

REMITTANCE AGREEMENT

THIS REMITTANCE AGREEMENT (this "Agreement") is made and entered into on September 20, 2011, by and between the **CITY OF LOMPOC, a municipal corporation** (the "City"), and the **LOMPOC REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), with reference to the following facts:

RECITALS

WHEREAS, Assembly Bills X1 26 ("AB 26") and X1 27 ("AB 27") were passed by the State Legislature on June 15, 2011, and signed by the Governor on June 28, 2011.

WHEREAS, upon enactment, AB 27 codified Part 1.9 of Division 24 of the California Health and Safety Code, commencing with section 34192 ("Part 1.9");

WHEREAS, AB 27 established a "voluntary alternative redevelopment program" whereby the City may choose to continue the operation of the Agency 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 Santa Barbara County Auditor-Controller ("County Auditor"). All section references in this Agreement are to the California Health and Safety Code, unless otherwise specified;

WHEREAS, the City Council of the City (the "City Council") has adopted Ordinance No. 1216 (the "Ordinance"), committing to comply with and make the remittances required by Part 1.9 and continue the existence and activities of the Agency after enactment of AB 27;

WHEREAS, pursuant to Section 34194.1, in making remittances to the County Auditor pursuant to Section 34194, the City may use any available funds not otherwise obligated for other uses;

WHEREAS, pursuant to Section 34194.2, the City may enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the City, in an amount not to exceed the annual remittance required each year pursuant to Chapter 3 of Part 1.9, for the purpose of financing activities within the redevelopment area that area that are related to accomplishing the Agency's project goals;

WHEREAS, the purpose of this Agreement is to provide for the transfer of funds pursuant to Section 34194.2 to enable the City to make the remittances required by Part 1.9;

WHEREAS, the obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment plan for Redevelopment Project Area No. 1, as currently constituted or as it may be amended;

WHEREAS, the validity of AB 26 and AB 27 is being challenged in a lawsuit entitled

California Redevelopment Association, et al. v. Matosantos, et al., California Supreme Court Case No. S194861 (the “CRA Lawsuit”) and other lawsuits challenging the validity of AB 26 and AB 27 may be filed;

WHEREAS, pending a decision on the merits in the CRA Lawsuit, the California Supreme Court has stayed the effectiveness of portions of AB 26 and AB 27, including, but not limited to, Sections 34194, 34194.1 and 34194.2; and

WHEREAS, it is the intention of the City and the Agency for this Agreement to become effective only if and when the stay ordered by the California Supreme Court in the CRA Lawsuit has been lifted or dissolved; provided, however, if the decision on the merits in the CRA Lawsuit or any other lawsuit challenging the validity of AB 26 and/or 27 is that provisions of AB 27 authorizing the making of remittances to the County Auditor are invalid for any reason, this Agreement shall be null and void and of no effect.

NOW, THEREFORE, the City and Agency mutually agree as follows:

1. EFFECT OF RECITALS.

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.

2. OBLIGATIONS OF THE PARTIES.

A. For purposes of this Agreement, the term “Net Available Tax Increment” means any tax increment funds allocated to the Agency, net of (1) existing debt service payments, (2) existing third-party contractual obligations, and (3) any funds on deposit in or to be deposited in the Agency’s Low and Moderate Income Housing Trust Fund (“Housing Fund”). Notwithstanding the foregoing definition, for the purpose of making the remittance payments for the 2011-2112 Fiscal Year only, “Net Available Tax Increment” includes tax increment funds to be allocated for the 2011-2012 Fiscal Year to the Housing Fund pursuant to Sections 33334.2, 33334.4 and 33334.6 to the extent the Agency 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 or pursuant to this Agreement.

B. The Agency shall transfer to the City Net Available Tax Increment or other funds which will be used by the City to make the remittance payments required by Part 1.9 and due in equal installments on January 15 and May 15 of each fiscal year. The amount transferred to the City in each fiscal year shall not exceed the amount required for the City to pay the remittance amount for that fiscal year determined by the State Director of Finance pursuant to Part 1.9. The transfers shall be made in two installments each year to coincide with the January 15 and May 15 due dates for the installments of the remittance payments.

C. The City shall timely remit to the County Auditor the payments required by Part 1.9 as provided by 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 available funds. 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. The City may choose to fund the remittance payments solely from Agency funds and assets and is not obligated to use other funds to make those payments.

D. The obligations of the Agency under this Agreement shall be payable in the first instance out of Net Available Tax Increment, as defined in the above recitals and/or as defined or provided 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 Agency's redevelopment project areas, and allocated to the Agency and/or any lawful successor entity of the Agency and/or any entity established by law to carry out the redevelopment plan for the redevelopment project areas and/or expend tax increment or pay indebtedness of the Agency to be repaid with tax increment, pursuant to Section 33670 or any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. If Net Available Tax Increment in a given fiscal year is insufficient to pay the entire amount of the remittance payment, then the Agency may also transfer to the City income received by the Agency from its projects and programs or any other additional funds available to it.

3. 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, each of the Parties, 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, costs or expenses that may be incurred by such other party solely by reason of Government Code section 895.2.

4. RESERVATION OF RIGHTS; EFFECTIVE DATE; TERMINATION FOR INVALIDITY OF AB 27.

By this Agreement, the City is not warranting or guaranteeing the payment of money to any other entity, and the City reserves the right to cease making the payments required by AB 27 if the amount of such payments (as determined by the Department of Finance) prove to be in excess of the available funds not otherwise obligated for other uses or for any other reason as determined by the City Council. Moreover, this Agreement shall in no way be construed as requiring the City to abide by AB 26 or AB 27 in the event either, or both, bills are found unconstitutional or otherwise legally invalid in whole or in part, nor shall this Agreement have the effect or give rise to any waiver of rights or remedies the City or Agency may have, whether in law or in equity, to challenge AB 26 or AB 27. This Agreement shall not be construed as the City's or Agency's acceptance of, or concurrence with, either AB 26 or AB 27, nor does this Agreement evidence any assertion or belief whatsoever on the part of the City those bills are constitutional or lawful or satisfy any legitimate public purpose.

While the City intends to make the remittances as provided for in AB 27 and pursuant to this Agreement, the remittances shall be made under protest and without

prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination by a court of competent jurisdiction that AB 26 or AB 27, or both, are unconstitutional or otherwise unlawful. The City and the Agency reserve the right, regardless of any remittance made pursuant to this Agreement, to challenge the legality of AB 26 or AB 27, or both.

The CRA Lawsuit and/or other actions challenging the validity of AB 26 and AB 27 has, or have been, or may be filed on behalf of cities, counties or redevelopment agencies.

In the CRA Lawsuit, the California Supreme Court has issued a stay of the effectiveness of portions of AB 26 and AB 27. Until and unless the stay issued by the California Supreme Court has been lifted or dissolved, this Agreement shall not become effective, the City shall not be obligated to make any community remittance for the duration of such stay and the Agency shall not be obligated to remit funds to the City to enable the City to make such payments. Moreover, to the extent the California Supreme Court or any court of competent jurisdiction determines the provisions of AB 27 regarding the making of remittances to the County Auditor, or anyone else, are invalid for any reason, this Agreement shall be deemed null and void and of no further force and effect when all petitions for rehearing and appeals from such determination are exhausted or unsuccessful, or time for filing petitions for rehearing and appeals therefrom has lapsed.

5. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS.

A. 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 with respect to the subject matter hereof.

B. 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.

C. 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.

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

6. 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, then the remainder of the provisions of this Agreement 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.

7. 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 full force and effect and be fully enforceable according to its terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

"CITY"

"AGENCY"

**CITY OF LOMPOC
AGENCY**

LOMPOC REDEVELOPMENT

By: _____
John H. Linn, Mayor

By: _____
John H. Linn, Chair

ATTEST:

ATTEST:

Stacey Alvarez, City Clerk

Stacey Alvarez, Agency Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Joseph W. Pannone, City Attorney
Counsel

Joseph W. Pannone, Agency