

MEETING DATE:    **07.11.11**

AGENDA ITEM:    **Introduction of an Ordinance Opting-in to an Alternative  
Redevelopment Program, Approval of a Resolution  
Reducing the FY 2011-2012 Affordable Housing  
Allocation and Approval of an Agreement between the  
City of Culver City and the Culver City Redevelopment  
Agency Providing Funding for the Required Payments.**

**ATTACHMENTS**

|                      | <u>Pages</u> |
|----------------------|--------------|
| 1. Ordinance         | 1-4          |
| 2. Resolution        | 5-7          |
| 3. Funding Agreement | 8-12         |

ORDINANCE NO. 2011-\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CULVER CITY,  
CALIFORNIA, AUTHORIZING THE CITY OF CULVER CITY TO  
PARTICIPATE IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT  
PROGRAM, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS**

WHEREAS, Assembly Bill X1 26 and Assembly Bill X1 27 (collectively, "AB 26/AB 27") were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 29, 2011;

WHEREAS, AB 27 is to be codified as Part 1.9 of Division 24 of the California Health and Safety Code ("Part 1.9"); and

WHEREAS, AB 27 establishes a voluntary alternative redevelopment program whereby the Culver City Redevelopment Agency ("Agency") would be authorized to continue to exist upon the enactment of an ordinance by the City to comply with the provisions of Part 1.9; and

WHEREAS, AB 27 requires the City to notify the County Auditor-Controller ("County"), the State Controller, and the State Department of Finance on or before November 1, 2011, that the City will comply with Part 1.9; and

WHEREAS, AB 27 requires the City to make specified remittances to the County in order to continue the existence of the Agency, as prescribed in Part 1.9; and

WHEREAS, AB 27 authorizes the City to enter into an agreement with the Agency, whereby the Agency would transfer a portion of its tax increment to the City for the purpose of financing certain activities within the Redevelopment Project Areas, as specified in Part 1.9; and

WHEREAS, AB 27 imposes specified sanctions on the City in the event that the City fails to make the required remittances, as determined by the State's Director of Finance; and

## ATTACHMENT 1

1 WHEREAS, AB 27 authorizes the County to charge a fee that does not  
2 exceed the reasonable costs to the County Auditor-Controller to implement the provisions  
3 of Part 1.9; and

4 WHEREAS, AB 27 authorizes the City to establish a new redevelopment  
5 agency if its former Agency has been dissolved pursuant to AB 26 only after the debt  
6 obligations of the Agency have been retired and the City satisfies the provisions of Part 1.9;  
7 and

8 WHEREAS, it is hereby acknowledged by the City Council that the League of  
9 California Cities, the California Redevelopment Association, the City Attorney and special  
10 counsel for the City have respectively opined that certain or all provisions of AB 26/AB 27,  
11 including but not limited to the effective date, violate the State Constitution and other laws  
12 (collectively, the "Laws"), and are invalid and unenforceable; and

13 WHEREAS, the City Council does not intend, by enactment of this Ordinance,  
14 to waive any constitutional and/or legal rights and, therefore, reserves all of its rights under  
15 the Laws to challenge the validity of any or all provisions of AB 26/AB 27 in any  
16 administrative or judicial proceeding and/or repeal this Ordinance, without prejudice to the  
17 City's right to recover any amounts remitted under Part 1.9; and

18 WHEREAS, the City Council does not intend, by enactment of this Ordinance,  
19 to pledge any of the City's assets, general fund or otherwise, to make the remittance  
20 payments contemplated by Part 1.9, it being understood by the City Council that any  
21 remittance payments will be funded solely from Agency funds and/or assets transferred to  
22 the City in accordance with Part 1.9; and

23 WHEREAS, the City Council does not intend, by enactment of this Ordinance  
24 to waive any rights of appeal regarding the amount of any remittance established by the  
25 State Department of Finance, as provided in Part 1.9.

# ATTACHMENT 1

1 NOW, THEREFORE, the City Council of the City of Culver City, California  
2 DOES HEREBY ORDAIN as follows:

3 **SECTION 1. Authorization to Continue Agency.** Subject to Sections 3 and 4,  
4 herein, the City hereby commits to comply with and make the remittances required by Part  
5 1.9, and authorize the continuation of the Agency. Any remittance payments required to be  
6 paid by the City pursuant to Part 1.9 shall be paid solely from Agency funds and/or assets  
7 transferred to the City in accordance with Part 1.9.

8 **SECTION 2. Reservation of Rights.** It is the position of the City that certain or  
9 all provisions of AB 26 and AB 27 violate the Laws, as referenced in the recitals, above,  
10 and are invalid and unenforceable. Neither the enactment of this Ordinance, nor the  
11 acknowledgment of or references to any provisions of AB 26/AB 27, nor the City's payment  
12 of any remittances contemplated by AB 27 shall be deemed to be, nor are they intended  
13 as, an acknowledgment of the validity of AB 26/AB 27, and the City reserves all rights in its  
14 sole discretion to challenge the validity of any or all provisions of AB 26/AB 27 in any  
15 administrative or judicial proceeding and/or repeal this Ordinance, without prejudice to the  
16 City's right to recover any amounts remitted under Part 1.9.

17 **SECTION 3. Enactment.** This Ordinance shall be deemed as "enacted"  
18 within the meaning of Part 1.9 upon the adoption of this Ordinance.

19 **SECTION 4. Authorization of Implementing Actions.** The City Manager is  
20 hereby authorized to take any actions necessary to implement this Ordinance and comply  
21 with Part 1.9, including without limitation, providing required notices to the County Auditor-  
22 Controller, the State Controller, and the State's Department of Finance; entering into any  
23 agreements with the Agency to make the remittance payments; or making any remittance  
24 payments.

25 **SECTION 5.** The City Council hereby declares that, if any provision, section,  
26 subsection, paragraph, sentence, phrase or word of this Ordinance is rendered or declared  
27 invalid or unconstitutional by any final action in a court of competent jurisdiction or by  
28

## ATTACHMENT 1

reason of any preemptive legislation, then the City Council would have independently adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases or words of this ordinance and as such they shall remain in full force and effect.

**SECTION 6.** Pursuant to Section 619 of the City Charter, this Ordinance shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption, the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the Culver City News and shall post this Ordinance or a summary thereof in at least three places within the City.

APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
MICHEÁL O'LEARY, MAYOR  
City of Culver City, California

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
MARTIN R. COLE, City Clerk

\_\_\_\_\_  
CAROL A. SCHWAB, City Attorney

A11-00344

RESOLUTION NO. 2011-A\_\_\_\_\_

A RESOLUTION OF THE CULVER CITY REDEVELOPMENT AGENCY BOARD REDUCING ITS ALLOCATION TO THE LOW AND MODERATE INCOME HOUSING FUND FOR THE 2011/2012 FISCAL YEAR AND MAKING CERTAIN FINDINGS AND DETERMINATIONS.

THE CULVER CITY REDEVELOPMENT AGENCY BOARD HEREBY FINDS, DETERMINES, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. Health & Safety Code Sections 33334.2 and 33334.3 of California's Community Redevelopment Law [Health & Safety Code §§33000, et seq.] ("CRL") require the Culver City Redevelopment Agency ("Agency") to use 20 percent of taxes allocated to the Agency pursuant to Section 33670 of the CRL ("Tax Increment") for the purpose of increasing, improving, and preserving the community's supply of low and moderate income housing and to hold such funds in a separate Low and Moderate Income Housing Fund until used for such purposes ("Low and Moderate Income Housing Fund").

Section 2. Assembly Bill X1 26 and Assembly Bill X1 27 (collectively, "AB 26./AB 27") were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 29, 2011.

Section 3. AB 27 is to be codified as Part 1.9 of Division 24 of the California Health and Safety Code ("Part 1.9").

Section 4. AB 26/AB 27 establish a voluntary alternative redevelopment program whereby the Agency would be authorized to continue to exist upon the enactment of an ordinance by the City of Culver City ("City") to comply with the provisions of Part 1.9,

## ATTACHMENT 2

1 including payment of an annual remittance to the County Auditor-Controller ("Opt-In  
2 Ordinance").

3           Section 5.    AB 26/AB 27 authorize the Agency to enter into an agreement  
4 with the City whereby the Agency would transfer a portion of its Tax Increment to the City in  
5 an amount not to exceed the amount of the City's annual remittance to the County Auditor-  
6 Controller ("Remittance Agreement").

7           Section 6.    AB 26/AB 27 authorize the Agency to reduce its allocation of  
8 Tax Increment to the Low and Moderate Income Housing Fund for the 2011/2012 Fiscal  
9 Year if the City complies with the provisions of Part 1.9 and the Agency finds that there are  
10 insufficient other moneys to meet its debt and other obligations, current priority program  
11 needs or its obligations under the Remittance Agreement.

12           Section 7.    The Agency Board has reviewed and duly considered the Staff  
13 Report, documents and other written evidence presented at its July 11, 2011 meeting and  
14 hereby determines that it will be in the best interests of the City and the health, safety,  
15 morals and welfare of its residents, and in accord with the public purposes and provisions  
16 of applicable state and local law and requirements, to reduce its allocation of Tax Increment  
17 to the Low and Moderate Income Housing Fund for the 2011/2012 Fiscal Year in an  
18 amount equal to 100% of the amount that would otherwise be placed in the Low and  
19 Moderate Income Housing Fund {currently estimated to be \$7,600,000 ("Allocation  
20 Reduction")}.  
21

22           Section 8.    All other legal prerequisites to the adoption of this Resolution  
23 have occurred.  
24  
25  
26  
27  
28

## ATTACHMENT 2

Section 9. The Agency Board has received and heard all oral and written objections pertaining to this matter, and all such oral and written objections are hereby overruled.

Section 10. The Agency Board hereby finds and determines that the foregoing recitals are true and correct.

Section 11. Based upon evidence in the record, the Agency Board finds that there are insufficient other moneys to meet its debt and other obligations, current priority program needs or its obligations under the Remittance Agreement.

Section 12. The Agency Board finds and determines that it is necessary to implement the Allocation Reduction for the 2011/2012 Fiscal Year.

Section 13. The Agency Executive Director, or designee, is hereby authorized to take such actions as are necessary and appropriate to carry out and implement the Allocation Reduction for the 2011/2012 Fiscal Year upon the City's enactment of the Opt-In Ordinance.

This Resolution shall take effect immediately upon its adoption.

APPROVED AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
D. SCOTT MALSIN, Chair  
Culver City Redevelopment Agency

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ALICE PRASAD, Agency Secretary

\_\_\_\_\_  
MURRAY KANE, Agency General Counsel

A11-00343

**REMITTANCE AGREEMENT  
PURSUANT TO  
CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2**

**THIS REMITTANCE AGREEMENT** (this “**Agreement**”) is entered into this 11<sup>th</sup> day of July, 2011, by and between the CITY OF CULVER CITY, a municipal corporation (the “**City**”) and the CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic (the “**Agency**”), with reference to the following facts:

A. Assembly Bill No. X1 26 and Assembly Bill No. X1 27 (collectively, “**AB 26/AB 27**”) were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 29, 2011.

B. AB 27 will be codified as Part 1.9 of Division 24 of the California Health and Safety Code, commencing with Section 34192 (“**Part 1.9**”).

C. AB 26 /AB 27 establish 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 Culver City (the “**City Council**”) has enacted or, concurrently with this Agreement is enacting,, an ordinance to comply with Part 1.9 (the “**Opt-In Ordinance**”); and the effective date of this Agreement shall be contingent upon the enactment of the Opt-In Ordinance.

E. Pursuant to the Opt-In 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 pursuant to AB 26/AB 27.

F. Pursuant to Section 34194.1, in making remittances to the County Auditor-Controller pursuant to Section 34194 or 34194.5, the City may use any available funds not otherwise obligated for other uses.

G. 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 that year pursuant to Chapter 3 of Part 1.9, for the purpose of financing activities within the Redevelopment Project Area that are related to accomplishing the Agency project goals.

H. 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 in this current fiscal year 2011-2012 and future fiscal years, if such payments are required.

## ATTACHMENT 3

I. For purposes of this Agreement, the term "Net Available Tax Increment" is defined as any tax increment funds allocated to the Agency, net of existing debt service payments and existing third-party 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 for the 2011/2012 fiscal year only, 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 as provided in this Agreement.

J. 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 each of the Agency's Redevelopment Project Areas.

**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 in a timely manner Net Tax Increment or other funds in an amount sufficient for the City to make the remittance payments required by 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 Tax Increment or other funds from the Agency, the City shall timely remit to the County Auditor-Controller the payments required by Part 1.9 as provided in the Opt-In 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 funds made available to the City by the Agency, including but not limited to amounts previously or subsequently pledged to the City for payment of Agency expenses that remain unencumbered. 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, it being understood that any remittance payments shall be funded solely from Agency funds and/or assets.

3. The obligations of the Agency under this Agreement shall be payable out of Net Available Tax Increment, as defined in the above recitals and/or as defined or provided for in any applicable constitutional provision, statute or other provision of law

## **ATTACHMENT 3**

now existing or adopted in the future, levied by or for the benefit of taxing agencies in the Agency's Redevelopment Project Area(s), 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 Area(s) and/or expend tax increment or pay indebtedness of the Agency to be repaid with tax increment, pursuant to Health and Safety Code Section 33670 or any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. 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 or any other additional funds available to it.

### **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

### ATTACHMENT 3

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 CULVER CITY

By: \_\_\_\_\_  
Micheál O' Leary, Mayor

Attest:

By: \_\_\_\_\_  
Martin Cole, City Clerk

Approved as to form:  
CAROL SCHWAB  
CITY ATTORNEY

By: \_\_\_\_\_  
Carol Schwab, City Attorney

Approved as to form:  
KANE, BALLMER & BERKMAN  
Special Counsel to the City

By: \_\_\_\_\_

CULVER CITY REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
D. Scott Malsin, Chair

Attest:

By: \_\_\_\_\_  
Alice Prasad, Agency Secretary

Approved as to form:  
KANE, BALLMER & BERKMAN  
Agency General Counsel

By: \_\_\_\_\_