

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

DEPT: Chief Executive Office

BOARD AGENDA # B-16

Urgent Routine

AGENDA DATE September 13, 2011

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Resolution of Intent to Continue Redevelopment Activities in the County of Stanislaus, Introduce and Waive the First Reading of an Ordinance to Continue Redevelopment Activities, and Approval of a Reimbursement Agreement with Stanislaus County Redevelopment Agency for Remittance Payments Made by the County under the 'Alternative Voluntary Redevelopment Program' to the State of California in Accordance with AB X1 27

STAFF RECOMMENDATIONS:

1. Adopt a non-binding resolution indicating the County's intention to enact an ordinance by November 1, 2011, in accordance with AB X1 27 agreeing to comply with the Alternative Voluntary Redevelopment Program.
2. Introduce and waive the first reading of the Alternative Voluntary Redevelopment Program ordinance.

(Continued on page 2)

FISCAL IMPACT:

AB X1 27 requires that an ordinance be adopted by the County, the Sponsoring Community for the Stanislaus County Redevelopment Agency, in order for the Agency to avoid being dissolved under AB X1 26. Under the ordinance, the County agrees to pay the State of California an annual remittance payment for the remaining 32-year life of the Agency. The initial remittance payment for Fiscal Year 2011-2012 is \$2,655,853 and the payment for Fiscal Year 2012-2013 is estimated to be approximately \$631,800.

(Continued on page 2)

BOARD ACTION AS FOLLOWS:

No. 2011-534

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien
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: INTRODUCED AND WAIVED THE FIRST READING OF ORDINANCE C.S. 1106

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. ORD-55-O-4

Approval of a Resolution of Intent to Continue Redevelopment Activities in the County of Stanislaus, Introduce and Waive the First Reading of an Ordinance to Continue Redevelopment Activities, and Approval of a Reimbursement Agreement with Stanislaus County Redevelopment Agency for Remittance Payments Made by the County under the 'Alternative Voluntary Redevelopment Program' to the State of California in Accordance with AB X1 27

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STAFF RECOMMENDATIONS: (Continued)

3. Adopt the proposed ordinance agreeing to comply with the Alternative Voluntary Redevelopment Program in accordance with AB X1 27, contingent on the California Supreme Court, or any other Court, determining AB X1 27 is constitutional and an executed agreement with the Stanislaus County Redevelopment Agency for reimbursement of State remittance payments made by the County in accordance with AB X1 27.
4. Authorize the County's Chief Executive Officer to enter into an agreement with the Stanislaus County Redevelopment Agency for reimbursement of State remittance payments made by the County in accordance with AB X1 27.

FISCAL IMPACT: (Continued)

Subsequent payments are estimated to be initially slightly less than the Fiscal Year 2012-2013 payment and annually reducing in proportion to the Agency's debt service.

If the Agency is unable at any time to reimburse the County, the Agency may be dissolved in accordance with AB X1 26, without the need for further remittance payment by the County. There will be no impact to the County General Fund, as all payments will be made from Redevelopment Agency Tax Increment.

DISCUSSION:

On June 29, 2011, Governor Brown signed into law Assembly Bill (AB) X1 26 and X1 27. AB X1 26 immediately suspended all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011 (Dissolution Act). AB X1 27 allows redevelopment agencies to avoid dissolution under the Dissolution Act by opting into an Alternative Voluntary Redevelopment Program (Voluntary Program) requiring specified substantial annual contribution to local schools and special districts. These annual contributions are to be made by a redevelopment agency's Sponsoring Community in the form of a remittance payment to the State of California. Stanislaus County is the Sponsoring Community for the Stanislaus County Redevelopment Agency.

On July 18, 2011, the California Redevelopment Association (CRA) and the League of California Cities (LOCC) filed a lawsuit with the California Supreme Court requesting that the Court declare unconstitutional AB X1 26 and AB X1 27. On August 11, 2011, the Court announced it would hear the lawsuit and issued a partial stay regarding suspension of the effectiveness of AB X1 26 and AB X1 27 until it rules on the

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constitutionality of the two bills. The partial stay of AB X1 26 keeps in effect Health and Safety Code Sections 34161-34167, which preclude redevelopment agencies from incurring new indebtedness, transferring assets, acquiring real property, entering into new contracts or modifying existing contracts and/or adopting or amending redevelopment plans.

Under the stay, actions in accordance with AB X1 27 are not required; however, it is unclear how the Court will address the specific time frames called out for in both AB X1 26 and 27 if the bills are held to be constitutional. AB X1 27 allows redevelopment agencies to avoid dissolution under AB X1 26, if the Sponsoring Community enacts an ordinance by October 1, 2011, in which it agrees to comply with the Voluntary Redevelopment Program by making the remittance payment. The Sponsoring Community has until November 1, 2011 to adopt the ordinance if by October 1, 2011 it adopts a non-binding resolution of intent to adopt an ordinance.

As such, the Stanislaus County Redevelopment Agency's legal counsel is recommending the Agency and the County take action as required by AB X1 26 and 27, contingent on the Court's ultimate determination. Since ordinances take 30 days to become effective, this item includes approval to adopt both a non-binding resolution and an ordinance.

In addition to adopting the resolution and ordinance, this item authorizes the County Chief Executive Officer to execute an agreement between the County and the Agency for reimbursement of the remittance payments. On the same day this item is considered, the Agency will consider authorizing its Executive Director to enter into the reimbursement agreement with the County.

The Agency is projecting it will be able to make reimbursement payments for Fiscal Year 2011-2012 and 2012-2013. In Fiscal Year 2013-2014, however, the Agency's pass-through payment obligations increase and if gross tax increment received by the Agency remains flat or decreases, it is likely the Agency will be unable to fully reimburse the County.

The draft agreement with the County provides for two options if the Agency is unable to fully reimburse the County in any one fiscal year. Option one: the Agency dissolves in accordance with AB X1 26 and the County has no further obligation. Option two: the County may agree to make a remittance payment without immediate reimbursement from the Agency, if the Agency can show it will be able to fully reimburse the County in subsequent years. Option two is completely dependent on the County's willingness and ability to wait for reimbursement.

Approval of a Resolution of Intent to Continue Redevelopment Activities in the County of Stanislaus, Introduce and Waive the First Reading of an Ordinance to Continue Redevelopment Activities, and Approval of a Reimbursement Agreement with Stanislaus County Redevelopment Agency for Remittance Payments Made by the County under the 'Alternative Voluntary Redevelopment Program' to the State of California in Accordance with AB X1 27

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Approving the actions requested in this item, position the Agency to remain active for at least one to two years while the Courts and the State legislature decide the future of redevelopment agencies. If the bills are found to be constitutional, failure to take the requested actions leaves the County and the Agency dependent on the Court's interpretation/action relating to the timelines in both bills. If the bills are found to be unconstitutional, the actions being requested will be set-aside and Agency activities will continue as authorized under the California Redevelopment Law.

POLICY ISSUES:

Traditionally, the efforts of the Redevelopment Agency fall within the Board's Priorities of A Well Planned Infrastructure System, A Healthy Community, and Effective Partnerships. Adoption of the proposed ordinance furthers the Board's priorities by allowing the Agency to continue to operate.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

CONTACT PERSONS:

Monica Nino, Assistant Executive Officer. Telephone: (209) 525-6333

Kirk Ford, Planning and Community Development Director. Telephone: (209) 525-6330

ATTACHMENTS:

1. Resolution of Intent to Adopt Alternative Voluntary Redevelopment Program Ordinance.
2. Proposed Alternative Voluntary Redevelopment Program Ordinance.
3. Draft Agreement with Stanislaus County Redevelopment Agency for Reimbursement of Remittance Payment.

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA

Date: September 13, 2011

No. 2011-534

On motion of Supervisor Withrow and approved by the following vote,
and approved by the following vote,

Seconded by Supervisor O'Brien

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

Item # B-16

THE FOLLOWING RESOLUTION WAS ADOPTED:

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
DECLARING ITS INTENT TO ADOPT AN ORDINANCE AUTHORIZING THE COUNTY TO MAKE
CERTAIN REMITTANCES TO THE COUNTY AUDITOR-CONTROLLER IN ACCORDANCE WITH
HEALTH AND SAFETY CODE SECTION 34194, AND TO TAKE ALL OTHER ACTIONS REQUIRED IN
ORDER TO CONTINUE REDEVELOPMENT ACTIVITIES IN THE COUNTY OF STANISLAUS**

WHEREAS, the Board of Supervisors of the County of Stanislaus ("County") approved and adopted the Redevelopment Plan for Stanislaus County Redevelopment Project No. 1, on June 25, 1991 ("Redevelopment Plan"), covering certain properties within the County (the "Project Areas"); and

WHEREAS, the Redevelopment Agency of the County of Stanislaus ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed, companion bills Assembly Bill x1 26 ("AB 26") and Assembly Bill x1 27 ("AB 27"), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, AB 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

(Continued on page 2)

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
Stanislaus County Board of Supervisors,
State of California



WHEREAS, AB 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” to remain in existence and carry out the provisions of the CRL, by adopting a nonbinding resolution of its intent to adopt an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code by November 1, 2011, and notifying the State Department of Finance, the State Controller, and the County Auditor-Controller of the County’s adoption of such resolution; and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et. al. v. Ana Matosantos, et. al.*, Case No. 5194861), challenging the validity of AB 26 and AB 27 on behalf of cities, counties, and redevelopment agencies, and requesting a stay of enforcement; and

WHEREAS, on August 11, 2011, the California Supreme Court (“Court”) issued a partial stay of the effectiveness of AB 26 and AB 27, until the Court can rule on the validity of the two bills, which stay was further modified by the Court on August 17, 2011 (collectively, the “stay”); and

WHEREAS, the effect of the stay on the November 1, 2011, deadline for electing to participate in the Alternative Voluntary Redevelopment Program is unclear, and therefore, notwithstanding the pending litigation and the stay, the County wishes to adopt this Resolution expressing its intent to enact an Ordinance, prior to November 1, 2011, electing to participate in the Alternative Voluntary Redevelopment Program should AB 26 and AB 27 be upheld and/or the stay is lifted;

WHEREAS, in the event the Court revises or lifts its stay, or finds AB 26 or AB 27 to be valid, this election shall be effective without further action by the County; and

WHEREAS, although the County wishes to adopt this resolution at this time, it shall be deemed null and void and of no further force or effect if AB 26 and/or AB 27 are determined to be invalid or otherwise unenforceable, for any reason; and

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS DOES RESOLVE AS FOLLOWS:

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. The Board of Supervisors hereby declares its intent to adopt an ordinance on or before November 1, 2011, agreeing to comply with the Alternative Voluntary Redevelopment Program, subject to AB 26 and AB 27 being upheld by the Court and the stay being lifted.

Section 3. The County’s Clerk of the Board is hereby directed to notify the State Department of Finance, the State Controller, and the Stanislaus County Auditor-Controller of the adoption of this resolution.

Section 4. This resolution sets forth the current intent of the Board of Supervisors regarding compliance with AB 27, but does not constitute a binding commitment by the Board of Supervisors to proceed with such intent.

Section 5. This resolution shall be come effective immediately upon its passage and adoption.

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS AUTHORIZING THE COUNTY TO MAKE CERTAIN REMITTANCES TO THE COUNTY AUDITOR-CONTROLLER IN ACCORDANCE WITH HEALTH AND SAFETY CODE SECTION 34194, AND TO TAKE ALL OTHER ACTIONS REQUIRED IN ORDER TO CONTINUE REDEVELOPMENT ACTIVITIES IN THE COUNTY OF STANISLAUS, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS

WHEREAS, the Board of Supervisors of the County of Stanislaus (“County”) approved and adopted the Redevelopment Plan for Stanislaus County Redevelopment Project No. 1, on June 25, 1991 (“Redevelopment Plan”), covering certain properties within the County (the “Project Areas”); and

WHEREAS, the Redevelopment Agency of the County of Stanislaus (“Agency”) is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*) (“CRL”); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed, companion bills Assembly Bill x1 26 (“AB 26”) and Assembly Bill x1 27 (“AB 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, AB 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, AB 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code and agreeing to remit specified annual amounts to the County Auditor-Controller; and

WHEREAS, AB 27 authorizes the County to enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the County, in an amount not to exceed the annual remittance required that year pursuant to AB 27, for the purpose of financing activities related to accomplishing the Agency’s goals within the redevelopment area; and

WHEREAS, AB 27 provides that, in order to enable the Agency to be included in the Alternative Voluntary Redevelopment Program, the County must notify the County Auditor-Controller, the State Controller, and the State Department of Finance, on or before November 1, 2011, that the County will comply with the provisions of Part 1.9; and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et. al. v. Ana Matosantos, et. al.*, Case No. 5194861), challenging the validity of AB 26 and AB 27 on behalf of cities, counties, and redevelopment agencies, and requesting a stay of enforcement; and

WHEREAS, on August 11, 2011, the California Supreme Court (“Court”) issued a partial stay of the effectiveness of AB 26 and AB 27, until the Court can rule on the validity of the two bills, which stay was further modified by the Court on August 17, 2011 (collectively, the “stay”); and

WHEREAS, the County has adopted Resolution [REDACTED], a non-binding resolution declaring its intent to adopt an Ordinance to allow the County to participate in the Alternative Voluntary Redevelopment Program; and

WHEREAS, the effect of the stay on the November 1, 2011, deadline for electing to participate in the Alternative Voluntary Redevelopment Program is unclear, and therefore, notwithstanding the pending litigation and the stay, the County wishes to adopt this Ordinance, in the event AB 26 and AB 27 are upheld and/or the stay is lifted;

WHEREAS, to the extent the Court has stayed the effectiveness of the payment obligation under AB 26 and AB 27, the County is not obligated to make any community remittance for the duration of the stay; and

WHEREAS, in the event the Court revises or lifts its stay, or finds AB 26 and AB 27 to be valid, this election shall be effective without further action by the County; and

WHEREAS, in the event that the Court finds AB 26 and AB 27 to be valid, or the Court otherwise revises or lifts the stay, the County, under the threat of dissolution pursuant to AB 26, shall make the Fiscal Year 2011-2012 community remittance, as well as the subsequent annual community remittances as set forth in the CRL; and

WHEREAS, should the payment of any community remittance be required before the Court determines the validity of AB 26 and AB 27, such remittances shall be made under protest and without prejudice to the County’s right to recover such amounts and interest thereon should the Court later determine that AB 26 and AB 27 are invalid; and

WHEREAS, the County reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 26 and AB 27; and

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS DOES
ORDAIN AS FOLLOWS:**

Section 1. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. **Participation in the Alternative Voluntary Redevelopment Program.** In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the Board of Supervisors hereby determines that the County shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 27. Except as set forth in Section 4, below, the Board of Supervisors hereby determines that the County shall make the community remittances set forth in Health and Safety Code section 34194 *et seq.*

Section 3. **Reservation of Rights.** Neither the adoption of this Ordinance, nor the acknowledgment of or references to any provisions of AB 26 or AB 27, nor the County's payment of any remittances contemplated by Part 1.9, shall be deemed to be, nor are they intended as, an acknowledgment of the validity of AB 26 and AB 27, nor the County's payment of any remittances contemplated by Part 1.9. The County reserves all rights of the County and the Agency to challenge the validity of any or all provisions of AB 26 or AB 27 in any administrative or judicial proceeding and to repeal this Ordinance, without prejudice to the County's right to recover any amounts remitted under Part 1.9. In addition, the County reserves all rights of the County and the Agency to pursue any and all appeals and any available legal or equitable remedy provided or available by law to correct any erroneous decision regarding the amount of any remittance that may be required to be paid by the County under Part 1.9 or other applicable statutes or regulations.

Section 4. **Effect of Stay or Determination of Invalidity.** County shall not make any community remittance until the Court either lifts the stay of the enforcement of AB 26 and AB 27, or determines that AB 26 and AB 27 are valid. Any community remittance paid prior to a final determination of the Court shall be made under protest and without prejudice to the County's right to recover such amount and interest thereon in the event that there is a final determination that AB 26 and AB 27 are invalid. If there is a final determination that AB 26 and AB 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. **Authorization of Implementation.** The Board of Supervisors hereby authorizes and directs the Chief Executive Officer (or his/her designee) to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Stanislaus County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the County's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, entering into any remittance funding agreement with the Agency (in a form approved by County Counsel), and making any remittance payments, as set forth in AB 27.

Section 6. **Additional Understandings and Intent.** It is the understanding and intent of the Board of Supervisors that the County will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the County in amounts not to exceed the annual community remittance. The County does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the annual community remittance payments.

Section 7. CEQA. The Board of Supervisors finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that it is not a “project” subject to CEQA review; the community remittances authorized hereunder are a government funding mechanism and fiscal activity for potential future projects and programs, and do not commit funds to any specific project or program that may result in a potentially significant environmental impact. The Board of Supervisors, therefore, directs that a Notice of Exemption be filed with the County Clerk in accordance with CEQA Guidelines.

Section 8. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at the County’s Clerk of the Board office located at 1010 10th Street, Modesto, CA. The custodian for these records is The County’s Clerk of the Board.

Section 9. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is, for any reason held to be unconstitutional, invalid, or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining provisions or applications of this Ordinance or any part hereof. The Board of Supervisors hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion hereof. To this end, the provisions of this Ordinance are declared to be severable.

Section 10. Certification; Publication. The County’s Clerk of the Board shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the County of Stanislaus, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the County Clerk in accordance with Government Code § 36933.

Section 11. Effective Date. This Ordinance shall be deemed “enacted” within the meaning of Part 1.9 upon the Board’s adoption of this Ordinance. Subject to the immediately preceding sentence, this Ordinance shall take effect and be in force thirty (30) days from its adoption. If there is a final judicial determination that AB 26 and/or AB 27 are invalid for any reason, this Ordinance shall be deemed to be null and void and of no further force and effect.

PASSED AND ADOPTED on motion of Supervisor _____, seconded by Supervisor _____ and approved by the following vote at a regular meeting of the Board of Supervisors on the ___ day of _____, 2011:

AYES:

NAYS:

ABSENT:

ABSTAIN:

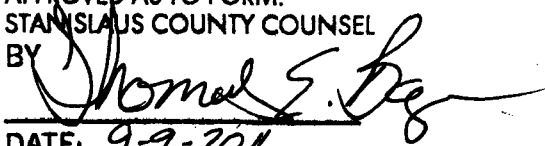
Dick Monteith, Chairman of the Board

ATTEST:

Christine Ferraro Tallman, Clerk of the Board

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL

BY



DATE: 9-9-2011

REMITTANCE AGREEMENT
BETWEEN STANISLAUS COUNTY AND THE STANISLAUS COUNTY
REDEVELOPMENT AGENCY

BOARD OF SUPERVISORS

2011 OCT -5 A 10:21

(California Health and Safety Code § 34194.2)

THIS REMITTANCE AGREEMENT (“Agreement”), is entered into this 21st day of September, 2011, by and between Stanislaus County, (hereinafter referred to as “County”), and the Stanislaus County Redevelopment Agency (hereinafter referred to as “Agency”).

RECITALS

The County and the Agency (collectively, the “Parties” and individually, a “Party”) enter into this Agreement with reference to the following circumstances:

WHEREAS, Assembly Bill x1 27 (“AB 27”) was passed by the State Legislature on June 15, 2011, and signed by the Governor on June 28, 2011; and

WHEREAS, upon enactment, AB 27 codified Part 1.9 of Division 24 of the California Health and Safety Code, commencing with section 34192 (“Part 1.9”) which establishes a “voluntary alternative redevelopment program,” whereby the County may choose to continue the operation of the Agency upon the enactment of an ordinance by the County to comply with the provisions of Part 1.9, and to make certain remittances described in California Health and Safety Code Section¹ 34194 to the Stanislaus County Auditor-Controller (“County Auditor”); and

WHEREAS, the Board of Supervisors of the County of Stanislaus (“Board”) has adopted or, concurrently with this Agreement, is adopting, an ordinance to comply with Part 1.9 (“Ordinance”); and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et. al. v. Ana Matosantos, et. al.*, Case No. 5194861), challenging the validity of AB 26 and AB 27 on behalf of cities, counties, and redevelopment agencies, and requesting a stay of enforcement; and

WHEREAS, on August 11, 2011, the California Supreme Court (“Court”) issued a partial stay of the effectiveness of AB 26 and AB 27, until the Court can rule on the validity of the two bills, which stay was further modified by the Court on August 17, 2011 (collectively, the “stay”); and

¹ All section references in this Agreement are to the California Health and Safety Code, unless otherwise specified.

WHEREAS, notwithstanding the pending litigation and stay, the Board has committed to comply with and make the remittances required by Part 1.9 at such time as the stay is lifted or AB 26 and AB 27 are upheld; and

WHEREAS, pursuant to Section 34194.1, in making remittances to the County Auditor pursuant to Section 34194 or 34194.5, the County may use any available funds not otherwise obligated for other uses; and

WHEREAS, pursuant to Section 34194.2, the County may enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the County, in an amount not to exceed the annual remittance required that year pursuant to Chapter 3 of Part 1.9, for the purpose of financing activities within the redevelopment area that are related to accomplishing the Agency's project goals; and

WHEREAS, the purpose of this Agreement is to provide for the transfer of funds by the Agency to the County in an amount not to exceed the remittances required by Part 1.9., with net available tax increment in this current fiscal year and forthcoming fiscal years; and

WHEREAS, for purposes of this Agreement, the term "Net Available Tax Increment," as used herein, means any tax increment funds allocated to the Agency, net of existing debt service payments and existing third-party contractual obligations, not including any funds on deposit in the Agency's Low and Moderate Income Housing Fund ("Housing Fund"), but including any portion of tax increment funds to be allocated to the Housing Fund for the 2011-12 Fiscal Year only, to the extent the Agency makes a finding that there are insufficient other moneys to meet its debt and other obligations, current priority program needs or its obligation to transfer funds to the County under Section 34194.2, as provided in this Agreement; and

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 for each of the Agency's redevelopment project areas; and

WHEREAS, to the extent the Court has stayed the effectiveness of the payment obligation under AB 26 and AB 27, the County is not obligated to make any community remittance for the duration of the stay; and

WHEREAS, although the Parties wish to enter into this Agreement at this time, it shall be deemed null and void and of no further force or effect if AB 26 and AB 27 are determined to be invalid or otherwise unenforceable, for any reason; and

WHEREAS, in the event the Court revises or lifts its stay, or finds AB 26 and AB 27 to be valid, this Agreement shall be effective without further action by the County.

AGREEMENT

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:

I. INTRODUCTORY PROVISIONS

The recitals above are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement.

II. OBLIGATIONS OF THE PARTIES

1. The Agency shall transfer to the County Net Available Tax Increment or other funds in an amount not to exceed the remittance payments required by Part 1.9. In the event the amounts available for transfer to the County are insufficient for the County to pay the remittance amount determined by the State Director of Finance pursuant to Part 1.9 (subject to the County's right to appeal the amount of remittance to the director pursuant to Part 1.9) ("Remittance"), the County may loan such funds to the Agency. Should the County loan such funds to the Agency, the Agency shall repay such amounts to the County, in future years, according to terms and a schedule agreed upon by the Parties. Any Remittance payments funded in part by the County shall be subject to repayment solely from Agency funds and assets.

a. The Agency shall transfer Net Available Tax Increment to the County at least 21 days prior to the due date of each installment of the Remittance.

2. Upon the County's receipt of Net Available Tax Increment or other funds, the County will deposit the funds in a separate Voluntary Alternative Redevelopment Program account ("VARP account"). The VARP account shall contain no other funds of the County, except funds transferred by the Agency and any interest earned thereon. The County shall only use the Agency funds in the VARP account for making the State Remittance payments. Any funds in the VARP account not needed or used to make remittance payments shall be returned to the Agency.

3. Subject to the receipt of sufficient Net Available Tax Increment or other funds from the Agency, the County shall timely remit to the County Auditor the payments required by Part 1.9. The County's obligation to pay such remittances shall be a special limited obligation of the County payable solely from Net Available Tax Increment or any other funds made available to the County by the Agency, including but not limited to amounts previously or subsequently pledged to the County for payment of redevelopment expenses that remain unencumbered. In the event the Net Available Tax Increment is insufficient to fully fund the Remittance, the County may loan the necessary funds to the Agency, subject to repayment by the Agency. However, nothing contained in this Agreement shall be deemed to be a pledge of the County's general fund revenues or other assets to make the remittance payments contemplated by Part 1.9, and any remittance payments funded in part by the County shall be subject to repayment solely from Agency funds and assets.

4. The obligations of the Agency under this Agreement shall be payable out of Net Available Tax Increment, as defined in the above recitals and/or as defined or provided for in any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, levied by or for the benefit of taxing agencies in the Agency's redevelopment project areas, and allocated to the Agency and/or any lawful successor entity of the Agency and/or any entity established by law to carry out the redevelopment plan for the redevelopment project areas and/or expend tax increment or pay indebtedness of the Agency to be repaid with tax increment, pursuant to Section 33670 or any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. In the event that additional funds are required in order to make the Agency payments to the County required by this Agreement, the Agency shall make such payments from income received from its projects and programs or any other additional funds available to it.

5. For the 2011/12 fiscal year only, Part 1.9 authorizes the Agency, upon making certain findings, to transfer Housing Funds to the County under this Agreement. Should the Agency determine that it must use Housing Funds to make the full transfer of funds to the County for the State Remittance, the Agency shall so inform the County, make the required findings of section 34194.3, and identify the impacts of the diversion of Housing Funds.

6. Until the Court's stay is revised or lifted, or the Court determines that AB 26 and AB 27 are valid, the Agency shall not transfer any funds to the County. In the event the Court determines that AB 26 and/or AB 27 are invalid or otherwise unenforceable for any reason, this Agreement shall be deemed null and void and of no further force or effect, as of the date such order or judgment becomes final. Any State Remittance payments, or portions thereof, made by the County and returned to the County, or amounts otherwise held in the VARP account, shall be returned to the Agency.

III. LIABILITY AND INDEMNIFICATION

- a. County: Neither Agency, nor its officers, directors, officials, agents, employees, volunteers, or representatives 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 this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, County shall fully indemnify, defend, 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 in connection with this Agreement.
- b. Agency: Neither County, nor its officers, directors, officials, agents, employees, volunteers, or representatives 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 this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, Agency shall fully indemnify, defend, 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 in connection with this Agreement.

IV. ENTIRE AGREEMENT; WAIVERS; FURTHER ACTS AND AMENDMENTS

1. This Agreement shall be executed in duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof.
2. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.
3. This Agreement is intended solely for the benefit of the County and the Agency, and their respective successors in interest. Notwithstanding any reference in this Agreement to persons or entities other than the County and the Agency, there shall be no third party beneficiaries under this Agreement.
4. Each Party agrees to perform any further acts and execute and deliver any documents that may be necessary to carry out the provisions of this Agreement.
5. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the Parties.

V. SEVERABILITY

If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.


VI. BINDING ON SUCCESSORS


This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the Parties, whether by agreement or operation of law. This Agreement shall survive any full or partial merger of the County and the Agency and shall remain in effect and be fully enforceable according to its terms.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by and through their respective authorized officers as of the date first set forth above.

COUNTY OF STANISLAUS

STANISLAUS COUNTY
REDEVELOPMENT AGENCY

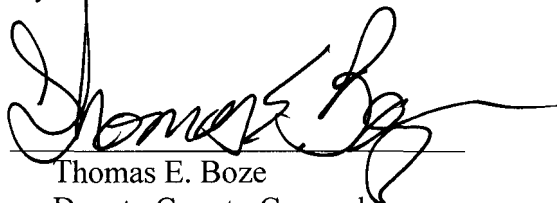
By: 
RICHARD W. ROBINSON,
Chief Executive Officer

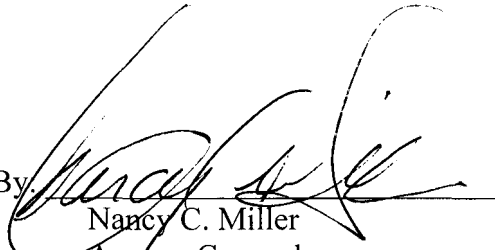
By: 
KIRK FORD, Director

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

STANISLAUS COUNTY ORDINANCE C.S. 1106

NOTICE IS HEREBY GIVEN that on September 20, 2011, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1106 authorizing the County to make certain remittances to the County Auditor-Controller in accordance with Health and Safety Code Section 34194, and to take all other actions required in order to continue redevelopment activities in the County of Stanislaus, subject to certain conditions and reservations. Conditions and reservations include:

- That the County will enter into an agreement with the Stanislaus County Redevelopment Agency to pay the State of California an "annual community remittance" as authorized pursuant to Section 34194.2, and whereby the Agency will transfer annual portions of its tax increment to the County in amounts not to exceed the annual community remittance to the State of California. The County does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the annual community remittance payments.

NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Monica Nino in the Chief Executive Office, at (209) 525-6333 or at 1010 10th Street, Suite 6800, Modesto, CA 95354.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: September 13, 2011

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
Of the Board of Supervisors
Of the County of Stanislaus,
State of California

BY:


Elizabeth A. King, Assistant Clerk of the Board

PowerPoint Presentation

Stanislaus County

Approval of a Resolution and Ordinance to
Continue Redevelopment Activities and
Approval of a Reimbursement Agreement

AGENCY CONTINUATION

AB X1 27

- ▶ In order to opt into an Alternative Voluntary Redevelopment Program, a Sponsoring Community has until November 1, 2011 to adopt an ordinance if by October 1, 2011 it adopts a non-binding resolution of intent to adopt an ordinance.
 - 30-days required for adoption of ordinance.

REIMBURSEMENT AGREEMENT

AB X1 27

- ▶ Any action by the County to make the necessary remittance payments to the State will be contingent on the Agency's ability to reimburse the County for payment.
- ▶ If the Agency is unable to reimburse the County:
 - Agency dissolves OR
 - County may allow the Agency to provide full reimbursement in subsequent years.

STAFF RECOMMENDATION

CONTINUATION & REIMBURSEMENT AGREEMENT

- ▶ Adopt a non-binding resolution, introduce and waive the first reading of the Alternative Voluntary Redevelopment Program (Voluntary Program) Ordinance, adopt the Voluntary Program Ordinance, and authorize a reimbursement agreement by taking actions 1-4 listed under Staff Recommendations.

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of **THE MODESTO BEE**, printed in the City of **MODESTO**, County of **STANISLAUS**, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of **STANISLAUS**, State of California, Under the date of **February 25, 1951, Action No. 46453**; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Sep 15, 2011

STANISLAUS COUNTY
ORDINANCE C.S. 1106

NOTICE IS HEREBY GIVEN that on September 20, 2011, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1106 authorizing the County to make certain remittances to the County Auditor-Controller in accordance with Health and Safety Code Section 34194, and to take all other actions required in order to continue redevelopment activities in the County of Stanislaus, subject to certain conditions and reservations. Conditions and reservations include that the County will enter into an agreement with the Stanislaus County Redevelopment Agency to pay the State of California an "annual community remittance" as authorized pursuant to Section 34194.2, and whereby the Agency will transfer annual portions of its tax increment to the County in amounts not to exceed the annual community remittance to the State of California. The County does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the annual community remittance payments. NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Monica Nino in the Chief Executive Office, at (209) 525-6333 or at 1010 10th Street, Suite 6800, Modesto, CA 95354. BY ORDER OF THE BOARD OF SUPERVISORS. DATED: September 13, 2011. ATTEST: CHRISTINE FERRARO TALLMAN, Clerk of the Board of Supervisors of the County of Stanislaus, State of California. BY: Elizabeth A. King, Assistant Clerk of the Board. Pub Dates Sept. 15, 2011

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

September 15th, 2011

(By Electronic Facsimile Signature)

