community. The estimated cost for completing the remaining phases of the project is approximately \$11,700,000. The Empire sub-area was developed at a time when County standards did not require installation of a storm drain system and, while it is expected the community will cover the on-going costs of operating and maintaining the storm drain system, it is not feasible to expect that the community can afford to pay for the entire cost of the project. Some Federal Community Development Block Grant funds have been secured to assist with funding the project, but a source of full funding for the project has not been identified. Agency funding of the Empire Storm Drain project will aid in the elimination of blighted conditions, such as inadequate public improvements, facilities, and utilities and inadequate drainage, which have been identified to exist within the Agency's Project No. 1.

Approval of California Health and Safety Code Section 33445 Findings as they Relate to the Stanislaus County Redevelopment Agency (RDA) Project No. 1 Public Infrastructure Projects and to Authorize the Director of the Stanislaus County Public Works Department to Enter Into an Agreement with the RDA for Design, Engineering, and Construction of the Agency's Public Improvement Projects

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Section 33445 findings for the Airport and Parklawn Neighborhood Sewer projects are required to be obtained from the City of Modesto, since the city will ultimately own the sewer infrastructure.

In addition to making the required Section 33445 findings discussed above, this item requests that the Board of Supervisors authorize the Director of the Stanislaus County Public Works Department to enter into an agreement with the Stanislaus County Redevelopment Agency for the administration, design, engineering, environmental, and construction of the Agency's Project No. 1 public improvement projects, including the Empire Storm Drain project, and Airport and Parklawn Neighborhood Sewer projects. All costs incurred by the County as a result of the agreement will be funded as part of the agreement by the Agency. Historically, the Agency has contracted with the County Public Works Department for similar services associated with the implementation of public improvement projects including Empire Phase 1A storm drain project and the Shackelford Neighborhood sewer project. The following is an overview of the Airport and Parklawn Neighborhood Sewer projects:

- Airport Neighborhood Sewer Project – This project includes installation of a sewer system, with a sewer main, a pump station (if necessary), and street overlays. There has been no advisory vote for the Airport area yet, and this would be required before the City of Modesto would agree to extend sewer service to the neighborhood. LAFCO approval of an out-of-boundary agreement is also still required.
- Parklawn Neighborhood Sewer Project – This project includes installation of a sewer system with street overlays. The neighborhood consists of the southern portion of the Shackelford sub-area located south of Hatch Road, in the Modesto area, and is comprised of two areas: the Olympic Tract area and the Hatch/Olivero area.
 - Olympic Tract – This area is generally bounded by Hatch on the north, Parklawn Avenue on the south, Morgan Road on the east, and Pacific Union railway on the west. Preliminary engineering design for this area has been completed with the input of the City of Modesto which will be the service provider. The project includes construction of a sewer main and a pump station. In November 2010, the voters of the City of Modesto approved an advisory ballot measure regarding extending sewer to this area. Local Agency Formation Commission (LAFCO) approval of an out-of-boundary agreement is still required.
 - Hatch/Olivero – This area is generally bounded by Hatch Road on the north, Olivero Road on the south, the Pacific Union railway on the west, and Crows Landing Road on the east. No preliminary engineering or advisory vote has been conducted for this area.

Approval of California Health and Safety Code Section 33445 Findings as they Relate to the Stanislaus County Redevelopment Agency (RDA) Project No. 1 Public Infrastructure Projects and to Authorize the Director of the Stanislaus County Public Works Department to Enter Into an Agreement with the RDA for Design, Engineering, and Construction of the Agency's Public Improvement Projects

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The agreement will allow construction to occur on a "pay-as-you-go" basis, depending on available of funding from the Agency, and will be contingent on ensuring no funds are utilized and/or transferred to Public Works until the Agency has fully covered its annual debt service and on-going operation and maintenance costs. Nothing in the agreement will preclude the County from securing other funds to leverage with redevelopment funds to cover project costs. The County General Fund is not obligated in any way to cover any revenue shortfall associated with an Agency project.

If redevelopment agencies are eliminated, as proposed in the State Governor's current budget proposal, the Public Works Department will not be obligated to continue work on any of the public infrastructure projects beyond that which has already been funded. The Public Works Department will coordinate with the Agency, or any successor agency, if redevelopment agencies are eliminated, to ensure funding is available for the scope and schedule of work being undertaken.

POLICY ISSUES:

Approval of this item will help further the Board Priorities of a Well Planned Infrastructure System, A Healthy Community, and Effective Partnerships by providing needed storm water and sewer infrastructure to existing unincorporated communities.

STAFFING IMPACT:

There are no staffing impacts associated with approval of this item. The agreement with the Stanislaus County Redevelopment Agency will allow the County Public Works Department to utilize available in-house staff or to contract work to outside staff/firms. All staffing costs will be funded as part of the agreement by the Agency.

CONTACT PERSON:

Kirk Ford, Redevelopment Agency Executive Director. Telephone: (209) 525-6330
Matt Machado, Public Works Director. Telephone: (209) 525-4130

ATTACHMENTS:

1. Empire Sub-Area Map



Redevelopment Sub-Area 4: Empire Community

COOPERATION AGREEMENT
BETWEEN STANISLAUS COUNTY AND THE STANISLAUS COUNTY
REDEVELOPMENT AGENCY

THIS COOPERATION AGREEMENT (“Agreement”), is made between Stanislaus County, through the Stanislaus County Department of Public Works, (hereinafter referred to as “County”), and the Stanislaus County Redevelopment Agency (hereinafter referred to as “Agency”).

RECITALS

WHEREAS, the Stanislaus County Redevelopment Agency adopted the Redevelopment Plan for Stanislaus County Redevelopment Project No. 1 (“Redevelopment Plan”) which has resulted, and will continue to result, in the allocation to the Agency of certain property-based taxes generated from the Project Area (“tax increment”) in accordance with California Community Redevelopment Law (Health & Safety Code, §§ 33000, *et seq.*) (“Community Redevelopment Law”).

WHEREAS, the Redevelopment Plan is intended, among other things, to: provide for the construction and installation of necessary public infrastructure and facilities; to facilitate the repair, restoration, and replacement of existing public facilities; to promote the redevelopment and economic revitalization; to increase, improve, and preserve the supply of low and moderate income housing; and to take all other necessary actions to implement the Redevelopment Plan, using tax increment to accomplish these goals and objectives.

WHEREAS, the Agency has adopted a five-year Implementation, as amended from time-to-time, with established goals to support infrastructure improvements, affordable housing, community revitalization, and economic development.

WHEREAS, pursuant to Community Redevelopment Law, section 33320, certain public bodies, including the County, may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. These projects include, but are not limited to the construction of the Airport Neighborhood Sewer, Empire Storm Drain, and Parklawn Neighborhood Sewer projects, and additional projects identified in the Agency’s Implementation Plan (“Projects”), as set forth in Exhibit A, attached hereto and made a part of this Agreement.

WHEREAS, on April 19, 2011, the Stanislaus County Redevelopment Agency Board adopted a resolution determining that the use of Agency redevelopment funding for the Projects is in accordance with Community Redevelopment Law, section 33445, and other applicable law, and authorized the Agency’s Executive Director to pledge \$32,000,000 to the County for the construction of the Projects.

WHEREAS, to carry out the Projects in accordance with the objectives and purposes of the Redevelopment Plan and the Implementation Plan, the Agency desires the County’s assistance and cooperation. The County agrees to aid the Agency and cooperate with the Agency

to implement the Projects expeditiously in accordance with the Redevelopment Plan and the Implementation Plan, and to undertake and complete all actions necessary or appropriate to ensure that the objectives of the Redevelopment Plan and Implementation Plan are fulfilled within the time effectiveness of the Redevelopment Plan.

WHEREAS, it is in the mutual interest of County and the Agency to work together to complete the Projects, and the Agency desires to utilize the County's resources and staff for this purpose.

WHEREAS, by approving and entering into this Agreement, the Agency has approved certain obligations, including the pledge of tax increment, to pay for the Projects. In the event that tax increment is insufficient and additional funds are required in order to make Agency payments to the County under this Agreement, Agency shall use its best efforts to find additional sources of funding to fund this Agreement, but is not obligated to secure such additional funding.

WHEREAS, the obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan, which indebtedness shall be payable out of tax increments levied by or for the benefit of taxing agencies in the Redevelopment Plan area, and allocated pursuant to Community Redevelopment Law.

NOW, THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

AGREEMENT

1. **TERM.** This Agreement shall remain in effect until June 25, 2042, unless terminated as set forth below, or extended pursuant to Community Redevelopment Law.
2. **PROJECT MANAGERS.** County and Agency shall each designate a Project Manager, who shall coordinate all services provided under this Agreement and shall have the authority to act for County and the Agency with respect to the services provided under this Agreement.
3. **COUNTY OBLIGATIONS.**
 - a. County shall use the funds pledged under this Agreement to pay for the work required to carry out and complete the Projects, as set forth in Exhibit "A." This includes all predevelopment work, environmental, design, architectural, engineering, administrative, construction, legal, insurance, financing costs, and other costs to complete the Projects. County may provide the required services using County staff, or it may subcontract for those services. All subcontracts shall be approved by the Agency's Project Manager, and all work shall be completed in the most efficient, cost-effective, and timely manner. All employee and contractual services of the County proposed to be funded pursuant to this Agreement shall be directly related to redevelopment purposes set forth in Community Redevelopment Law.

b. Prior to the release of any net tax increment funds from the restricted account (Section 4.c.), County shall submit invoices to Agency. All invoices shall include a general description of the services performed, the hours worked by County staff, and itemized reimbursable costs (including invoices from third-party contractors) incurred to the date of the invoice, if any. All invoices shall be accompanied by evidence, reasonably satisfactory to the Agency's Executive Director or designee, substantiating that County's progress on the Projects is commensurate with expenditures, and that all expenditures are consistent with Community Redevelopment Law and the purposes of this Agreement.

(1) County staff time shall be compensated at the weighted hourly labor rates applicable at the time the work is completed, and shall include direct salary costs, employee benefits, and overhead expenses. The basis for the calculation of the weighted hourly labor rate shall be included in each report, and shall be consistent with the restrictions set forth in Exhibit B.

(2) Agency shall notify County of concerns regarding the services and expenditures described in any invoice within seven (7) days of receipt. If the Agency disapproves an expenditure, the parties agree to meet and confer to resolve the dispute.

c. No Project construction shall be commenced until the Project conditions, as set forth in Exhibit A, are satisfied and sufficient funds are available to complete construction. Construction can be phased to allow for project construction as sufficient funding becomes available for each Project phase. County's obligations hereunder are expressly contingent on timely receipt of sufficient funds from the Agency to complete the Projects. This Agreement does not obligate the County to expend any funds other than Agency funds toward completion of the Projects.

d. County shall provide services under this Agreement consistent with the requirements and standards established by applicable federal law, state law, ordinances, regulations and resolutions, including the obligation to comply with Community Redevelopment Law, applicable environmental laws, competitive bidding requirements, and prevailing wage laws.

e. The County will perform its work in accordance with generally accepted industry standards and practices for the professionals that will be used in performance of this Agreement.

4. AGENCY OBLIGATIONS.

a. In addition to Six Million, Thirteen Thousand, One-hundred Eight dollars (\$6,013,108) in tax increment funds currently held by Agency, Agency shall pay annually to County one-hundred percent (100%) of the Net Tax Increment received for the construction of these public improvement projects. The total increment paid to County under this Agreement shall not exceed Thirty-Two Million Dollars (\$32,000,000). "Net Tax Increment" shall

mean the full amount of increment received, less Agency annual costs for indebtedness, payments to other governmental entities pursuant to statute, bond payments, administration, planning design and engineering, permitting, site testing, environmental review, remediation of hazardous material, acquisition and disposition of interests in real property and personal property, development, bidding, construction, construction management, legal fees, rehabilitation, and monitoring and enforcement of affordable housing covenants and other requirements pursuant to applicable law in connection with existing Projects.

- b. The Agency's obligations under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan, which indebtedness shall be payable out of tax increments levied by or for the benefit of taxing agencies in the Redevelopment Plan area, and allocated pursuant to Community Redevelopment Law.
 - c. The Agency will annually transfer the Net Tax Increment funds, which shall be held in a restricted County account and expended only for the Projects. The Agency shall only deposit the amount of funds available after all of the Agency's debt service and operation and maintenance costs have been fully covered at the end of the Agency's fiscal year. These funds shall be deposited no later than ninety (90) days following the close of the Agency's fiscal year.
 - d. The indebtedness of Agency under this Agreement shall be subordinate to the rights of the holder or holders of any existing bonds, notes, or other instruments of indebtedness of the Agency incurred or issued to finance redevelopment activities and projects pursuant to the Redevelopment Plan and Implementation Plan, including without limitation any pledge of tax increment to pay any portion of the principal and interest (or otherwise comply with the obligations and covenants) of any bond or bonds issued or sold by the Agency with respect to the Redevelopment Plan.
5. **PERIODIC CONSULTATION.** County and Agency shall confer periodically with each other to establish priorities for completion of the Projects and to evaluate whether Projects are being initiated and completed as contemplated by this Agreement.
6. **TERMINATION.** Either party may terminate this Agreement, upon sixty (60) days written notice of intent to terminate, in the event of: (1) default by the other party; (2) the initiation of litigation concerning this Agreement; (3) the unavailability of funding as contemplated under this Agreement; (4) the occurrence of any event making performance of this Agreement impossible; or (5) upon the mutual agreement of the parties. All unused funds held by the County shall be transferred back to the Agency within ninety (90) days of notification of termination. In ascertaining the services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress.

7. DEFAULT.

- a. If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days after receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder; provided, however, that if such obligation cannot reasonably be performed within said 30 day period, no default shall have occurred if the nonperforming party commences to cure within said 30-day period and thereafter diligently pursues the cure to completion. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity, including the right to terminate this Agreement or require specific performance. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative, and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party. All notices of default shall clearly describe the nature of the alleged failure to perform any obligation under this Agreement.
- b. In the event the performance of any obligation is delayed due to causes which are outside the control of both parties, and could not be avoided by the exercise of due care, which causes may include, but are not limited to, delays by regulatory agencies, wars, terrorism, floods, adverse weather conditions, labor disputes, earthquakes, fires, incidence of disease or pandemic, riots, civil commotion, or other unavoidable casualties, both Parties will be entitled to an extension in time for performance equivalent to the length of delay. Neither Party is entitled to compensation from the delay arising from such events.

8. INDEMNIFICATION.

- a. County: Neither Agency and its officers, directors, officials, agents, employees, volunteers and representatives thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by County under or in connection with any work or activity under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, County shall fully indemnify and hold Agency harmless from any liability arising out of the performance of the Agreement or injury of such nature that it would be actionable if inflicted by a private person, (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by County under or in connection with any work or activity under this Agreement. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.
- b. Agency: Neither County and its officers, directors, officials, agents, employees, volunteers and representatives thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Agency under or in connection with any work or activity under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, Agency shall fully indemnify and hold County harmless from any liability arising out of the performance of the Agreement or

injury of such nature that it would be actionable if inflicted by a private person, (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Agency under or in connection with any work or activity under this Agreement. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

9. **NOTICES:** Notices and correspondence in connection with this Agreement shall be addressed as set forth below or as either party may hereinafter designate by written notice to the other. All notices, demands, requests or approvals to be given under this Agreement must be given in writing and will be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

a. To County: Matt Machado, Director
Stanislaus County Public Works
1716 Morgan Road
Modesto, CA 95358

b. To Agency: Kirk Ford, Executive Director
Stanislaus County Redevelopment Agency
1010 10th Street – Suite 3400
Modesto, CA 95354

10. **RECORDS AND AUDITS.** Records of County's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to Agency for inspection and/or audit at mutually convenient times during performance and for a period of five (5) years from the termination of this Agreement.

11. **AMENDMENTS.** This Agreement is the sole and only agreement between the Parties regarding the subject matter hereof, and other agreements on this subject matter either oral or written are void. Any amendments to this Agreement shall be in writing and shall be properly executed by both Parties and approved as to form by the County's County Counsel and Agency's Attorney.

12. **ATTORNEY'S FEES.** If any legal action is necessary to enforce any provision of this Agreement or for damages by reason for an alleged breach of any provisions of this Agreement, the Parties agree that attorney's fees shall not be recoverable by the prevailing party.

13. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the Parties, and no representations, inducements, promises, or agreements otherwise between the parties, not embodied herein, or incorporated herein by reference shall be of any force or effect.

14. **SEVERABILITY.** If any portion of this Agreement or application thereof to any person or circumstances shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state or county statute, ordinance, or regulation the

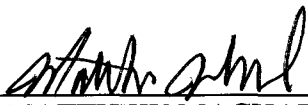
remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of the Agreement are severable.

15. SUCCESSORS AND ASSIGNS. This Agreement shall be binding on and enforceable by and against the Parties to it and their respective heirs, legal representatives, successors and assigns.
16. DUPLICATE COUNTERPARTS. This Agreement may be executed in any number of counterparts, and each such counterpart, executed telecopy, fax or photocopy shall be deemed to be an original instrument, but all of which together shall constitute one or the same Agreement.
17. AGREEMENT TO PERFORM NECESSARY ACTS. Each party to this Agreement agrees to perform any further acts and execute and deliver any documents that may be necessary to carry out the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

COUNTY OF STANISLAUS

STANISLAUS COUNTY
REDEVELOPMENT AGENCY

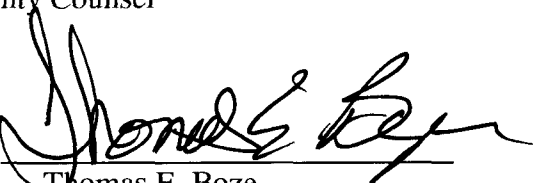
By: 
MATTHEW MACHADO, Director
Department of Public Works

By: 
KIRK FORD, Executive Director

APPROVED AS TO FORM:

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: 
Thomas E. Boze
Deputy County Counsel

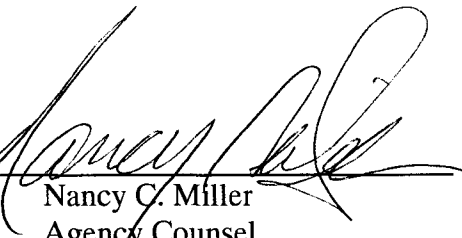
By: 
Nancy C. Miller
Agency Counsel

EXHIBIT A

SCOPE OF WORK

1. Projects

County shall aid and cooperate with the Agency to implement the following projects, as set forth in detail below, and identified in the Agency's Implementation Plan, Project No. 1:

- a. Airport Neighborhood Sewer Project
- b. Empire Storm Drain Project
- c. Parklawn Neighborhood Sewer Project

2. Additional Projects

Additional projects identified in the Agency's Implementation Plan, as it may be adopted from time to time, may be added, provided funding is available and such projects are consistent with Community Redevelopment Law.

3. Authorized Costs

County's costs to implement such projects may include those activities identified in paragraph 3.a. of the agreement, including, administration, planning design and engineering, permitting, site testing, environmental review, remediation of hazardous material, acquisition and disposition of interests in real property and personal property, development, bidding, construction, construction management, legal fees, rehabilitation, and monitoring and enforcement of affordable housing covenants and other requirements pursuant to applicable law in connection with the Projects.

4. Project Conditions

With the exception of preparing and processing the necessary environmental reviews and Agency authorized pre-construction work, the County may not begin any Project identified above until the following conditions have been satisfied:

- a. For any Project: all required environmental documentation must be adopted, or the project must otherwise comply with the California Environmental Quality Act of 1970 (Public Resources Code 21000 *et seq.*) and the National Environmental Policy Act.
- b. For the Airport Neighborhood Sewer Project:
 - 1) A positive Measure M (advisory) vote; and
 - 2) Local Agency Formation Commission authorization, if necessary, to approve new sewer service.
- c. For the Empire Storm Drain project:
 - 1) Provision for payment of the project's ongoing operations and maintenance costs by the formation of a County Service Area pursuant to the County Service Area Law (Government Code §25210.1 *et seq.*) or other appropriate means.

- d. For the Parklawn Neighborhood Sewer Project:
 - 1) Inclusion in the County's Capital Improvement Project (including the required findings of consistency by the Stanislaus County Planning Commission).
 - 2) The City of Modesto makes the findings required pursuant to Health and Safety Code §33445.
 - 3) Local Agency Formation Commission authorization, if necessary, to approve new sewer service extensions.

5. Limitations on County Expenses Reimbursable with Tax Increment

Administrative and project delivery costs, for this agreement as a whole and individual projects, shall not exceed the limits set forth in Exhibit B.

6. Additional Project Descriptions:

- a. Empire Storm Drain Project – This project includes installation of curb, gutter, handicap returns, new street sections, and a positive storm drain collection system for the entire Empire sub-area. Phase 1A of the project has been completed and includes a self-contained French drain in the area generally bounded by “A” Street to the West, McCoy Avenue to the north, North & South Avenue to the east, and South Avenue to the south. The remainder of the project is proposed to be completed in the following three phases:

- (1) Phase 1B – This portion of the project, located south of State Route 132 (Yosemite Boulevard) consists of the installation and connection of storm drain facilities, Phase 1A and 1B, to the Modesto Irrigation District's (MID) river outfall. The scope of work includes the installation of about 8000 linear feet of underground storm drainage, catch basins and a Storm Drain separator/filtration unit. This project phase is contingent upon the ability to utilize the existing MID outfall lateral and the MID river outfall. The utility company is currently completing environmental review for necessary repairs to the lateral and outfall. Phase 1B will require a formal agreement between the County and the utility company to use the same pipeline and the outfall. Additionally, through a Proposition 218 vote, the community will have to approve an operations and maintenance agreement and benefit assessment district to offset related infrastructure improvement and maintenance costs over the life of the improvement. Total cost for completion of Phase 1B is estimated at \$5,500,000.
- (2) Phase 2 – This portion of the project is located west of the Santa Fe railroad and north of State Route 132 (Yosemite Boulevard). Preliminary engineer for this phase has been completed. The scope of work includes the installation of about 12,500 linear feet of underground storm drain and 31 catch basins. Environmental review and a Proposition 218 vote to establish a benefit assessment district are still needed. Total cost for completion of Phase 2 is estimated at \$2,700,000.

- (3) Phase 3 – This portion of the project is located east of the Santa Fe railroad and north of Phase 1A. Preliminary engineering for this phase has been completed. The scope of work includes the installation of about 17,390 linear feet of underground storm drain and 42 catch basins. Environmental review and a Proposition 218 vote to establish a benefit assessment district are still needed. Total cost for completion of Phase 3 is estimated at \$3,500,000.
 - b. Parklawn Neighborhood Sewer Project – The Parklawn Neighborhood consists of the southern portion of the Shackelford Sub-Area located south of Hatch Road. The neighborhood is comprised of two areas: the Olympia Track area and the Hatch/Olivero area. The Parklawn Neighborhood Sewer project is a continuation of the Shackelford area sewer project completed in 2004.
 - (1) Olympia Tract -- Preliminary engineering design for this area has been completed with the input of the City of Modesto which will be the service provider. The project includes construction of approximately 14,000 linear feet of sewer main, a pump station, reconstruction of the roadways and connections to 328 residential lots. In November 2010, the voters of the City of Modesto approved an advisory ballot measure regarding extending sewer to this area. LAFCO approval of an out-of-boundary agreement is still required. Total estimated cost of construction including all offsite and onsite work (including septic abandonment and sewer connection plumbing) and City sewer connection fees is approximately \$6,909,000.
 - (2) Hatch/Olivero – No preliminary engineering or advisory vote has been conducted for this area. The area consists of approximately 71 residential lots. Total estimated cost of construction including all offsite and onsite work (including septic abandonment and sewer connection plumbing) and City sewer connection fees is approximately \$1,500,000.
 - c. Airport Neighborhood Sewer Project – This project would provide sewer hookups for approximately 481 residential lots. The project also includes construction of approximately 23,000 linear feet of sewer main, a pump station, and reconstruction of the roadways. There has been no Measure M vote for the Airport area yet, and this would be required before the City of Modesto would agree to extend sewer service to the neighborhood. LAFCO approval of an out-of-boundary agreement is also still required. Total estimated cost of construction including all offsite and onsite work and City sewer connection fees is approximately \$11,644,000.
7. Project Schedule – The County and the Agency will evaluate programs/projects and how those needs compare with the needs of other programs/projects (i.e. high per capita septic system failures), to develop the Project Schedule. The Project Schedule shall be subject to final approval by the Agency’s Executive Director or designee.

EXHIBIT B

ADMINISTRATION AND PROJECT DELIVERY COST CAPS

1. Limits on Administrative Costs
 - a. Administration costs shall not exceed ten percent (10%).
2. Administration activities (Pre-Construction & Construction) include:
 - a. Review and authorization of invoices, management of consultants & subcontractors, scheduled progress meetings with consultants & subcontractors, site visits, public interaction (including any contracts for public relation services), account/journal voucher processing, meetings with any governmental entities, verification of compliance with state and federal wage requirements (including interviews and payroll inspections), filing, copying, mailing, and other similar administration activities.
3. Non-Administrative Pre-Construction Activities include:
 - a. Design and engineering, the Request for Proposal process (RFP) (including RFP development & selection process), plan reviews, Rights of Way negotiations/clearance, geotechnical work, utility relocation, and other similar non-administration pre-construction activities.
 - b. All pre-construction activities contracted to an outside firm are considered non-administrative activities.
 - c. Design and engineering work performed in-house by a County employee may be viewed as administrative activities, if proper documentation of work performed is not maintained as part of the project records. In order to insure proper documentation, the following must be provided:
 - (1) Prior to any design or engineering work being performed by a County employee, Public Works shall provide the Agency with the following information:
 - (a) The names and titles of all employees and their weighted labor rates.
 - (b) An outline of the work tasks to be performed by each employee along with the total hours of work and overall cost for each task.

The information required above shall be provided in a form approved by the Agency to ensure efficient monitoring of the program.

4. Non-Administrative Construction Activities include:

- a. Engineering, construction work, on-site inspections of construction work, and other non-administration construction activities.
- b. Engineering work performed in-house by a County employee may be viewed as administrative activities, if proper documentation of work performed is not maintained as part of the project records. In order to insure proper documentation, the following must be provided:
- c. Prior to any design or engineering work being performed by a County employee, Public Works shall provide the Agency with the following information:
 - (1) The names and titles of all employees and their weighted labor rates.
 - (2) An outline of the work tasks to be performed by each employee along with the total hours of work and overall cost for each task.

The information required above shall be provided in a form approved by the Agency to ensure efficient monitoring of the program.

- d. All construction activities contracted to an outside firm are considered non-administrative activities.