RESOLUTION NO. ACRA-2011-1

A Resolution of the Albany Community Reinvestment Agency, Approving a Public Improvements Grant and Cooperation Agreement and Making Certain Findings Related Thereto

The Albany Community Reinvestment Agency resolves as follows:

WHEREAS, the City Council ("City Council") of the City of Albany ("City") has adopted and amended, from time to time, the Albany Community Reinvestment Plan ("Redevelopment Plan") for the Cleveland Avenue/Eastshore Highway Redevelopment Project Area ("Project Area"); and

WHEREAS, the Albany Community Reinvestment Agency ("Agency") is engaged in various activities in its efforts to remove the blighting conditions that still remain in the Project Area; and

WHEREAS, in keeping with the goals of the Agency to eliminate blight and reduce physical and economic blight in accordance with the Redevelopment Plan and Agency's current Implementation Plan ("Implementation Plan"), the City and Agency have been working cooperatively regarding the development of certain public improvements in the Project Area; and

WHEREAS, due to the complexity of the projects and the varying funding sources, the Agency and the City mutually desire to enter into a Public Improvements Grant and Cooperation Agreement (the "Agreement", a copy of which is on file with the City Clerk and Agency Secretary through which the Agency shall pay for designated portions of, and the City shall conduct, public improvement projects to alleviate blighting conditions in the Project Area as set forth in the proposed Agreement; and

WHEREAS, implementation of the Agreement will assist the Agency to accomplish the stated goals in the Redevelopment Plan and its current Implementation Plan as described in the staff report accompanying this Resolution (the "Staff Report"); and

WHEREAS, under the California Redevelopment Law (Health and Safety code Section 33100 et seq.; the "Law"), before the Agency can expend money for public improvements, the Agency and the City must make specified findings pursuant to Health and Safety Code Section 33445; and

WHEREAS, pursuant to the Law, the Agency is authorized, with the consent of the City Council to pay for part, or all, of the costs of public improvements that are of benefit to the Project Area; and

WHEREAS, no other reasonable means of financing the estimated cost of the public improvements are available to the City or the community; and

WHEREAS, pursuant to State CEQA Guidelines Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), because the Agreement consists of the creation of a governmental funding mechanism for various public improvements, but does not commit funds to any specific public improvement, in that environmental review required by CEQA shall be completed prior to the commencement of any public improvement listed in the Agreement; and

WHEREAS, the Staff Report, the Redevelopment Plan, the report to City Council accompanying the Redevelopment Plan, and the Implementation Plan provide additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE BE IT RESOLVED by the Albany Community Reinvestment Agency as follows:

Section 1.

All the Recitals above are true and correct and incorporated herein.

Section 2.

In compliance with Section 33445 of the Law, the Agency hereby finds that: (a) the acquisition of the land or the installation or construction of the public improvements listed in the Agreement that are publicly owned are of benefit to the Project Area by helping to eliminate blight within the Project Area or providing housing for low- or moderate-income persons; (b) no other reasonable means of financing the acquisition of land or the installation or construction of the public improvements listed in the Agreement that are publicly owned are available to the community; and (c) the appropriation and payment of funds by the Agency for the acquisition of land or the cost of the public improvements listed in the Agreement that are publicly owned is consistent with the Agency's current Implementation Plan. These findings are based on the facts and analysis in the Staff Report incorporated in this Resolution.

Section 3.

The Agency agrees to make the expenditures as called for in the Agreement for the public improvement projects listed in the Agreement, subject to completion of any environmental review required by CEQA prior to the commencement of any improvement listed in the Agreement.

Section 4.

The Agency hereby approves the Agreement and authorizes the Agency Executive Director to enter into and execute the Agreement on behalf of the Agency for the funding and completion of the projects listed in the Agreement, substantially in the form on file with the Agency Secretary and the City Clerk, with such revisions as are reasonably determined necessary by the Agency signatory, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Agency signatory. The Agency Executive Director is authorized to implement the Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Agreement.

Section 5.

The Agency hereby approves and appropriates (to the extent not already appropriated) the amounts necessary to fund the Agency's obligations under the Agreement as a lawful expenditure of Agency funds under the Law. The Agency's current fiscal year budget is hereby amended to the extent necessary to implement the foregoing appropriation.

Section 6.

The Agency Executive Director is hereby authorized and directed to file Notices of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

Section7.

The Agency Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Agency's obligations pursuant to this Resolution and the Agreement.

Section 8.

The Agency Secretary shall certify to the adoption of this Resolution.

Section 9.

This Resolution shall take effect immediately upon adoption.

Marjorie Atkinson

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City of Albany

1000 SAN PABLO AVENUE • ALBANY, CALIFORNIA 94706-2295

CITY ADMINISTRATOR
PH. (510) 528-5710
FAX (510) 528-5797

CITY ATTORNEY
PH. (510) 524-9205
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CITY CLERK
PH. (510) 528-5720
FAX (510) 528-5797

CITY COUNCIL
PH. (510) 528-5720
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COMMUNITY DEVELOPMENT & ENVIRONMENTAL RESOURCES
- Building
- Engineering
- Environmental Resources
- Maintenance
- Planning

PH. (510) 528-5760
FAX (510) 524-9359

FINANCE & ADMINISTRATIVE SERVICES
CITY TREASURER
PH. (510) 528-5730
FAX (510) 528-2743

FIRE & EMERGENCY MEDICAL SERVICES
PH. (510) 528-5771
FAX (510) 528-5774

PERSONNEL
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FAX (510) 528-5797

POLICE
PH. (510) 525-7300
FAX (510) 525-1360

RECREATION & COMMUNITY SERVICES
1249 Marin Avenue
PH. (510) 524-9283
FAX (510) 528-8914
- Friendship Club/ Childcare Program PH. (510) 524-0135
- Senior Center PH. (510) 524-9122 FAX (510) 524-8940
- Teen Center PH. (510) 525-0576

RESOLUTION NO. ACRA2011-1

PASSED AND APPROVED BY THE ALBANY COMMUNITY REINVESTMENT AGENCY, this 17th day of January, 2011 by the following votes:

AYES: Agency Members Lieber, Wile & Vice-Chair Atkinson

NOES: None

ABSENT: None RECUSED: Council Member Thomsen & Mayor Javandel

WITNESS MY HAND AND THE SEAL OF THE ALBANY COMMUNITY REINVESTMENT AGENCY, this 3rd day of February 2011.

JACQUELINE L. BUCHOLZ, CMC
SECRETARY

PUBLIC IMPROVEMENTS GRANT AND COOPERATION AGREEMENT FOR THE ALBANY REINVESTMENT REDEVELOPMENT PROJECT AREA

This Public Improvements Grant and Cooperation Agreement (the "Agreement") is for purposes of funding acquisition, design and construction of various public improvements owned or to be owned by the City of Albany (the "City"), and is entered into as of January17, 2011 by and between the City and the Albany Community Reinvestment Agency (the "Agency"), on the basis of the following facts, understandings and intentions of the parties:

RECITALS

A. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council of the City has adopted and the Agency is responsible for implementing the Redevelopment Plan (the "Redevelopment Plan") for the Cleveland Avenue/Eastshore Highway Redevelopment Project Area (the "Project Area").

B. To assist in implementing the Redevelopment Plan, the Agency has adopted a five (5)-year implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law.

C. The Agency and the City desire that the Agency will fund and the City will acquire any necessary land for, and design and construct various elements of public improvements and facilities owned or to be owned by the City, as more fully set forth in Exhibit A attached to and incorporated in this Agreement by this reference. Exhibit A in its entirety is referred to in this Agreement as the "Improvement Plan," and the improvements listed in the Improvement Plan are referred to individually as a "Public Improvement Project" and collectively as the "Public Improvement Projects." The Improvement Plan set forth in Exhibit A includes the currently estimated costs of implementing the Public Improvement Projects.

D. The Public Improvement Projects are provided for in the Redevelopment Plan, and are consistent with the Implementation Plan. Implementation of the Public Improvement Projects will benefit the Project Area and will assist in the elimination of blight in the Project Area and the provision of affordable housing in the community. The Agency's use of funds as provided in this Agreement is authorized by the Redevelopment Law, and the Agency and City Council have made all findings required under the Redevelopment Law for such use.

E. Pursuant to State CEQA Guidelines Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), because this Agreement consists of the creation of a governmental funding mechanism for various public improvements, but does not commit funds to any specific public improvement, in that environmental review required by CEQA shall be completed prior

to the commencement of any Public Improvement Project listed in the Improvement Plan contained in Exhibit A.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Agency agree as follows:

ARTICLE 1
AGENCY GRANT

Section 1.1 Agency Grant. Subject to the terms and conditions of this Agreement, the Agency hereby grants to the City, and the City hereby accepts from the Agency, a grant (the "Grant") in an amount not to exceed the total amount shown for all Public Improvement Projects in the Improvement Plan attached to this Agreement as Exhibit A at the time of execution of this Agreement (the "Maximum Grant Amount"), for use by the City to complete the Public Improvement Projects as further provided in Article 2.

Section 1.2 Grant Source. The sources of the Grant from the Agency to the City consist of:

(a) All funds currently held by the Agency (other than in the Agency's Low and Moderate Income Housing Fund) and not previously budgeted or appropriated for other activities, projects, or programs (the "Available Funds"); and

(b) All future tax increment revenue allocated to the Agency pursuant to the Redevelopment Plan and the Redevelopment Law and available to the Agency after the Agency: (1) makes all necessary annual payments with respect to then existing debt obligations of the Agency, including, without limitation, bonded indebtedness, pass-through payments owed to affected taxing entities under agreement or Sections 33607.5 or 33607.7 of the Redevelopment Law, written agreements with other persons or entities, deposits to the Agency's Low and Moderate Income Housing Fund pursuant to the Redevelopment Law, and any other statutorily required payment obligations of the Agency; and (2) sets aside a reasonable amount for Agency administration as mutually determined by the City and the Agency (collectively, the "Pledged Funds").

In no event shall the sum of the Available Funds and the Pledged Funds exceed the Maximum Grant Amount.

Section 1.3 Payment Procedure. The Agency shall pay the Available Funds to the City within ten (10) days of the date of this Agreement. The Agency shall pay the Pledged Funds to the City within ten (10) days after receipt of each installment of tax increment revenue in an amount equal to the portion of such tax increment revenue constituting Pledged Funds. Until needed to fund a Public Improvement Project, the City shall invest all Grant funds received from the Agency in the Local Agency Investment Fund or other comparable investment vehicle, and shall apply all interest earned thereon toward the cost of the Public Improvement Projects. Any Grant funds

held by or for the benefit of the City at the earlier of (a) completion of and payment for all of the Public Improvement Projects or (b) the Plan Effectiveness Deadline (as defined in Section 2.1) shall be promptly reimbursed by the City to the Agency, and may thereafter be used by the Agency free of any obligation under this Agreement.

Section 1.4 Indebtedness of the Agency. The obligation of the Agency to pay the Available Funds and the Pledged Funds to the City shall constitute an indebtedness of the Agency incurred in carrying out the Redevelopment Plan and a pledge of tax increment received by the Agency from the Project Area to repay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the Redevelopment Law, and the Redevelopment Plan.

Section 1.5 Subordination. The parties agree that the obligation of the Agency to make payments pursuant to this Agreement is subordinate to: (a) any obligation of the Agency to pay debt service on tax increment bonds, or any other loans or agreements, heretofore or hereafter issued and secured by a pledge of and a lien upon tax increment revenue generated by the Agency in the Project Area; (b) any required deposits or related payments to the Agency's Low and Moderate Income Housing Fund; and (c) any pass-through payment obligation to affected taxing entities.

ARTICLE 2
COMPLETION OF PUBLIC IMPROVEMENT PROJECTS

Section 2.1 Use of Grant. The City shall use the Grant exclusively for the completion of the Public Improvement Projects in accordance with the terms and conditions of this Agreement. Among other activities, the City may use the Grant to pay costs of land acquisition, relocation, demolition, site preparation and remediation, design, and construction of the Public Improvement Projects, and reasonable staff, consultant and other administrative costs in connection therewith. The City shall undertake the Public Improvement Projects in accordance with all applicable laws and regulations, including without limitation, laws and regulations related to competitive bidding of public works projects, payment of prevailing wages, non-discrimination, and the use of tax-exempt bond proceeds, if and to the extent such tax-exempt bond proceeds constitute a portion of the Grant funds. The City shall use the Grant funds for completion of the various Public Improvement Projects by not later than the deadline for effectiveness of the Redevelopment Plan (the "Plan Effectiveness Deadline"), as set forth in the Redevelopment Plan.

Section 2.2 Consultation; Modification of Improvement Plan. The Agency and the City shall confer periodically to establish priorities and timing for funding and completion of the various Public Improvement Projects, to review the scope and design of each Public Improvement Project, and to determine any mutually acceptable modifications in the cost estimates and budgets for the various Public Improvement Projects. The City and Agency may modify the Improvement Plan from time to time: to provide for the use of additional federal, state and local funds; to account for unexpected revenues, whether greater or lesser; to modify, add, or delete a Public

Improvement Project from the Improvement Plan; to modify the cost estimate for individual Public Improvement Projects; to maintain consistency with the City's General Plan or the Redevelopment Plan; or to take into consideration unforeseen circumstances, including without limitation circumstances that may come to light as a result of subsequent environmental review required by CEQA, as further described in Section 2.3. The Improvement Plan may be modified by the City Manager on behalf of the City and the Executive Director on behalf of the Agency; provided, however, in no event shall the total Grant to be paid by the Agency to the City exceed the Maximum Grant Amount without a formal amendment of this Agreement approved by the City Council and the Agency Board; and, provided further, however, that any addition of a Public Improvement Project to the Improvement Plan shall be conditioned upon the making of all required Redevelopment Law findings and CEQA findings by the City Council and the Agency Board in their policy discretion.

Section 2.3 CEQA Review. Prior to the approval, use of Grant funds, and commencement of work on any Public Improvement Project listed in the Improvement Plan (other than preliminary feasibility work that is exempt from the requirements of CEQA), all necessary environmental review required by CEQA shall be completed. All Public Improvement Projects to be funded with Grant funds from the Agency pursuant to this Agreement must be consistent with CEQA. This Agreement in no way limits the discretion of the Planning Commission, the Agency, and City Council in completing environmental review of the Public Improvement Projects.

Section 2.4 Ongoing City Obligations. Following completion, the City shall be responsible for causing the operation and maintenance of each Public Improvement Project in accordance with City policies and standards for such improvements then in effect and as amended from time to time. The Agency's grant and the City's acceptance of the Grant shall not imply any ownership or responsibility for the Public Improvement Projects by the Agency, and the City shall retain any and all responsibility and liability for them.

Section 2.5 Indemnity. The City shall indemnify, defend, and hold the Agency, its officers, agents, and employees, harmless against all claims, demands, damages, losses, costs, expenses, including without limitation, attorneys' fees and costs of litigation, or liabilities made against them which arise out of, or in connection with, the construction or failure of the Public Improvement Projects; provided, however, that this indemnity shall not extend to any claim arising solely from the Agency's negligence or the Agency's negligent failure to perform its obligations under this Agreement.

ARTICLE 3
GENERAL PROVISIONS

Section 3.1 Non-Liability of Officials. No member, official, employee or agent of the Agency shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Agency for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement. No

member, official, employee or agent of the City shall be personally liable to Agency, or any successor in interest, in the event of any default or breach by the City for any amount which may become due to the Agency or successor or on any obligation under the terms of this Agreement.

Section 3.2 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits a party's approval, consent, or waiver, the written approval, consent, or waiver of the Agency's Executive Director and the City's City Manager (or their respective designees) shall constitute the approval, consent, or waiver of the Agency and the City, respectively, without further authorization required from the governing board of the party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board when she/he deems it appropriate.

Section 3.3 Nondiscrimination.

(a) In Performance of Agreement. The City and its contractors, subcontractors, agents, and employees shall not, because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability of any person, refuse to hire or employ the person, or refuse to select the person for a training program leading to employment, or bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions or privileges of employment with respect to performance of this Agreement.

(b) With Respect to Use of the Public Improvements Projects. The City covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Public Improvement Projects.

Section 3.4 No Third Party Beneficiaries. No person or entity other than the Agency, the City and their permitted successors and assigns, shall have any right of action under this Agreement.

Section 3.5 State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 3.6 Records. The City shall maintain complete and accurate financial accounts, documents and records with respect to the performance of its obligations under this Agreement, and shall make same available to the Agency's authorized agents for copying and auditing upon reasonable prior notice. Such accounts, documents and records shall be retained by the City for the longer of two (2) years following completion of the applicable Public Improvement Project or whatever retention period the City has designated for such documents.

Section 3.7 Inspection of Documents. During the regular office hours and upon reasonable prior notice, the City and the Agency, by their duly authorized representatives, shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement.

Section 3.8 Additional Acts. The parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of consummating the transactions contemplated in this Agreement.

Section 3.9 Litigation Regarding Agreement Validity. In the event litigation is initiated attacking the validity of this Agreement, each party shall in good faith defend and seek to uphold the Agreement.

Section 3.10 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

Section 3.11 Entire Agreement; Modification and Amendment. This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. Except as otherwise provided in Section 2.2, this Agreement cannot be amended or modified except by written agreement of the parties.

Section 3.12 Defaults and Remedies. If either party breaches any other material provision of this Agreement, the other party shall first notify the breaching party in writing of the purported breach or failure, giving the breaching party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the breaching party does not then so cure within such thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the breaching party fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-breaching party shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (a) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement shall survive such termination); and (b) prosecuting an action for damages or specific performance.

Section 3.13 Attorneys' Fees. In any action which a party brings to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

Section 3.14 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest

and assigns of each of the parties to this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 3.16 Time Of The Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

AGENCY
Approved as to Form

Robert Zweber
Agency Counsel

ALBANY COMMUNITY REINVESTMENT

Beth Pollard
_____, Executive Director

Approved as to Form

Robert Zweber
City Attorney

CITY OF ALBANY

Beth Pollard
_____, City Manager

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EXHIBIT A

IMPROVEMENT PLAN

The Improvement Plan consists of the acquisition and improvement of land for, design, construction, and related activities to complete the following Public Improvement Projects, as contained and referenced in the Five-Year Implementation Plan adopted by the Albany Community Reinvestment Agency on November 15, 2010:

Improvements to Cleveland Avenue totaling approximately $2.8 million, including:

- Gateway and Way finding signage
- Street repaving and installation of sidewalks
- Streetscape improvements
- Creek and Storm Drain improvements
- Traffic Improvements at the Freeway off ramp
- Bicycle and Pedestrian Trail connection

Acquisition, development, and associated improvements of property on Pierce Street, with an estimated cost of $7.5 million, including:

- Acquisition of the 4.45 acre Pierce Street parcel from the California Department of Transportation
- Relocating the City's maintenance center activities from leased space on Cleveland Avenue and constructing a new maintenance center
- Development of park space
- Implementation of the Bicycle and Pedestrian Trail connection