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

DEPT: Treasurer-Tax Collector

BOARD AGENDA # *B-3

Urgent Routine

AGENDA DATE May 8, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Adopt the Fifth Amendment to the Joint Exercise of Powers Agreement of the California County Tobacco Securitization Agency Relating to the Operations of the Commission

STAFF RECOMMENDATIONS:

1. Approve the amendment to Section 7 of the Joint Exercise of Powers Agreement relating to annual meetings of the Commission.
2. Authorize the Chief Executive Officer to sign the amended Joint Exercise of Powers Agreement.

FISCAL IMPACT:

There is no fiscal impact to Stanislaus County.

BOARD ACTION AS FOLLOWS:

No. 2012-218

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

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

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:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Adopt the Fifth Amendment to the Joint Exercise of Powers Agreement of the California County Tobacco Securitization Agency Relating to the Operations of the Commission

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DISCUSSION:

In November 1998, the attorney general of 46 states (including California), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa and the Territory of the Northern Marianas (collectively, the "Settling States") and the four largest United States tobacco manufacturers entered into a master settlement agreement (MSA) in resolution of cigarette-smoking related litigation. The MSA releases the tobacco manufacturers from past, present and future smoking-related claims in exchange for, among other things, certain payments to be made to the Settling States.

On August 5, 1998 the counsel for the State of California and various cities and counties therein ("participating jurisdictions") entered into a memorandum of understanding (MOU). Pursuant to the MOU, participating jurisdictions are entitled to receive a portion of the payments made to the State of California in accordance with the MSA. Some jurisdictions, in an effort to manage/mitigate the risks associated with the receipts of such revenues, opted to securitize this revenue stream.

On November 15, 2000, the Counties of Stanislaus, Kern, Merced, and Sonoma formed The California County Tobacco Securitization Agency (the "Agency"), pursuant to a Joint Powers Agreement (JPA). The Agency was formed for the purpose of assisting its members to manage the risk associated with receipt of MSA payments by securitizing (or monetizing) the payments made under the MSA.

Section 10 of the Joint Powers Agreement, permits additional counties to become members of the Agency, subject to the approval by the Board of Supervisors of each member county. On three previous occasions, May 14, 2002, July 30, 2002, and December 13, 2005, the Stanislaus County Board of Supervisors approved resolutions allowing the Counties of Marin, Placer, Fresno, Alameda, and Los Angeles, respectively, to join the Agency. Each of such counties has securitized all or a portion of its MSA payments through the issuance of bonds by the Agency.

Pursuant to Section 13 of the JPA Agreement, provisions of the JPA Agreement may be amended by a supplemental agreement executed by all of the Members. The proposed change is to clarify Section 7 regarding annual meetings as indicated in bold in the attached document titled "Fifth Amendment to Joint Exercise of Powers Agreement of the California County Tobacco Securitization Agency By and Among the County of Stanislaus, the County of Merced, the County of Sonoma, the County of Kern, the County of Marin, the County of Placer, the County of Fresno, the County of Alameda and the County of Los Angeles", Dated as of April 1, 2012. This change allows meetings

Approval to Adopt the Fifth Amendment to the Joint Exercise of Powers Agreement of the California County Tobacco Securitization Agency Relating to the Operations of the Commission

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of the Commission to be held by teleconference and allows an Operating Committee meeting to be held in lieu of a Commission meeting.

POLICY ISSUES:

Approval of this agenda item will support the Board's priority of Efficient Delivery of Public Services.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Gordon B. Ford, Treasurer-Tax Collector. Telephone: (209) 525-4463

FIFTH AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

OF

THE CALIFORNIA COUNTY TOBACCO SECURITIZATION AGENCY

BY AND AMONG

THE COUNTY OF STANISLAUS, THE COUNTY OF MERCED,
THE COUNTY OF SONOMA, THE COUNTY OF KERN, THE COUNTY OF MARIN, THE
COUNTY OF PLACER, THE COUNTY OF FRESNO, THE COUNTY OF ALAMEDA AND
THE COUNTY OF LOS ANGELES

DATED AS OF APRIL 1, 2012

THIS FIFTH AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of April 1, 2012 (the "Fifth Amendment"), is made and entered into by and among the COUNTY OF STANISLAUS, a body corporate and politic and a political subdivision in the State of California (the "State"), the COUNTY OF MERCED, a body corporate and politic and a political subdivision of the State, the COUNTY OF SONOMA, a body corporate and politic and a political subdivision of the State, the COUNTY OF KERN, a body corporate and politic and a political subdivision of the State, the COUNTY OF MARIN, a body corporate and politic and a political subdivision of the State, the COUNTY OF PLACER, a body corporate and politic and a political subdivision of the State, the COUNTY OF FRESNO, a body corporate and politic and a political subdivision of the State, the COUNTY OF ALAMEDA, a body corporate and politic and a political subdivision of the State and the COUNTY OF LOS ANGELES, a body corporate and politic and a political subdivision of the State (each of the County of Stanislaus, the County of Merced, the County of Sonoma, the County of Kern, the County of Marin, the County of Placer, the County of Fresno, the County of Alameda, and the County of Los Angeles together with any other county executing this Agreement, except those counties that have withdrawn in accordance with Section 11 hereof, being herein referred to as a "Member")

W I T N E S S E T H:

WHEREAS, the County of Stanislaus, the County of Merced, the County of Sonoma, and the County of Kern have heretofore entered into an agreement entitled "Joint Exercise of Powers Agreement," dated November 15, 2000, (the "Original Agreement"), creating The California County Tobacco Securitization Agency (the "Agency");

WHEREAS, the County of Marin, the County of Placer, and the County of Fresno have heretofore entered into an agreement entitled "First Amendment to Joint Exercise of Powers Agreement," dated May 1, 2002, as amended (the "First Amendment");

WHEREAS, the County of Alameda has heretofore entered into an agreement entitled, Second Amendment to Joint Exercise of Powers Agreement, dated August 15, 2002, as amended (the "Second Amendment");

WHEREAS, the County of Los Angeles has heretofore entered into an agreement entitled, Third Amendment to Joint Exercise of Powers Agreement, dated January 24, 2006, as amended (the "Third Amendment");

WHEREAS, the Members amended certain provisions of the agreement entitled, Fourth Amendment to Joint Exercise of Powers Agreement, dated September 6, 2006, as amended (the "Fourth Amendment"). The Original Agreement, collectively with the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment are hereinafter referred to as the "Agreement");

WHEREAS, pursuant to Section 13 of the Agreement, each Member desires to amend the provisions thereof relating to the operations of the Commission and to clarify existing Commission practice;

NOW, THEREFORE, the Agreement is amended as follows:

SECTION 1. Amendment of Section 7 of the Agreement.

(a) Section 7.1 of the Agreement is hereby amended to read as follows (bolded language shows change):

7.1. Annual Meetings; Special Meetings. **Unless an Operating Committee meeting is held in lieu of a Commission meeting as provided below**, an annual meeting of the Commission shall be held on or about September 1 of each year, on a date and at a place selected by the President. In addition, special meetings of the Commission shall be held upon receipt by the President of the written request of the two Commissioners of any Member, or at the discretion of the President. Subject to Section 7.2 hereof, the date upon which, and the hour and place at which, each such meeting shall be held shall be fixed in the written request of the Commissioners requesting such meeting, or as determined by the President, as the case may be. **To the extent permitted by the Brown Act, all or any meetings of the Commission may be held by teleconference.**

The President, upon not less than 10 days' prior notice to the full Commission, may convene, **in lieu of an annual meeting of the Commission**, a meeting of the Operating Committee at the time, date and place designated by the President **to consider such matters specified in such notice which the Operating Committee is authorized to approve pursuant to this paragraph.** The Operating Committee shall be authorized to approve, on behalf of the Commission, ministerial and non-legislative matters, including but not limited to the selection of counsel, the selection of auditors, and the approval of minutes, the approval of the audit reports, and the approval of any annual report. The notice to the full Commission shall specify the agenda for the Operating Committee meeting. If prior to the scheduled meeting date of the Operating Committee the Commissioners representing any Member request that a full Commission meeting be held instead of a meeting of the Operating Committee, the President shall proceed to convene a meeting of the full Commission. Any action taken by the Operating Committee must be unanimous. To the extent permitted by the Brown Act, all or any meetings of the Commission or the Operating Committee may be held by teleconference.

SECTION 2. Filing of Notice of Amendment to Agreement.

Within 30 days after the effective date hereof, the Secretary shall cause a notice of this Fifth Amendment to be prepared and filed with the office of the Secretary of State in the manner set forth in Section 6503.5 of the California Government Code.

SECTION 3. Effectiveness; Counterparts.

This Fifth Amendment shall become effective upon execution hereof. This Fifth Amendment may be executed in counterpart as provided in Section 17 of the Agreement.

SECTION 4. Ratification.

All approvals given and actions taken by the Operating Committee through the date of this Fifth Amendment are ratified and approved.

IN WITNESS WHEREOF, the parties hereto have caused this Fifth Amendment to the Agreement to be executed and attested by their duly authorized proper officers, and their official seals to be hereto affixed, as of the day and year first above written.

COUNTY OF STANISLAUS, CALIFORNIA

By *Monica King* 5/8/12
Chief Executive Officer

[SEAL] Attest:

Christina Ferraro

Clerk of the Board of Supervisors

Approved as to form:

Dean Wright

County Counsel

COUNTY OF MERCED, CALIFORNIA

By _____
County Executive Officer

[SEAL] Attest:

Clerk of the Board of Supervisors

Approved as to form:

County Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Fifth Amendment to the Agreement to be executed and attested by their duly authorized proper officers, and their official seals to be hereto affixed, as of the day and year first above written.

COUNTY OF STANISLAUS, CALIFORNIA

By _____
Chief Executive Officer

[SEAL] Attest:

Clerk of the Board of Supervisors

Approved as to form:

County Counsel



[SEAL] Attest:

Victoria Bryan, Deputy

Clerk of the Board of Supervisors

Approved as to form:

[Signature]

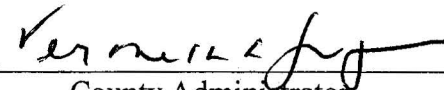
County Counsel

COUNTY OF MERCED, CALIFORNIA

By *[Signature]*

County Executive Officer

COUNTY OF SONOMA, CALIFORNIA

By 
County Administrator

[SEAL] Attest:


Clerk of the Board of Supervisors

Approved as to form:


County Counsel

COUNTY OF KERN, CALIFORNIA

By _____
Chairman, Board of Supervisors

[SEAL] Attest:

Clerk of the Board of Supervisors

Approved as to form:

County Counsel

COUNTY OF SONOMA, CALIFORNIA

By _____
County Administrator

[SEAL] Attest:

Clerk of the Board of Supervisors

Approved as to form:

County Counsel



[SEAL] Attest:

Karen L Winn, Deputy

Clerk of the Board of Supervisors

Approved as to form:

Jeri A Björn

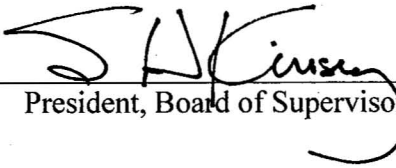
County Counsel

COUNTY OF KERN, CALIFORNIA

By *Zack Scrivner* _____ MAY 08 2012
Chairman, Board of Supervisors

ZACK SCRIVNER

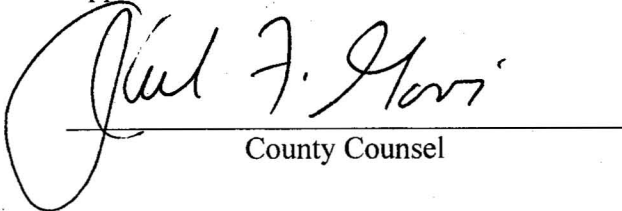
COUNTY OF MARIN, CALIFORNIA

By 
President, Board of Supervisors

[SEAL] Attest:


Clerk of the Board of Supervisors

Approved as to form:


County Counsel

COUNTY OF PLACER, CALIFORNIA

By _____
Chairman, Board of Supervisors

[SEAL] Attest:

Clerk of the Board of Supervisors

Approved as to form:

County Counsel

COUNTY OF MARIN, CALIFORNIA

By _____
President, Board of Supervisors

[SEAL] Attest:

Clerk of the Board of Supervisors

Approved as to form:

County Counsel

COUNTY OF PLACER, CALIFORNIA

By  _____
Chairman, Board of Supervisors

[SEAL] Attest:



Clerk of the Board of Supervisors

Approved as to form:



County Counsel



[SEAL] Attest:

Kelly Sorensen, Deputy
Clerk to the Board of Supervisors

Approved as to legal form:

By Blaine Melnick
Chief Dep. County Counsel
(5th Amendment to JPA Agrmt)

COUNTY OF FRESNO, CALIFORNIA

By [Signature]
County Administrative Officer

COUNTY OF ALAMEDA, CALIFORNIA

By _____
County Administrator

[SEAL] Attest:

Clerk of the Board of Supervisors

Approved as to form:

County Counsel

COUNTY OF FRESNO, CALIFORNIA

By _____
County Administrative Officer


[SEAL] Attest:

Clerk to the Board of Supervisors

Approved as to legal form:

County Counsel

COUNTY OF ALAMEDA, CALIFORNIA

By  _____
County Administrator

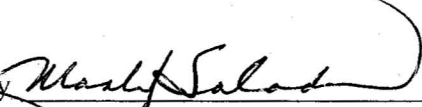
[SEAL] Attest:


Clerk of the Board of Supervisors

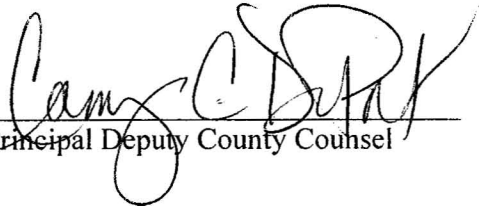
Approved as to form:


County Counsel

COUNTY OF LOS ANGELES, CALIFORNIA

By 
Authorized Officer

Approved as to form:
JOHN F. KRATTLI
Acting County Counsel

By: 
Principal Deputy County Counsel



State of California
Secretary of State

FILE NO. 1972

AMENDMENT OF A JOINT POWERS AGREEMENT
(Government Code section 6503.5)

FILED
in the office of the Secretary of State
of the State of California

AUG 02 2012

(Office Use Only)

Instructions:

1. Complete and mail to: Secretary of State, P.O. Box 942877, Sacramento, CA 94277-0001.
2. Include filing fee of \$1.00.
3. Do not include attachments.
4. A copy of the full text of the joint powers agreement and amendments, if any, must be submitted to the State Controller's office. For address information, contact the State Controller's office at www.sco.ca.gov.

Date of filing initial notice with the Secretary of State: December 8, 2000

File number of initial notice: 1734

Name of the agency or entity created under the agreement and responsible for the administration of the agreement:
The California County Tobacco Securitization Agency

Agency's or Entity's Mailing Address: c/o Eric D. Tashman, Sidley Austin LLP, 555 California Street, Suite 2000, San Francisco, CA 94104-1715; etashman@sidley.com

Title of the agreement: Fifth Amendment to Joint Exercise of Powers Agreement

Complete one or more boxes below. The agreement has been amended to:

- Change the parties to the agreement as follows: _____
- Change the name of the administering agency or entity as follows: _____
- Change the purpose of the agreement or the powers to be exercised as follows: _____
- Change the short title of the agreement as follows: _____
- Make other changes to the agreement as follows: Change in Section 7, regarding annual and special meetings.

RETURN ACKNOWLEDGMENT TO: (Type or Print)

7/30/2012

NAME [Eric D. Tashman]
[Sidley Austin LLP]
ADDRESS [555 California St., Ste. 2000]
[San Francisco, CA 94104-1715]
CITY/STATE/ZIP []

Date _____
Eric D. Tashman
Signature

Eric D. Tashman, Partner
Typed Name and Title



I hereby certify that the foregoing transcript of _____ page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

AUG 03 2012

Date: _____


Debra Bowen
DEBRA BOWEN, Secretary of State