

RESOLUTION NO. 2011-92

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING AND AUTHORIZING EXECUTION OF A REMITTANCE AGREEMENT BETWEEN THE CITY AND THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ROHNERT PARK PURSUANT TO HEALTH AND SAFETY CODE SECTION 34194.2

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.) ("**CRL**"), the City Council ("**City Council**") of the City of Rohnert Park ("**City**") created the Community Development Commission of the City of Rohnert Park ("**CDC**") to serve as the redevelopment agency within the City; and

WHEREAS, the CDC is responsible for carrying out the Redevelopment Plan for the Rohnert Park Redevelopment Project ("**Redevelopment Plan**") covering certain areas within the City ("**Project Area**"); and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed: (i) ABX1 26, which prohibits agencies from taking numerous actions, effective immediately, and purportedly retroactively, and provides that agencies are deemed to be dissolved as of October 1, 2011; and (ii) ABX1 27, which provides that agencies do not have to cease activities and do not have to dissolve, if the community creating the redevelopment agency enacts an ordinance agreeing to comply with the alternative voluntary redevelopment program described in Section 2 of ABX1 27 adding Part 1.9 (commencing with section 34192) of Division 24 of the Health and Safety Code ("**Alternative Redevelopment Program**"); and

WHEREAS, the Alternative Redevelopment Program requires the City to remit specific annual payments to the Sonoma County Auditor-Controller ("**City Remittance**"); and

WHEREAS, pursuant to Section 34194.2 of the CRL, the City may enter into an agreement with the CDC, whereby the CDC will transfer a portion of its tax increment to the City in a particular fiscal year, in an amount not to exceed the amount of the City Remittance for such fiscal year, for the purpose of financing activities within the Project Area related to the CDC's goals; 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 constitutionality of ABX1 26 and ABX1 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement; and

WHEREAS, on August 11, 2011, the Supreme Court issued a partial stay on the effectiveness of ABX1 26 and ABX1 27 until the Court can rule on the constitutionality of the two bills, which stay was further modified by the Court on August 17, 2011 (collectively, the "**Stay**"); and

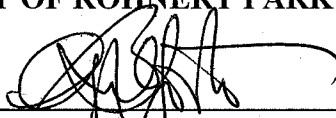
WHEREAS, the Stay is unclear as to what actions an agency or city should be taking during pendency of the Stay and, therefore, notwithstanding the pending litigation and the Stay, City adopted Ordinance No. 839 agreeing to comply with the Alternative Redevelopment Program, subject to certain terms and conditions, and City and CDC wish to enter into a remittance agreement pursuant to Section 34194.2 of the CRL in order to enable the City to make the annual City Remittance payments required by ABX1 27 and enable the CDC to continue its activities necessary to carry out the goals and objectives of the Redevelopment Plan, in the event ABX1 26 and ABX1 27 are upheld and the Stay is lifted.

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby approves the Remittance Agreement, substantially in the form attached hereto as Exhibit A ("**Agreement**"), and authorizes and directs the City Manager to execute the Agreement on behalf of the City, subject to such technical or clarifying revisions as are reasonably determined necessary by the City Manager and approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions and execute all documents as necessary or appropriate to carry out the Agreement on behalf of the City.

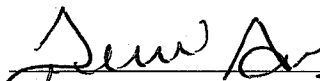
DULY AND REGULAR ADOPTED this 27th day of September, 2011.

CITY OF ROHNERT PARK



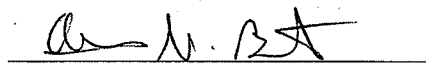
Gina Belforte, Mayor

ATTEST:



Terri Griffin, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

Alexandra M. Burnhili, Assistant City Attorney

AHANOTU: <u>AYE</u>	CALLINAN: <u>AYE</u>	MACKENZIE: <u>AYE</u>	STAFFORD: <u>AYE</u>	BELFORTE: <u>AYE</u>
AYES: (5)	NOES: (0)	ABSENT: (0)	ABSTAIN: (0)	

**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 ROHNERT PARK, a general law city and municipal corporation (the "**City**") and the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ROHNERT PARK, a public body, corporate and politic (the "**CDC**"), with reference to the following facts:

A. The CDC is a redevelopment agency organized and existing under the California Community Redevelopment Law (health and Safety Code Section 33000, *et seq.*) and is responsible for implementing the Redevelopment Plan for the Rohnert Park Redevelopment Project ("**Redevelopment Plan**") covering certain areas within the City ("**Project Area**").

B. Assembly Bill No. x1 26 ("**AB 26**") and Assembly Bill No. x1 27 ("**AB 27**") were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 29, 2011.

C. AB 26 requires that each redevelopment agency be dissolved unless, pursuant to AB 27 (to be codified as Part 1.9 of the California Health and Safety Code, commencing with Section 34192), the community that created it enacts an ordinance committing it to participate in what is commonly known as the voluntary alternative redevelopment program and to make certain statutorily-specified payments described in Health and Safety Code Section 34194 to the County Auditor-Controller ("**Alternative Redevelopment Program**" or "**Program**").

D. The City Council of the City of Rohnert Park the "**City Council**") has adopted Ordinance No. 839 to comply with AB 27 and participate in the Alternative Redevelopment Program (the "**Ordinance**").

E. An action challenging the constitutionality of AB 26 and AB 27 has been filed on behalf of cities, counties and redevelopment agencies and is being litigated by the League of California Cities and California Redevelopment Association, and the Supreme Court of the State of California has stayed, in part, the effect of AB 26 and AB 27.

F. Pursuant to the Ordinance, the City has committed to make the remittances required by the Alternative Redevelopment Program, to otherwise comply with the Program's requirements and, in doing so, to authorize the continuation of the CDC after enactment of AB 26 and AB 27.

G. The City has committed to make the remittances under protest and without prejudice to the City's right to recover such amounts and interest thereon in the event there is a final determination by the Supreme Court that AB 26 and AB 27 are invalid.

H. Notwithstanding the Supreme Court's order staying the effectiveness of AB 26 and AB 27, the City and CDC desire to prepare for the Supreme Court's ultimate determination on the merits of the litigation and to be prepared for continued operation of the CDC if AB 26 and AB 27 are found to be a valid exercise of the State Legislature's power.

I. Execution of this Agreement will allow the City and CDC to continue redevelopment activities immediately upon the Supreme Court's determination on the merits of the litigation, or upon its lifting of the stay as to AB 26 and AB 27, should either take place.

J. In the event the Supreme Court issues a final determination that AB 26 and AB 27 are invalid, this Agreement shall be null and void and of no further force or effect, as the City has already determined that the Ordinance shall be deemed to be null and void and of no further force or effect in such event.

K. Unless and until AB 26 and AB 27 are invalidated, the City, pursuant to Health and Safety Code Section 34194.1, may use any available funds not otherwise obligated for other uses in making remittances to the Sonoma County Auditor-Controller pursuant to Health and Safety Code Section 34194 or 34194.5.

L. Pursuant to Health and Safety Code Section 34194.2, the City may enter into an agreement with the CDC, whereby the CDC will transfer a portion of the taxes allocated to it pursuant to Health and Safety Code Section 33670 ("**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 CDC project goals ("**City Remittances**").

M. The purpose of this Agreement is to provide for the foregoing transfer of Tax Increment funds, should the Supreme Court uphold the validity of AB 26 and AB 27, in this current fiscal year and forthcoming fiscal years, in amounts sufficient to pay the annual City Remittances required by the Alternative Redevelopment Program and to allow the City to undertake projects, programs and activities related to the CDC's project goals, including the administrative costs of undertaking those projects, programs, and activities.

N. The obligations of the CDC under this Agreement shall constitute an indebtedness of the CDC for the purpose of carrying out the Redevelopment Plan for the Project Area.

O. As further stated in the Ordinance, the City reserves the right, whether any City Remittance has been paid, to challenge the legality of AB 26 and AB 27.

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 CDC shall transfer to the City in a timely manner Tax Increment or any other available funds in an amount sufficient for the City to make the City Remittances required by the Alternative Redevelopment Program. The amount to be transferred to the City shall equal the entire amount determined by the State Director of Finance to be the City's obligation under the

Program, subject to the City's right to appeal the amount of remittance to the Director pursuant to the Program. The City and CDC agree that if CDC does not have sufficient Tax Increment or other funds available to make the full City Remittance required in any fiscal year, City shall have no obligation to use City funds for such purpose, in which case the CDC may be deemed to be dissolved under Health and Safety Code Section 34195. Notwithstanding the foregoing, CDC shall have no obligation to transfer any monies under this subsection 1 for the duration of the Supreme Court's stay.

2. Subject to the timely receipt from the CDC of Tax Increment or other funds sufficient to make the annual City Remittances required by the Program, the City shall pay to the Sonoma County Auditor-Controller, no later than January 15 and May 15 of each year, one-half of the City Remittance amount due for each fiscal year while this Agreement is in effect. The City's obligation to make such City Remittance payments shall be a special limited fund obligation of the City payable solely from Tax Increment or other available funds paid to the City by the CDC pursuant to this Agreement. Nothing contained in this Agreement shall be deemed to be a pledge of the City's general fund revenues or any other assets to pay the City Remittances for any fiscal year. Notwithstanding the foregoing, City shall have no obligation to transfer any monies under this subsection 2 for the duration of the Supreme Court's stay.

III. TERMINATION

This Agreement shall be deemed null and void if AB 26 and AB 27 are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner. Notwithstanding the foregoing or any other provision of this Agreement, either the City or the CDC may terminate this Agreement at any time, for any reason or no reason, by written notice to the other party.

IV. 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.

V. 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 constitutes the entire understanding and agreement of the parties, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

2. This Agreement is intended solely for the benefit of the City and the CDC. Notwithstanding any reference in this Agreement to persons or entities other than the City and the CDC, there shall be no third party beneficiaries under this Agreement.

3. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the parties.

4. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

VI. SEVERABILITY

If any term, provision, 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 CDC 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 ROHNERT PARK

COMMUNITY DEVELOPMENT
COMMISSION OF THE CITY OF
ROHNERT PARK

By: _____
Gabriel Gonzalez, City Manager

By: _____
Gabriel Gonzalez, Executive Director

Attest: _____
Terri Griffin, City Clerk

Attest: _____
Terri Griffin, Secretary

Approved As To Form:

Approved As To Form:

By: _____
Michelle Kenyon, City Attorney

By: _____
Michelle Kenyon, General Counsel