

RESOLUTION NO. 2011-465

Adopted by the Sacramento City Council

August 9, 2011

AUTHORIZING THE CITY MANAGER TO EXECUTE A REMITTANCE AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO PURSUANT TO HEALTH AND SAFETY CODE SECTION 34194.2

BACKGROUND

- A. Assembly Bill No. X1 27 ("AB 27") was passed by the State Legislature on June 15, 2011 and signed by the Governor on June 29, 2011.
- B. AB 27 is codified as Part 1.9 of the California Health and Safety Code, commencing with Section 34192 ("Part 1.9").
- C. AB 27 establishes a Voluntary Alternative Redevelopment Program whereby the City may choose to continue redevelopment activities 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 Chapter 3 of Part 1.9 to the County Auditor-Controller.
- D. The City is concurrently adopting an emergency ordinance to bind the City to comply with Part 1.9, subject to certain reservation of rights (the "Ordinance").
- E. Pursuant to the Ordinance, the City commits to comply with and make the remittances required under Part 1.9 and authorizes the continuation of the Agency.
- F. Pursuant to Health and Safety Code Section 34194.2, the City may enter into an agreement (the "Remittance Agreement") with the Agency, whereby the Agency will transfer a portion of its Net Available Tax Increment, or other unencumbered funds from the Agency 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 schools located within the redevelopment project areas.
- G. The term "Net Available Tax Increment" is defined as any property tax increment funds allocated to the Agency, net of existing debt service payments and existing contractual obligations, not including any funds on deposit in the Agency'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 Health and Safety Code Section 33334.2, 33334.4 and 33334.6 except for the 2011-12 fiscal year only, to the extent the Agency makes a finding that there are insufficient other funds 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 the Remittance Agreement.

H. The obligations of the Agency under the Remittance 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.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager, or his designee, is hereby authorized to execute, after the effective date of the enactment of the Ordinance to comply with Part 1.9 under AB 27, the Remittance Agreement with the Redevelopment Agency of the City of Sacramento in the form set out as Exhibit A.

Table of Contents:

Exhibit A: Remittance Agreement

Adopted by the City of Sacramento City Council on August 9, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

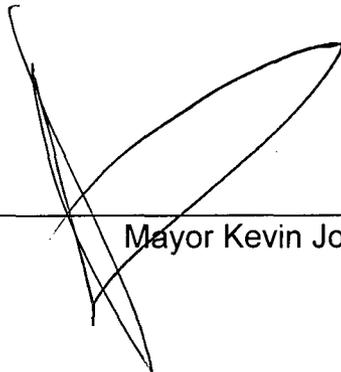
Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk



Mayor Kevin Johnson

**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 SACRAMENTO, a municipal corporation (the "**City**") and the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic (the "**Agency**"), with reference to the following facts:

- A. Assembly Bill No. X1 27 ("**AB 27**") and Assembly Bill No. X1 26 ("**AB 26**") were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 29, 2011.
- B. Upon enactment, AB 27 is to be codified as Part 1.9 of the California Health and Safety Code, commencing with Section 34192 ("**Part 1.9**").
- C. AB 27 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 Health and Safety Code Section 34194 to the County Auditor-Controller.
- D. The City Council of the City of Sacramento (the "**City Council**") has adopted or, concurrently with approval of 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 Agency after enactment of AB 27.
- F. Pursuant to Section 34194.2, the City may enter into an agreement with the Agency, whereby the Agency will transfer a portion of its net available tax increment or other unencumbered funds 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 making certain payments into a Special District Allocation Fund and Educational Revenue Augmentation Fund administered by the County Auditor-Controller.

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

H. The term "Net Available Tax Increment" is defined as any property tax increment funds allocated to the Agency, net of existing debt service payments and existing contractual obligations, not including any funds on deposit in the Agency'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 Health and Safety Code Section 33334.2, 33334.4 and 33334.6 except for the 2011-12 fiscal year only, to the extent the Agency makes a finding that there are insufficient other funds 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.

I. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment plans for each of the Agency's redevelopment project areas within the City of Sacramento or those joint project areas administered by the Agency.

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 Agency shall transfer to the City at least seven (7) days prior to the due dates for the remittance payments required by Part 1.9 the amount of Net Available Tax Increment or other unencumbered Agency funds sufficient for the City to make the required remittance payments under 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 Available Tax Increment or other unencumbered funds from the Agency, the City shall timely remit to the County Auditor-Controller the payments required by Part 1.9 pursuant to the authority as provided for 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 received from the Agency. Nothing contained in this Agreement shall be deemed to be a pledge of the City's general fund revenues or any other City assets to make the remittance payments required under Part 1.9, it being understood that the remittance payments shall be funded solely from Agency funds and/or assets. Nothing contained in this Agreement

shall be deemed to be a pledge of funds owed to bondholders or other third parties under agreements between Agency and the City Financing Authority.

3. The obligations of Agency under this Agreement shall be payable out of Net Available Tax Increment allocated to the Agency. In the event that additional funds are required in order to make the Agency payments to the City required by this Agreement, the Agency shall make such payments from income received by the Agency from its projects and programs and/or from the sale of Agency assets and any other additional funds available to it, but excluding City funds transferred to the Agency, including, without limitation, the Sheraton Hotel sale proceeds.

4. Each year by no later than October 1st, the Agency shall submit to City written verification that Agency is able to make the required remittance payment for the subsequent City fiscal year to allow City to take whatever actions that may be necessary in the event the Agency is unable to make the required remittance payment, which would subject the City to sanctions under AB 27 and result in dissolution of the Agency under AB 26.

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 Government Code section 895, the parties hereto, as between themselves, pursuant to the authorization contained in 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 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 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 Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, 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 Agency 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 SACRAMENTO

By: _____
William H. Edgar
Interim City Manager

Attest:

By: _____
Shirley Concolino
Clerk

Approved as to form:

By: _____
Eileen Teichert
City Attorney

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
LaShelle Dozier
Executive Director

Attest:

By: _____
Vickie Smith
Agency Clerk

Approved as to form:
Tia Boatmen Patterson
General Counsel

By: _____