

AGENCY TRANSFER PAYMENT AGREEMENT

This Agency Transfer Payment Agreement (the "Agreement"), is entered into as of the _____ day of _____, 2011, by and between Albany Community Reinvestment Agency, a public body, corporate and politic (the "Agency"), and the City of Albany, a municipal corporation (the "City"), with reference to 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 (the "City Council") of the City adopted Ordinance No. 98-04 adopting the Albany Reinvestment Redevelopment Plan (the "Redevelopment Plan"), and the Agency is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law.

B. ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"; and together with the Dissolution Act, the "Redevelopment Restructuring Acts") have been enacted to significantly modify the Redevelopment Law generally as follows:

1. The Dissolution Act immediately suspends all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011; and

2. The Voluntary Program Act, through the addition of Part 1.9 to the Redevelopment Law (the "Alternative Voluntary Redevelopment Program"), allows a redevelopment agency to avoid dissolution under the Dissolution Act by opting into an alternative voluntary redevelopment program requiring specified annual contributions to local school and special districts.

C. Specifically, Section 34193(a) of the Redevelopment Law (as added to the Redevelopment Law by the Voluntary Program Act) authorizes the City Council to enact an ordinance to comply with Part 1.9 of the Redevelopment Law, thereby exempting the Agency from the provisions of the Dissolution Act, and enabling the Agency to continue to exist and function under the Redevelopment Law, so long as the City and the Agency comply with the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law.

D. On August 11, 2011, the California Supreme Court (the "Court") agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts and issued an order granting a partial stay on specified portions of the Redevelopment Restructuring Acts, as modified on August 17, 2011 (the "Stay"), including a stay of the provisions of the Voluntary Program Act.

E. Through the adoption and enactment of Ordinance No. _____ (the "Continuation Ordinance"), the City Council, pursuant to Section 34193(a) of the Redevelopment Law, has elected to participate for itself and on behalf of the Agency in the Alternative Voluntary

Redevelopment Program set forth in Part 1.9 of the Redevelopment Law conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

F. Pursuant to Sections 34193.2(b) and 34195(b) of the Redevelopment Law, the City Council understands that participation in the Alternative Voluntary Redevelopment Program requires remittance of certain payments as set forth in Chapter 3 of Part 1.9 of the Redevelopment Law, and also constitutes an agreement on the part of the City, in the event the City fails to make such remittance payments, to assign to the State of California its rights to any payments owed by the Agency, including, but not limited to, payments from loan agreements and this Agreement.

G. Pursuant to Section 34194.2 of the Redevelopment Law, the City and Agency have elected to enter into this Agreement, whereby the Agency agrees to transfer a portion of the Agency's tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law, for purposes of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals.

H. Pursuant to Section 34194.1 of the Redevelopment Law, the City may use any available funds not otherwise obligated for other uses to make the remittances to the County Auditor-Controller required pursuant Chapter 3 of Part 1.9 of the Redevelopment Law.

I. The purpose of this Agreement is to provide for the transfer of tax increment and other funds from the Agency to the City in the amounts required to make each of the annual remittances mandated under Chapter 3 of Part 1.9 of the Redevelopment Law.

J. The obligations of the Agency under this Agreement constitute an indebtedness of the Agency with respect to the redevelopment project for the Redevelopment Plan within the meaning of Section 16 of Article XVI of the California Constitution.

K. The City Council does not intend, by execution of this Agreement, to waive any rights of appeal regarding the amount of any remittance payments established by the California Department of Finance, as provided in the Voluntary Program Act.

L. Under Title 14 of the California Code of Regulations, Section 15378(b)(4) this Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program.

M. Accordingly, the parties intend that, while this Agreement will be binding upon the parties as of the date set forth in the opening paragraph, the operation of the terms of this Agreement will be conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the Agency and the City agree as follows:

ARTICLE 1.
OBLIGATIONS OF THE PARTIES

1.1 General Purpose. To the extent required by law to maintain the existence and powers of the Agency under the Redevelopment Law, the City and the Agency hereby enter into this Agreement whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittances required under Chapter 3 of Part 1.9 of the Redevelopment Law, for the purpose of financing activities within the redevelopment area that are related to accomplishing the Agency's project goals for the Project Area.

1.2 Transfers to City. The Agency shall transfer to the City, in a timely manner, funds from sources described in Section 1.3, in an amount equal to the annual remittances required under Chapter 3 of Part 1.9 of the Redevelopment Law, as such may be adjusted (the "Agency Transfer Payments").

1.3 Source of Agency Transfer Payments. Any combination of the following shall constitute eligible sources for the Agency Transfer Payments:

a. Any tax increment funds allocated to the Agency pursuant to Section 33670 of the Redevelopment Law net of existing debt service payments and existing third-party contractual obligations, and excluding: (1) amounts required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the Redevelopment Law; and (2) any funds on deposit in the Agency's Low and Moderate Income Housing Fund;

b. Any other funds previously or subsequently made available to the City by the Agency, including any unencumbered funds previously pledged to the City by the Agency under an agreement for payment of public improvements and other redevelopment activities;

c. Notwithstanding anything to the contrary, for the 2011-2012 fiscal year alone, any portion of the amount of tax increment required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the Redevelopment Law for the 2011-2012 fiscal year, to the extent the Agency makes the finding that there are insufficient other funds to meet its debt and other obligations, current priority program needs, or its obligations to provide the Agency Transfer Payments under this Agreement.

1.4 Payment of Remittances by City. Subject to the receipt of sufficient Agency Transfer Payments pursuant to Section 1.2 above, the City shall remit to the County Auditor-Controller the payments required pursuant to Chapter 3 of Part 1.9 of the Redevelopment Law on or before the dates prescribed in Section 34194(d)(1). The City's obligations to make the remittances required hereunder shall be a special limited obligation of the City payable solely from the Agency Transfer Payments provided to the City pursuant to the terms of this

Agreement, and such remittances shall be made exclusively from the Agency Transfer Payments or from other funds that become available as a result of the City's receipt of the Agency Transfer Payments. Nothing in this Agreement shall be deemed to be a pledge of the City's general fund revenues or other assets for the purposes of funding the remittances required by Chapter 3 of Part 1.9 of the Redevelopment Law.

1.5 Subordination. The City shall consider in good faith any request by the Agency to subordinate the City's interest herein and to allow the Agency to pledge all or any portion of the tax increment revenue on a senior pledge basis to secure payments due on future indebtedness pledged with tax increment.

ARTICLE 2. GENERAL PROVISIONS

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

2.2 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.

2.3 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 implementing the actions contemplated under this Agreement.

2.4 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.

2.5 Severability. 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.

2.6 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. This Agreement cannot be amended or modified except by written agreement of the parties.

2.7 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, whether by agreement or operation of law, and including, without limitation, any successor to the Agency. 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.

2.8 Time of the Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

2.9 Binding Effect; Operation of Agreement. This Agreement shall be binding upon the parties as of the date set forth in the opening paragraph of this Agreement. The operation of the terms of this Agreement shall be conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

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

ALBANY COMMUNITY REINVESTMENT
AGENCY, a public body corporate and politic

By: _____
Beth Pollard, Executive Director

APPROVED AS TO FORM:

Agency Counsel

ATTEST: _____
Agency Secretary

CITY OF ALBANY, a municipal corporation

By: _____
Beth Pollard, City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST: _____
City Clerk