

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD, CALIFORNIA, AUTHORIZING THE CITY OF OXNARD TO PARTICIPATE IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS

WHEREAS, Assembly Bill x1 27 (“**AB 27**”) is codified as Part 1.9 of the California Health and Safety Code (“**Part 1.9**”); and

WHEREAS, AB 27, upon the concurrent enactment of Assembly Bill x1 26 (“**AB 26**”), establishes a voluntary alternative redevelopment program whereby the Oxnard Community Development Commission (“**Commission**”) would be authorized to continue to exist upon the enactment of an ordinance by the City to comply with the provisions of Part 1.9; and

WHEREAS, AB 27 requires the City to notify the County Auditor-Controller (“**County**”), the State Controller, and the State Department of Finance on or before November 1, 2011, that the City will comply with Part 1.9; and

WHEREAS, AB 27 requires the City to make specified remittances to the County in order to continue the existence of the Commission, as prescribed in Part 1.9; and

WHEREAS, AB 27 authorizes the City to enter into an agreement with the Commission, whereby the Commission would transfer a portion of its tax increment to the City for the purpose of financing certain activities within the City’s redevelopment areas, as specified in Part 1.9; and

WHEREAS, AB 27 imposes specified sanctions on the City in the event that the City fails to make the required remittances, as determined by the Director of Finance; and

WHEREAS, AB 27 authorizes the County to charge a fee that does not exceed the reasonable costs to the County auditor-controller to implement the provisions of Part 1.9; and

WHEREAS, AB 27 authorizes the City to establish a new community development commission if its former commission has been dissolved pursuant to SB 15 only after the debt obligations of the Commission have been retired and the City satisfies the provisions of Part 1.9; and

WHEREAS, it is hereby acknowledged by the City Council that the California League of Cities, the California Redevelopment Association, and special counsel for the City have respectively opined that certain or all provisions of AB 26 and AB 27, including, without limitation, the effectiveness date, violate the State Constitution and other laws (collectively, “**Laws**”), and are invalid and unenforceable; and

WHEREAS, the City Council does not intend, by enactment of this Ordinance, to waive any constitutional and/or legal rights by virtue of the enactment of this Ordinance and, therefore, reserves all of its rights under Laws to challenge the validity of any or all provisions of AB 26 and AB 27 in any administrative or judicial proceeding and/or repeal this Ordinance, without prejudice to the City's right to recover any amounts remitted under Part 1.9; and

WHEREAS, the City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or other assets, to make the remittance payments contemplated by Part 1.9, it being understood by the City Council that any remittance payments will be funded solely from Commission funds and/or assets transferred to the City in accordance with Part 1.9; and

WHEREAS, the City Council does not intend, by enactment of this Ordinance to waive any rights of appeal regarding the amount of any remittance established by the Department of Finance, as provided in Part 1.9.

NOW, THEREFORE, the City Council of the City of Oxnard, California does ordain as follows:

SECTION 1. Authorization to Continue Commission. Subject to Sections 3 and 4, herein, the City hereby commits to comply with and make the remittances required by Part 1.9, and authorize the continuation of the Commission after enactment of AB 27. Any remittance payments required to be paid by the City by Part 1.9 shall be paid solely from Commission funds and/or assets transferred to the City in accordance with Part 1.9.

SECTION 2. Application. If any provisions of this Ordinance or the application thereof is held to be invalid for any reason, then the remainder of this Ordinance and the application of provisions thereof shall not be affected thereby.

SECTION 3. Reservation of Rights. It is the position of the City that certain or all provisions of AB 26 and AB 27 violate the Laws, as referenced in the recitals above, and are invalid and unenforceable. Neither the adoption of this Ordinance, nor the acknowledgment of or references to any provisions of AB 26 and AB 27, nor the City's payment of any remittances contemplated by AB 27 shall be deemed to be, nor are they intended as, an acknowledgment of the validity of AB 26 and AB 27, and the City reserves all rights in its sole discretion to challenge the validity of any or all provisions of AB 26 and AB 27 in any administrative or judicial proceeding and/or repeal this Ordinance, without prejudice to the City's right to recover any amounts remitted under Part 1.9. The City reserves the right to pursue any and all appeals and any available legal or equitable remedy provided or available by law to obtain the correction of any erroneous decision regarding the amount of payments that may be required to be paid by the City under AB 27 or other applicable statutes or regulations.

SECTION 4. Enactment. This Ordinance shall only be deemed as "enacted" within the meaning of Part 1.9 upon (i) adoption of this Ordinance and (ii) the legally effective date of AB 26 and AB 27.

SECTION 5. Authorization of Implementing Actions. The City Manager, or designee, is hereby authorized to take any actions necessary to implement this Ordinance and comply with Part 1.9, including, without limitation, providing required notices to the Auditor Controller, the State Controller, and the Department of Finance; entering into any agreements with the Commission to make the remittance payments; or making any remittance payments.

Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. _____ was first read on _____ and finally adopted on _____ to become effective thirty days thereafter.

AYES:

NOES:

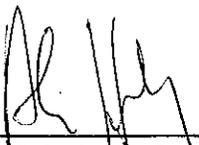
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

ATTACHMENT 1

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**REMITTANCE AGREEMENT
PURSUANT TO
CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2**

THIS REMITTANCE AGREEMENT (this “**Agreement**”) is entered into this ___ day of _____, 2011, by and between the CITY OF OXNARD, a municipal corporation (the “**City**”) and the OXNARD COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic (the “**Commission**”), with reference to the following facts:

A. Assembly Bill No. X1 27 and Senate Bill X1 15 (“**AB 27/SB 15**”) was passed by the California State Legislature on June 15, 2011 and subsequently enacted.

B. AB 27/SB 15 is codified as Part 1.9 of the California Health and Safety Code, commencing with Section 34192 (“**Part 1.9**”).

C. AB 27/SB 15 establishes a voluntary alternative redevelopment program whereby the City may choose to continue redevelopment pursuant to Part 1.9, upon the enactment of an ordinance by the City to comply with the provisions of Part 1.9 and make certain remittances described in California Health and Safety Code Section 34194 to the county auditor-controller.

D. The City Council of the City of Oxnard (the “**City Council**”) has adopted or, concurrently with this Agreement, is adopting, an ordinance to comply with Part 1.9 (the “**Ordinance**”).

E. Pursuant to the Ordinance, the City Council has committed to comply with and make the remittances required by Part 1.9 and authorize the continuation of the Commission after enactment of AB 27/SB 15.

F. Pursuant to Section 34194.1, in making remittances to the county auditor-controller pursuant to Section 34194 or 34194.5, the City may use any available funds not otherwise obligated for other uses.

G. Pursuant to Section 34194.2, the City may enter into an agreement with the Commission, whereby the Commission will transfer a portion of its tax increment to the City, 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 community development commission project goals.

H. The purpose of this Agreement is to provide for the transfer of funds by the Commission to the City in an amount sufficient for the City to make the remittances required by Part 1.9., with net available tax increment in this current fiscal year and forthcoming fiscal years.

I. The term “**Net Available Tax Increment**” is defined as any tax increment funds allocated to the Commission, net of existing debt service payments and existing third-party contractual obligations, not including any funds on deposit in the Commission’s Low and Moderate Income Housing Fund, and also not including any portion of tax increment funds to be

allocated to the Low and Moderate Income Housing Fund pursuant to California Health and Safety Code Section 33334.2, 33334.4 and 33334.6 for the 2011-12 fiscal year only, to the extent the Commission 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 City under Section 34194.2 as provided in this Agreement.

J. The obligations of the Commission under this Agreement shall constitute an indebtedness of the Commission for the purpose of carrying out the redevelopment plan for each of the Commission's redevelopment project areas.

NOW, THEREFORE, the parties hereto do mutually 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 Commission shall transfer to the City in a timely manner Net Tax Increment or other funds in an amount sufficient for the City to make the remittance payments required by Part 1.9. The amounts to be transferred to the City shall be sufficient for the City to pay the remittance amount determined by the State Director of Finance pursuant to Part 1.9, subject to the City's right to appeal the amount of remittance to the director pursuant to Part 1.9.

2. Subject to receipt of sufficient Net Tax Increment or other funds from the Commission, the City shall timely remit to the county auditor-controller the payments required by Part 1.9 as provided in the Ordinance. The City's obligation to make such remittances shall be a special limited obligation of the City payable solely from Net Available Tax Increment or any other funds made available to the City by the Commission, including, without limitation, amounts previously or subsequently pledged to the City for payment of redevelopment expenses that remain unencumbered. Nothing contained in this Agreement shall be deemed to be a pledge of the City's general fund revenues or other assets to make the remittance payments contemplated by Part 1.9, it being understood that the any remittance payments shall be funded solely from Commission funds and/or assets.

3. The obligations of the Commission 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 Commission's redevelopment project area(s), and allocated to the Commission and/or any lawful successor entity of the Commission and/or any entity established by law to carry out the redevelopment plan for the redevelopment project area(s) and/or expend tax increment or pay indebtedness of the Commission to be repaid with tax increment, pursuant to California Health and Safety Code 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 Commission payments to the City required by this Agreement, the Commission shall make such payments from income received by the Commission from its projects and programs or any other additional funds available to it.

III. LIABILITY AND INDEMNIFICATION

In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by California Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in California Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of California Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of California Government Code Section 895.2.

IV. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS

1. This Agreement shall be executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of five (5) pages which constitute the entire understanding and agreement of the parties.

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 City and the Commission. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Commission, there shall be no third party beneficiaries under this Agreement.

4. 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 City and the Commission and shall remain in effect and be fully enforceable according to its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

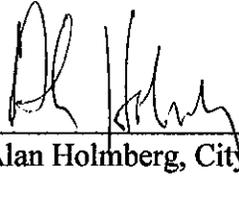
CITY OF OXNARD

By: _____
Dr. Thomas E. Holden, Mayor

ATTEST:

By: _____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

By:  _____
Alan Holmberg, City Attorney

APPROVED AS TO FORM:

KANE, BALLMER & BERKMAN
Special Counsel to the City

By: _____
Name: _____

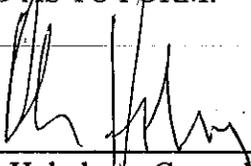
OXNARD COMMUNITY DEVELOPMENT COMMISSION

By: _____
Dr. Thomas E. Holden, Chairman

ATTEST:

By: _____
Daniel Martinez, Secretary Designate

APPROVED AS TO FORM:

By:  _____
Alan Holmberg, General Counsel

APPROVED AS TO FORM:

KANE, BALLMER & BERKMAN
Commission Special Counsel

By: _____
Name: _____