



STAFF REPORT

TO: City Council/RDA Board of Directors
FROM: City Manager/Executive Director
FOR SPECIAL COUNCIL MEETING: September 27, 2011

SUBJECT: Remittance Agreement By and Between the City of Twentynine Palms and the Twentynine Palms Redevelopment Agency

RECOMMENDATION

The City Manager/Executive Director recommends that the Mayor/Chair and City Council/Agency Board Members adopt City Resolution No. 11-29 and RDA Resolution No. 11-09 approving the Remittance Agreement between the City of Twentynine Palms and the Twentynine Palms Redevelopment Agency.

ORDER OF PROCEDURE

Request Staff Report (City Manager Warne)
Council Questions of Staff
Council Discussion
Motion/Second
Discussion of Motion
Call the Question

Attachments:

Council Resolution No. 11-29
RDA Resolution No. 11-09
Remittance Agreement

BACKGROUND

In January 2011, the Governor announced his intent to eliminate redevelopment agencies as a way to help balance the State budget. The Legislature later enacted, and the Governor signed, Assembly Bill (AB) 1X 26 and AB 1X 27. These bills took effect on June 29, 2011. AB 1X 26 dissolves redevelopment agencies; however AB 1X 27 provides an alternative to dissolution by allowing redevelopment agencies to participate in an "Alternative Voluntary Redevelopment Program" and continue operations in exchange for annual Community Remittance payments. These payments are ultimately the responsibility of the sponsoring community (in this case, the City), but AB 1X 27 authorizes redevelopment agencies to transfer a portion of tax increment revenue to the sponsoring community to reimburse them for the payments. The 2011-12 Community Remittance payment is determined by the State Department of Finance as described in AB 1X 27. Subsequent payments are based upon roughly one quarter of the 2011-12 remittance amount, and will increase or decrease at a rate reflective of annual increases or decreases to gross tax increment received by the agency. Payments may increase if the agency enters into new debt obligations after October 1, 2011.

The City Council adopted Urgency Ordinance No. 239 on July 16, 2011, and Ordinance No. 240 introduced July 16, 2001, and adopted August 9, 2011, agreeing to comply with the Alternative Voluntary Redevelopment Program and remit the annual Community Remittance payments to the County Auditor-Controller. The Remittance Agreement attached to the staff report formalizes the obligation of the Agency to reimburse the City for the annual Community Remittance

payments. In addition, the Remittance Agreement establishes the reimbursement payments as a debt of the Agency incurred prior to October 1, 2011; and as such, it can be entered into the Statement of Indebtedness (SOI) due October 1, 2011. Any debt established after this deadline could be subject to additional school pass-through payments as dictated by AB 1X 27.

Since AB 1X 26 and AB 1X 27 were signed into law, the constitutionality of both bills has been called into question. For this reason, the California League of Cities and the California Redevelopment Association filed suit against the bills in the California Supreme Court. The Supreme Court subsequently issued a partial stay on the effectiveness of both AB 1X 26 and AB 1X 27. Therefore, this Remittance Agreement will not take full effect and no Community Remittance payments will be collected unless the stay is lifted and both bills are upheld. It is also important to note that City and Agency's approval of the Remittance Agreement does not guarantee that the State will honor the agreement, as the Agency is currently suspended pursuant to the Supreme Court stay. However, approving the agreement and including it on the annual SOI is the most prudent action that can be taken to ensure that this debt will be recognized as valid.

ALTERNATIVES

Staff does not recommend any alternative actions at this time.

FISCAL IMPACT

There is no cost associated with the approval of the Remittance Agreement unless the Supreme Court lifts the stay and both AB 1X 26 and AB 1X 27 are upheld. The fiscal impact of opting into the Alternative Voluntary Redevelopment Program and making the Community Remittance payments was previously considered by the City Council and Agency when they opted into the program.

RESOLUTION NO. 11-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWENTYNINE PALMS APPROVING A REMITTANCE AGREEMENT BY AND BETWEEN THE CITY OF TWENTYNINE PALMS AND THE TWENTYNINE PALMS REDEVELOPMENT AGENCY, PURSUANT TO THE AUTHORITY SET FORTH IN HEALTH AND SAFETY CODE SECTION 34194.2 (AB 1X 27)

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, from the 2011-12 First Extraordinary Session, Assembly Bills 1X 26 and 1X 27 (“AB 1X 26” and “AB 1X 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on July 16, 2011, the City Council of the City of Twentynine Palms adopted Ordinance No. 239 as an urgency ordinance, to effect the City’s participation in the “Alternative Voluntary Redevelopment Program,” established pursuant to AB 1X 27, and thereby prevent the dissolution of the Twentynine Palms Redevelopment Agency (“Agency”) and enable the continuance of the Agency and its operations and programs; and

WHEREAS, Ordinance No. 239, as an urgency ordinance adopted in compliance with the requirements of Government Code Section 36937(b), became effective immediately upon its adoption; and

WHEREAS, on August 9, 2011, the City Council of the City of Twentynine Palms adopted Ordinance No. 240, as a regular ordinance, to also effect the City’s participation in the “Alternative Voluntary Redevelopment Program,” established pursuant to AB 1X 27, and thereby prevent the dissolution of the Agency and enable the continuance of the Agency and its operations and programs; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires the City to make certain remittance payments each fiscal year to the county auditor-controller to benefit schools and certain special districts; and

WHEREAS, Health and Safety Code Section 34194.2, a section within AB 1X 27, authorizes the City to 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 the Alternative Voluntary Redevelopment Program, as set forth in Chapter 3 of Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, a Remittance Agreement between the City and Agency, consistent with Health and Safety Code Section 34194.2, has been prepared and presented to the City Council and Agency Board for consideration; and

WHEREAS, as of the date hereof, the California Supreme Court has exercised original jurisdiction in *California Redevelopment Association, et al., Petitioners v. Ana Matosantos, et al., Respondents*, Case No. S194861, a lawsuit challenging the constitutionality and validity of ABX1 26 and ABX1 27, the Court issued a partial stay on the enforcement of ABX1 26 and ABX1 27, and the Court has indicated its intent to issue a ruling in the case in January 2012; and

WHEREAS, in light of the stay issued by the Court, the approval of the Agreement is subject to the condition subsequent that the Court lifts the stay and upholds the constitutionality and validity of both ABX1 26 and ABX1 27 which would then implement the City's remittance payment obligation under ABX1 27, as described in the Recitals to the Agreement, and require the payments by the Agency to the City as provided in the Agreement and subject to the terms of this Agreement; and

WHEREAS, as set forth in Section 5 of the Agreement, if the California Supreme Court, or any other court, determines that either ABX1 26 or ABX1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, the Agreement shall automatically, and without the need for any further action by the City Council, Agency Board of Directors, or any City or Agency officer, official, employee, agent, or representative, be terminated and of no further force and effect;

NOW, THEREFORE, the City Council of the City of Twentynine Palms resolves as follows:

Section 1. The foregoing Recitals are incorporated herein and made a part hereof.

Section 2. The Remittance Agreement, in the form presented concurrently with this Resolution, on file with the City Clerk, is hereby approved. The Mayor is authorized and directed to sign the Remittance Agreement on behalf of the City.

Section 3. The City Manager and his authorized designees are authorized and directed to take such other and further actions, and to sign such other and further documents and instruments, as may be necessary to implement and effect this Resolution and the Remittance Agreement on behalf of the City.

PASSED, APPROVED, AND ADOPTED this 27th day of September, 2011.

Jim Harris, Mayor

ATTEST:

Charlene L. Sherwood MMC, City Clerk

I hereby certify that the foregoing is a true copy of Resolution No. 11-29 adopted by majority vote of the City Council of the City of Twentynine Palms in a meeting held on the 27th day of September, 2011, in Twentynine Palms, California by the following vote, to wit:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

Charlene L. Sherwood MMC, City Clerk

RESOLUTION NO. 11-09

A RESOLUTION OF THE TWENTYNINE PALMS REDEVELOPMENT AGENCY APPROVING A REMITTANCE AGREEMENT BY AND BETWEEN THE CITY OF TWENTYNINE PALMS AND THE TWENTYNINE PALMS REDEVELOPMENT AGENCY, PURSUANT TO THE AUTHORITY SET FORTH IN HEALTH AND SAFETY CODE SECTION 34194.2 (AB 1X 27)

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, from the 2011-12 First Extraordinary Session, Assembly Bills 1X 26 and 1X 27 (“AB 1X 26” and “AB 1X 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on July 16, 2011, the City Council of the City of Twentynine Palms adopted Ordinance No. 239 as an urgency ordinance, to effect the City’s participation in the “Alternative Voluntary Redevelopment Program,” established pursuant to AB 1X 27, and thereby prevent the dissolution of the Twentynine Palms Redevelopment Agency (“Agency”) and enable the continuance of the Agency and its operations and programs; and

WHEREAS, Ordinance No. 239, as an urgency ordinance adopted in compliance with the requirements of Government Code Section 36937(b), became effective immediately upon its adoption; and

WHEREAS, on August 9, 2011, the City Council of the City of Twentynine Palms adopted Ordinance No. 240, as a regular ordinance, to also effect the City’s participation in the “Alternative Voluntary Redevelopment Program,” established pursuant to AB 1X 27, and thereby prevent the dissolution of the Agency and enable the continuance of the Agency and its operations and programs; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires the City to make certain remittance payments each fiscal year to the county auditor-controller to benefit schools and certain special districts; and

WHEREAS, Health and Safety Code Section 34194.2, a section within AB 1X 27, authorizes the City to 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 the Alternative Voluntary Redevelopment Program, as set forth in Chapter 3 of Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, a Remittance Agreement between the City and Agency, consistent with Health and Safety Code Section 34194.2, has been prepared and presented to the City Council and Agency Board for consideration; and

WHEREAS, as of the date hereof, the California Supreme Court has exercised original jurisdiction in *California Redevelopment Association, et al., Petitioners v. Ana Matosantos, et al., Respondents*, Case No. S194861, a lawsuit challenging the constitutionality and validity of ABX1 26 and ABX1 27, the Court issued a partial stay on the enforcement of ABX1 26 and ABX1 27, and the Court has indicated its intent to issue a ruling in the case in January 2012; and

WHEREAS, in light of the stay issued by the Court, the approval of the Agreement is subject to the condition subsequent that the Court lifts the stay and upholds the constitutionality and validity of both ABX1 26 and ABX1 27 which would then implement the City's remittance payment obligation under ABX1 27, as described in the Recitals to the Agreement, and require the payments by the Agency to the City as provided in the Agreement and subject to the terms of this Agreement; and

WHEREAS, as set forth in Section 5 of the Agreement, if the California Supreme Court, or any other court, determines that either ABX1 26 or ABX1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, the Agreement shall automatically, and without the need for any further action by the City Council, Agency Board of Directors, or any City or Agency officer, official, employee, agent, or representative, be terminated and of no further force and effect;

NOW, THEREFORE, the Board of Directors of the Twentynine Palms Redevelopment Agency resolves as follows:

Section 1. The foregoing Recitals are incorporated herein and made a part hereof.

Section 2. The Remittance Agreement, in the form presented concurrently with this Resolution, on file with the Agency Secretary, is hereby approved. The Chair is authorized and directed to sign the Remittance Agreement on behalf of the Agency.

Section 3. The Executive Director and his authorized designees are authorized and directed to take such other and further actions, and to sign such other and further documents and instruments, as may be necessary to implement and effect this RDA Resolution and the Remittance Agreement on behalf of the Agency.

PASSED, APPROVED AND ADOPTED this 27th day of September, 2011.

James Harris, Redevelopment Agency Chair

ATTEST:

Charlene L. Sherwood MMC, City Clerk/
Redevelopment Agency Secretary

I hereby certify that the foregoing RDA Resolution No. 11-09 was adopted by majority vote of the Twentynine Palms Redevelopment Agency at a special meeting held on the 27th day of September, 2011, in Twentynine Palms, California by the following vote of the Agency, to wit:

AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:

Charlene L. Sherwood MMC, City Clerk/
Redevelopment Agency Secretary

REMITTANCE AGREEMENT

(CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2)

This REMITTANCE AGREEMENT (“Agreement”) is entered into this 27th day of September, 2011, by and between the CITY OF TWENTYNINE PALMS a California municipal corporation (the “City”), and the TWENTYNINE PALMS REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”). The City and the Agency (collectively, the “Parties” and individually, a “Party”) enter into this Agreement with reference to the following:

RECITALS

A. On or about December 28, 1993, the City Council for the City approved and adopted the Redevelopment Plan for the “4 Corners Redevelopment Project (the “Redevelopment Plan”), covering certain properties located within the City and defined in the Redevelopment Plan as the 4 Corners Redevelopment Project Area (the “Project Area”).

B. The Agency has been and is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (“CRL”).

C. Since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private parties to create jobs and expand the local economy.

D. Over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, and increase, improve, and preserve the City’s supply of low and moderate income housing.

E. As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, from the 2011-12 First Extraordinary Session, Assembly Bills 26 and 27 (“AB 1X 26” and “AB 1X 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments.

F. Specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011.

G. AB 1X 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code (“Part 1.9”).

H. The Alternative Voluntary Redevelopment Program requires that the City agree by ordinance to remit specified annual amounts to the San Bernardino County Auditor-Controller (“County Auditor”).

I. City adopted Ordinance No. 239 (“Urgency Ordinance”) and Ordinance No. 240 (“Ordinance”), thereby agreeing to participate in the Alternative Voluntary Redevelopment Program and to remit specified annual amounts in accordance therewith.

J. Pursuant to Health and Safety Code Section 34194.1, in making remittances to the County Auditor pursuant to Health and Safety Code Sections 34194 or 34194.5, the City may use any available funds not otherwise obligated for other uses.

K. Pursuant to Health and Safety Code Section 34194.2 (“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 area that are related to accomplishing the Agency’s project goals.

L. The purpose of this Agreement is to provide for the transfer of funds by the Agency to the City pursuant to the authorization in Section 34194.2, with said transfer of funds to be in an amount not to exceed the annual amount that is sufficient for the City to make the remittances required by Chapter 3 of Part 1.9 for the applicable fiscal year.

M. 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 the Project Area.

N. While the City intends to make the remittances as provided for in AB 1X 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 1X 26 or AB 1X 27, or both, are unconstitutional or otherwise unlawful. The City reserves the right, regardless of any remittance made pursuant to this Agreement, to challenge the legality of AB 1X 26 or AB 1X 27, or both.

O. To the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program’s payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay. Moreover, to the extent that a court of competent jurisdiction determines that either AB 1X 26 or AB 1X 27, or both, are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, this Agreement shall be deemed null and void and of no further force and effect.

AGREEMENT

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated herein by this reference and are an integral part of this Agreement, the Parties mutually agree as follows:

1. Definitions. For purposes of this Agreement, “Available Agency Funds” shall mean, collectively, (a) any and all funds received and held by Agency not otherwise restricted or dedicated for a particular use, project, or program (“Unrestricted Agency Funds”), (b) Net Available Tax Increment Funds. For purposes of this Agreement, “Net Available Tax Increment Funds” means any and all tax increment funds allocated to the Agency pursuant to Article XVI, Section 16 of the California Constitution and Health and Safety Code Section 33670 (“tax increment”), less the following: (i) tax increment funds committed to bond and other debt

service payments and any interest payments thereon, (ii) tax increment funds committed to other third-party contractual payment obligations, (iii) tax increment funds required to be used for statutory or contractual “pass-through” payment obligations to or for the benefit of any affected taxing entities, and (iv) tax increment funds that are required to be deposited into and held in the Agency’s Housing Fund.

2. Agency Obligation to Transfer Funds to City; Determination of Remittance Payment Amounts. The Agency shall transfer to the City in a timely manner, from Available Agency Funds, amounts sufficient for the City to make the remittance payments required by Part 1.9 for every year such payments are required to be made. The amount of the remittance payments for each fiscal year shall be determined pursuant to Part 1.9, including Health and Safety Code Section 34194 (“Section 34194”). In the event the City disputes the State Director of Finance’s determination of the City’s remittance payment amount for Fiscal Year 2011-12 or the amount of the City’s remittance payment for any subsequent fiscal year, the City reserves the right to appeal to the State Director of Finance pursuant to Section 34194 and/or to initiate and pursue litigation to establish the correct amount that is required to be paid.

3. City Obligation to Transfer Remittance Payment Amounts to County Auditor; Limited Obligation of City; No Commitment of Funds from City General Fund. Subject to the receipt of sufficient Available Agency Funds from the Agency, the City shall, pursuant to Part 1.9, timely remit to the County Auditor the remittance payment amounts as determined pursuant to this Agreement. The City’s obligation to make such remittances shall be a special limited obligation of the City payable solely from payments received from the Agency pursuant to this Agreement. Nothing contained in this Agreement shall be deemed to be or is a pledge or commitment of the City’s general fund revenues or other City assets to make the remittance payments as provided for in Part 1.9, and any remittance payments shall be solely from payments received from the Agency pursuant to this Agreement.

4. Termination of Agreement and All City-Agency Agreements Upon Termination of City’s Participation in Alternative Voluntary Redevelopment Program; Self-Executing. In the event that the City elects to not make a remittance as required by Part 1.9 and the State Director of Finance makes the determination described in Health and Safety Code Section 34194(d)(2) or 34194.5 that the Agency shall be subject to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code, this Agreement and all City-Agency Cooperation Agreements shall be terminated, and of no further force and effect, without the need for any further action by the City Council, Agency Board of Directors, or any City or Agency officer, official, employee, agent, or representative. For purposes of this Agreement, “City-Agency Cooperation Agreements” shall mean any and all agreements, whether written or oral or by arrangement or general practice, by and between the City and Agency, which are not defined as “enforceable obligations” pursuant to Health and Safety Code Sections 34167 or 34170.5 (as may be amended from time to time) and which obligate the Agency to pay the City any amount of money or other consideration, including but not limited to City-Agency loan agreements that are not otherwise “enforceable obligations” (as defined above). It is the intent of the City and Agency by agreeing to the terms and conditions of this Section 4 that, upon the termination of the City’s and Agency’s participation in the Alternative Voluntary Redevelopment Program, neither the City nor the Agency shall owe any payments to the other Party, and that no payments from the Agency to the City pursuant to any City-Agency agreement shall be assigned to the State as contemplated by Health and Safety Code Sections 34193.2 and 34195(b).

5. Reservation of Rights; Payments Under Protest; Termination of Agreement If AB 1X 26 and/or 27 Ruled Unlawful; Self-Executing. The City and Agency reserve any and all rights to challenge the legality of AB 1X 26 and AB 1X 27, and the City and Agency reserve any and all rights to benefit from any other legal challenge that determines AB 1X 26 or AB 1X 27, or both, are unlawful. All remittance payments made by the City pursuant to this Agreement shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon unless and until there is a final determination by a court of competent jurisdiction that AB 1X 26 and AB 1X 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the City. For any action or actions challenging the validity of AB 1X 26 or AB 1X 27, or both, in the event that a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligations of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay, unless and until there is a final determination by a court of competent jurisdiction that AB 1X 26 and AB 1X 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the City. For any action or actions challenging the validity of AB 1X 26 or AB 1X 27, or both, in the event that a court of competent jurisdiction determines that either AB 1X 26 or AB 1X 27, or both, are unconstitutional or otherwise legally invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, this Agreement shall be terminated, and of no further force and effect, without the need for any further action by the City Council, Agency Board of Directors, or any City or Agency officer, official, employee, agent, or representative.

6. Indebtedness of Agency Prior to October 1, 2011. The Agency's funding obligations in this Agreement are intended to be and shall constitute an indebtedness of the Agency, incurred prior to October 1, 2011, within the meaning of Article XVI, Section 16 of the California Constitution and Health and Safety Code Sections 33670(b) and 34194(c)(2). The Agency shall include the total estimated indebtedness incurred by Agency pursuant to this Agreement on the Agency's annual statements of indebtedness that Agency is required to annually file pursuant to Health and Safety Code Section 33675 (or successor statute). The estimated total indebtedness incurred by the Agency pursuant to this Agreement is shown on Exhibit "A" attached hereto and incorporated herein by this reference. Any increase to the total estimated indebtedness that may occur after the Effective Date of this Agreement shall constitute indebtedness incurred prior to October 1, 2011.

7. Subordination. Agency's funding obligations hereunder shall be junior and subordinate to (i) all existing Agency tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (ii) all pledges by Agency of tax increments for tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (iii) other Agency financial agreements or other contractual obligations of Agency with any person or entity not a party to this Agreement, including but not limited to any and all tax sharing or so-called "pass-through" agreements entered into between Agency and any taxing entity; (iv) any contingent obligations of Agency; and (v) other financial agreements or other contractual obligations between the parties to this Agreement.

8. Non-Recourse Obligation. No officer, official, employee, agent, or representative of Agency or City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action herein shall be personally enforced against any such officer, official, employee, agent, or representative.

9. Indemnity. In contemplation of Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being a party to an agreement defined by Government Code Section 895, the Parties hereto, as between themselves, agree that the Agency shall indemnify, defend, and hold harmless the City for any loss, costs, or expenses that may be imposed upon the City by virtue of a third party prevailing in a legal challenge to the validity, enforceability, or administration of this Agreement. The provisions of Civil Code Section 2778 shall be applicable to this Agreement.

10. Entire Agreement and Full Integration. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof. 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.

11. Intended Parties; No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the City and the Agency, and their respective successors in interest; provided, however, that this Agreement shall be terminated in accordance with the terms and conditions set forth above in the event that the City or any other public agency becomes the "successor agency" to the Agency pursuant to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code. The City and Agency expressly covenant that there shall be no third party beneficiaries under this Agreement.

12. Waiver. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the Parties.

13. Severability. Each provision of this Agreement shall be severable from the whole, and if any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall remain in full force and effect.

14. Counterparts. This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

“AGENCY”

TWENTYNINE PALMS REDEVELOPMENT AGENCY, a public body, corporate and politic

By: _____
Jim Harris Redevelopment Agency Chair

ATTEST:

Charlene L. Sherwood MMC, City Clerk/
Redevelopment Agency Secretary

“CITY”

CITY OF TWENTYNINE PALMS, a California municipal corporation

By: _____
Jim Harris, Mayor

ATTEST:

Charlene L. Sherwood MMC, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Its: City Attorney and Agency Counsel

EXHIBIT "A"

**ESTIMATED TOTAL INDEBTEDNESS
PURSUANT TO THIS AGREEMENT**

**Estimated Twentynine Palms Redevelopment Agency Remittance Payment Amount
Indebtedness to be Paid to the City of Twentynine Palms per the Agreement**

Fiscal Year	Remittance Payment / Indebtedness
2011-12 *	\$829,353
2012-13 **	\$196,757
2013-14	\$206,595
2014-15	\$216,925
2015-16	\$227,771
2016-17	\$239,159
2017-18	\$251,117
2018-19	\$263,673
2019-20	\$276,857
2020-21	\$290,700
2021-22	\$305,235
2022-23	\$320,496
2023-24	\$336,521
2024-25	\$353,347
2025-26	\$371,015
2026-27	\$389,565
2027-28	\$409,044
2028-29	\$429,496
2029-30	\$450,971
2030-31	\$473,519
2031-32	\$497,195
2032-33	\$522,055
2033-34	\$548,158
2034-35	\$575,566
2035-36	\$604,344
2036-37	\$634,561
2037-38	\$666,289
2038-39	\$699,603
2039-40	\$734,584
2040-41	\$771,313
2041-42	\$809,878
2042-43	\$850,372
Total	\$14,752,034

* Department of Finance initial payment amount. The City filed an appeal of this amount, if the appeal is granted the payment would be lowered.

** 2012-13 amount is an estimate from the California Redevelopment Association, payments after 2012-13 are increased by 5% annually.



STAFF REPORT

TO: City Council/RDA Board of Directors
FROM: City Manager
FOR SPECIAL COUNCIL MEETING: September 27, 2011

SUBJECT: Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses

RECOMMENDATION

The City Manager/Executive Director recommends that the Mayor/Chair and City Council/Agency Board Members adopt City Resolution No. 11-30 and RDA Resolution No. 11-10 approving the Cooperation and Funding Agreements for payment or reimbursement of Administrative Expenses between the City of Twentynine Palms and the Twentynine Palms Redevelopment Agency.

ORDER OF PROCEDURE

Request Staff Report (City Manager Warne)
Council Questions of Staff
Council Discussion
Motion/Second
Discussion of Motion
Call the Question

Attachments:

Council Resolution No. 11-30
RDA Resolution No. 11-10
Cooperation and Funding Agreement

BACKGROUND

In January 2011, the Governor announced his intent to eliminate redevelopment agencies as a way to help balance the State budget. The Legislature later enacted, and the Governor signed, Assembly Bill ("AB") 1X 26 and AB 1X 27. These bills took effect on June 29, 2011. Many believe these bills violate a number of provisions in the California Constitution, including the recently enacted Proposition 22, so the California League of Cities and the California Redevelopment Association filed suit in the California Supreme Court challenging the constitutionality of these bills. On August 11, 2011, the Supreme Court agreed to take the case and issued a partial stay of AB 1X 26 and 27.

The Agency's operational status has been subject to significant fluctuations since adoption of the State budget. After the Governor's signature on the budget, all redevelopment agencies were suspended except for meeting ongoing operational activities. Then, the City Council resurrected the Agency by introducing and adopting Urgency Ordinance No. 239 on July 16, 2011; as well as via Ordinance No. 240 introduced July 16, 2001, adopted August 9, 2011. However, due to the Supreme Court stay of AB 1X 26 and 27, the City Council's Continuation Ordinance is at least temporarily not effective. Redevelopment agencies in California are again suspended; although they can make payments on existing enforceable obligations they cannot initiate new projects. The Supreme Court has declared their intent to rule on the case on or before January 15, 2012. Until then, all redevelopment agencies are subject to the remaining

provisions of AB 1X 26 that were not stayed by the Court.

Traditionally, the City Council has approved agreements between the City and Agency on a case-by-case basis that allowed for the reimbursement of capital improvement and economic development project expenditures. This procedure has worked for the City and Agency for many years; however the new regulations enacted by AB 1X 27 require a multiyear agreement to be enacted. This new agreement will be included on the Agency's Fiscal Year 2011-12 Statement of Indebtedness (SOI) that is due to the County Auditor Controller by October 1, 2011. The inclusion of this agreement on the SOI is crucial to City and Agency operations because any obligation paid from tax increment that is not included on this year's SOI will trigger increased pass through payments to affected taxing agencies in the future.

Due to the uncertainty of the outcome of the lawsuit filed against the State, it is important to note that the City / Agency approval of this agreement does not guarantee that the State will honor the agreement. However, approving the agreement and including it on the Fiscal Year 2011-12 SOI is the most prudent action that can be taken to ensure that the debt will be recognized as a valid existing expense that will not trigger higher future pass through payments pursuant to AB 1X 27.

ALTERNATIVES

Staff does not recommend any alternative actions at this time.

FISCAL IMPACT

There is no additional cost associated with the approval of the multiyear Cooperation and Funding Agreement as administrative costs will continue to be confirmed on an annual basis.

RESOLUTION NO. 11-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWENTYNINE PALMS APPROVING A COOPERATION AND FUNDING AGREEMENT FOR PAYMENT OR REIMBURSEMENT OF ADMINISTRATIVE EXPENSES BY AND BETWEEN THE CITY OF TWENTYNINE PALMS AND THE TWENTYNINE PALMS REDEVELOPMENT AGENCY

WHEREAS, by previous action duly and regularly taken, the City Council of the City of Twentynine Palms ("City Council" or "City" as appropriate) approved and adopted the Redevelopment Plan for the Four Corners Redevelopment Project Area (the "Redevelopment Plan" and "Project Area"); and

WHEREAS, the Twentynine Palms Redevelopment Agency ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken activities under the Redevelopment Plan and CRL by addressing blight in the Project Area by establishing and improving public facilities and infrastructure, by assisting in the development of affordable housing in the community, and by undertaking agreements with respect to the productive use of property within the Project Area; and

WHEREAS, over the life of the Redevelopment Plan and Project Area, the Agency intends to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the economic growth of the Project Area, create and develop local job opportunities, alleviate deficiencies in public infrastructure, and expand the opportunities for affordable housing, to name a few; and

WHEREAS, pursuant to Section 33220 of the CRL, any public body is authorized to enter into an agreement with the Agency for the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of redevelopment projects located within the jurisdiction in which such public body is authorized to act, upon the terms and with or without consideration as such public body determines; and

WHEREAS, pursuant to Section 33126(b) of the CRL, the Agency may enter into a contract with any other public agency pursuant to which such public agency furnishes necessary staff services associated with or required by redevelopment; and

WHEREAS, pursuant to California Health and Safety Code Section 33220 and City's police powers, the City has the authority to aid and cooperate with the Agency in the planning, undertaking, construction or operation of redevelopment projects within the area in which City and Agency are authorized to act; and

WHEREAS, in carrying out the Redevelopment Plan, the Agency is utilizing the staff and other resources of the City, for example the City Manager of the City serves as the Executive Director of the Agency and staff in various City departments perform functions and provide administrative services to the Agency, including but not limited to City Clerk, City legal counsel, Administration, Finance, Community Development including Planning and Building, City

Engineer/Public Works, and Community Services (collectively, the “City’s Administration Service Provider Departments”); and

WHEREAS, the City’s Administration Service Provider Departments devote substantial time in operating the Agency, including but not limited to gathering information relating to the Redevelopment Plans and the Project Areas, compiling, analyzing, and reporting data on numerous State-mandated reports, managing projects funded through tax increment, conferring and negotiating with developers and potential developers of land within the Project Areas, and undertaking planning and administrative activities in connection with the production, improvement and preservation of affordable housing, among other functions and activities; and

WHEREAS, the Agency and City, by annual budget actions, have implemented the Agency’s and City’s authority under the CRL, and under the City’s police powers, for the City to aid the Agency and cooperate with the Agency in the planning, undertaking, developing, and/or operating of redevelopment projects located within the Project Areas and, as may be authorized under the CRL, portions of the City outside the Project Areas, by the Agency engaging the services of the City to provide administrative services to assure the proper and legal functioning of the Agency; and

WHEREAS, a Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses (“Agreement”) by and between the City and Agency has been prepared to document and effectuate the provision of administrative services to the Agency by the City’s Administration Service Provider Departments; and

WHEREAS, the City adopted Ordinance No. 239 (“Urgency Ordinance”), thereby enabling the City and Agency to participate in the “Alternative Voluntary Redevelopment Program” pursuant to Part 1.9 of Division 24 of the Health and Safety Code (“Part 1.9”), and also adopted Ordinance No. 240 as a regular ordinance to additionally and independently enable the City and Agency to participate in the “Alternative Voluntary Redevelopment Program” pursuant to Part 1.9 of Division 24 of the Health and Safety Code (“Part 1.9”); and

WHEREAS, the obligations of the Agency under the Agreement are authorized by City’s agreeing to participate in the Alternative Voluntary Redevelopment Program and shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plans for the Project Areas; and

WHEREAS, City and Agency desire to enter into the Agreement to ensure that the duties, functions, operations, activities, programs, and projects of the Agency continue to be funded and implemented; and

WHEREAS, as of the date hereof, the California Supreme Court has exercised original jurisdiction in *California Redevelopment Association, et al., Petitioners v. Ana Matosantos, et al., Respondents*, Case No. S194861, a lawsuit challenging the constitutionality and validity of ABX1 26 and ABX1 27, the Court issued a partial stay on the enforcement of ABX1 26 and ABX1 27, and the Court has indicated its intent to issue a ruling in the case in January 2012; and

WHEREAS, in light of the stay issued by the Court, the approval of the Agreement is subject to the condition subsequent of the Court’s ruling, and potentially rulings by other courts, as set forth in Section 6 of the Agreement;

NOW, THEREFORE, the City Council of the City of Twentynine Palms resolves as follows:

Section 1. The foregoing Recitals are incorporated herein and made a part hereof.

Section 2. The Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses, in the form presented concurrently with this Resolution, on file with the City Clerk, is hereby approved. The Mayor is authorized and directed to sign the Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses on behalf of the City.

Section 3. The City Manager and his authorized designees are authorized and directed to take such other and further actions, and to sign such other and further documents and instruments, as may be necessary to implement and effect this Resolution and the Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses on behalf of the City.

PASSED, APPROVED, AND ADOPTED this 27th day of September, 2011.

Jim Harris, Mayor

ATTEST:

Charlene L. Sherwood MMC, City Clerk

I hereby certify that the foregoing is a true copy of Resolution No. 11-30 adopted by majority vote of the City Council of the City of Twentynine Palms in a meeting held on the 27th day of September, 2011, in Twentynine Palms, California by the following vote, to wit:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

Charlene L. Sherwood MMC, City Clerk

RESOLUTION NO. 11-10

A RESOLUTION OF THE TWENTYNINE PALMS REDEVELOPMENT AGENCY APPROVING A COOPERATION AND FUNDING AGREEMENT FOR PAYMENT OR REIMBURSEMENT OF ADMINISTRATIVE EXPENSES BY AND BETWEEN THE CITY OF TWENTYNINE PALMS AND THE TWENTYNINE PALMS REDEVELOPMENT AGENCY

WHEREAS, by previous action duly and regularly taken, the City Council of the City of Twentynine Palms ("City Council" or "City" as appropriate) approved and adopted the Redevelopment Plan for the Four Corners Redevelopment Project Area (the "Redevelopment Plan" and "Project Area"); and

WHEREAS, the Twentynine Palms Redevelopment Agency ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken activities under the Redevelopment Plan and CRL by addressing blight in the Project Area by establishing and improving public facilities and infrastructure, by assisting in the development of affordable housing in the community, and by undertaking agreements with respect to the productive use of property within the Project Area; and

WHEREAS, over the life of the Redevelopment Plan and Project Area, the Agency intends to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the economic growth of the Project Area, create and develop local job opportunities, alleviate deficiencies in public infrastructure, and expand the opportunities for affordable housing, to name a few; and

WHEREAS, pursuant to Section 33220 of the CRL, any public body is authorized to enter into an agreement with the Agency for the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of redevelopment projects located within the jurisdiction in which such public body is authorized to act, upon the terms and with or without consideration as such public body determines; and

WHEREAS, pursuant to Section 33126(b) of the CRL, the Agency may enter into a contract with any other public agency pursuant to which such public agency furnishes necessary staff services associated with or required by redevelopment; and

WHEREAS, pursuant to California Health and Safety Code Section 33220 and City's police powers, the City has the authority to aid and cooperate with the Agency in the planning, undertaking, construction or operation of redevelopment projects within the area in which City and Agency are authorized to act; and

WHEREAS, in carrying out the Redevelopment Plan, the Agency is utilizing the staff and other resources of the City, for example the City Manager of the City serves as the Executive Director of the Agency and staff in various City departments perform functions and provide administrative services to the Agency, including but not limited to City Clerk, City legal counsel, Administration, Finance, Community Development including Planning and Building, City

Engineer/Public Works, and Community Services (collectively, the “City’s Administration Service Provider Departments”); and

WHEREAS, the City’s Administration Service Provider Departments devote substantial time in operating the Agency, including but not limited to gathering information relating to the Redevelopment Plans and the Project Areas, compiling, analyzing, and reporting data on numerous State-mandated reports, managing projects funded through tax increment, conferring and negotiating with developers and potential developers of land within the Project Areas, and undertaking planning and administrative activities in connection with the production, improvement and preservation of affordable housing, among other functions and activities; and

WHEREAS, the Agency and City, by annual budget actions, have implemented the Agency’s and City’s authority under the CRL, and under the City’s police powers, for the City to aid the Agency and cooperate with the Agency in the planning, undertaking, developing, and/or operating of redevelopment projects located within the Project Areas and, as may be authorized under the CRL, portions of the City outside the Project Areas, by the Agency engaging the services of the City to provide administrative services to assure the proper and legal functioning of the Agency; and

WHEREAS, a Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses (“Agreement”) by and between the City and Agency has been prepared to document and effectuate the provision of administrative services to the Agency by the City’s Administration Service Provider Departments; and

WHEREAS, the City adopted Ordinance No. 239 (“Urgency Ordinance”), thereby enabling the City and Agency to participate in the “Alternative Voluntary Redevelopment Program” pursuant to Part 1.9 of Division 24 of the Health and Safety Code (“Part 1.9”), and also adopted Ordinance No. 240 as a regular ordinance to additionally and independently enable the City and Agency to participate in the “Alternative Voluntary Redevelopment Program” pursuant to Part 1.9 of Division 24 of the Health and Safety Code (“Part 1.9”); and

WHEREAS, the obligations of the Agency under the Agreement are authorized by City’s agreeing to participate in the Alternative Voluntary Redevelopment Program and shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plans for the Project Areas; and

WHEREAS, City and Agency desire to enter into the Agreement to ensure that the duties, functions, operations, activities, programs, and projects of the Agency continue to be funded and implemented; and

WHEREAS, as of the date hereof, the California Supreme Court has exercised original jurisdiction in *California Redevelopment Association, et al., Petitioners v. Ana Matosantos, et al., Respondents*, Case No. S194861, a lawsuit challenging the constitutionality and validity of ABX1 26 and ABX1 27, the Court issued a partial stay on the enforcement of ABX1 26 and ABX1 27, and the Court has indicated its intent to issue a ruling in the case in January 2012; and

WHEREAS, in light of the stay issued by the Court, the approval of the Agreement is subject to the condition subsequent of the Court’s ruling, and potentially rulings by other courts, as set forth in Section 6 of the Agreement;

NOW, THEREFORE, the Board of Directors of the Twentynine Palms Redevelopment Agency resolves as follows:

Section 1. The foregoing Recitals are incorporated herein and made a part hereof.

Section 2. The Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses, in the form presented concurrently with this Resolution, on file with the Agency Secretary, is hereby approved. The Chair is authorized and directed to sign the Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses on behalf of the Agency.

Section 3. The Executive Director and his authorized designees are authorized and directed to take such other and further actions, and to sign such other and further documents and instruments, as may be necessary to implement and effect this Resolution and the Cooperation and Funding Agreement for Payment or Reimbursement of Administrative Expenses on behalf of the Agency.

PASSED, APPROVED AND ADOPTED this 27th day of September, 2011.

James Harris, Redevelopment Agency Chair

ATTEST:

Charlene L. Sherwood MMC, City Clerk/
Redevelopment Agency Secretary

I hereby certify that the foregoing RDA Resolution No. 11-10 was adopted by majority vote of the Twentynine Palms Redevelopment Agency at a special meeting held on the 27th day of September, 2011, in Twentynine Palms, California by the following vote of the Agency, to wit:

AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:

Charlene L. Sherwood MMC, City Clerk/
Redevelopment Agency Secretary

**COOPERATION AND FUNDING AGREEMENT FOR
PAYMENT OR REIMBURSEMENT OF ADMINISTRATIVE EXPENSES**

This COOPERATION AND FUNDING AGREEMENT FOR PAYMENT OR REIMBURSEMENT OF ADMINISTRATIVE EXPENSES ("Agreement") is entered into this 27th day of September, 2011 (the "Date of Approval"), by and between the CITY OF TWENTYNINE PALMS a California municipal corporation (the "City"), and the TWENTYNINE PALMS REDEVELOPMENT AGENCY , a public body, corporate and politic (the "Agency"). The City and the Agency (collectively, the "Parties" and individually, a "Party") enter into this Agreement with reference to the following:

R E C I T A L S

A. On or about December 28, 1993, the City Council for the City approved and adopted the Redevelopment Plan for the "Four Corners Redevelopment Project (the "Redevelopment Plan"), covering certain properties located within the City and defined in the Redevelopment Plan as the Four Corners Redevelopment Project Area (the "Project Area").

B. The Agency has been and is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) ("CRL").

C. Since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private parties to create jobs and expand the local economy.

D. Pursuant to Section 33220 of the CRL, any public body is authorized to enter into an agreement with the Agency for the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of redevelopment projects located within the jurisdiction in which such public body is authorized to act, upon the terms and with or without consideration as such public body determines.

E. Pursuant to California Health and Safety Code Section 33220 and City's police powers, City has the authority to aid and cooperate with Agency in the planning, undertaking, construction or operation of redevelopment projects within the area in which City and Agency are authorized to act.

F. Pursuant to Section 33126(b) of the CRL, the Agency may enter into a contract with any other public agency pursuant to which such public agency furnishes necessary staff services associated with or required by redevelopment.

G. In carrying out the Redevelopment Plan, the Agency is utilizing the staff and other resources of the City. The City Manager of the City serves as the Executive Director of the Agency, and staff in various City departments perform functions and provide administrative services on behalf of the Agency, including but not limited to the City Clerk, City legal counsel, City Engineer, Administration, Finance, Community Development, Planning, Building, Community Services, and Public Works (collectively, the "City's Administration Service Provider Departments"). The City's Administration Service Provider Departments devote substantial time in gathering information relating to the Redevelopment Plan and the Project Area, compiling,

analyzing, and reporting data on numerous State-mandated reports and programs, managing projects funded through tax increment, conferring with developers and potential developers of land within the Project Area, and undertaking planning and administrative activities in connection with the production, improvement and preservation of affordable housing, among other duties and responsibilities.

H. The Agency and City, by annual budget actions, have implemented the Agency's and City's authority under the CRL, and under the City's police powers, for the City to aid the Agency and cooperate with the Agency in the planning, undertaking, construction, or operation of redevelopment projects located within the Project Area and, as may be authorized under the CRL, portions of the City outside the Project Area, by the Agency engaging the services of the City to provide administrative services to assure the proper and legal functioning of the Agency.

I. City adopted Ordinance No. 239 ("Urgency Ordinance") and Ordinance No. 240 ("Ordinance"), thereby enabling the City and Agency to participate in the "Alternative Voluntary Redevelopment Program" pursuant to Part 1.9 of Division 24 of the Health and Safety Code ("Part 1.9").

J. Part 1.9, the Alternative Voluntary Redevelopment Program, was enacted as part of the 2011-12 State budget bill, and more specifically as part of a two-bill package from the 2011-12 First Extraordinary Session, Assembly Bills 26 and 27 ("AB 1X 26" and "AB 1X 27").

K. As of the Date of Approval of this Agreement, the California Supreme Court ("Supreme Court") has exercised original jurisdiction in the case *California Redevelopment Association, et al., Petitioners v. Ana Matosantos, et al., Respondents*, Case No. S194861 ("CRA Case"), a lawsuit challenging the constitutionality and validity of AB 1X 26 and AB 1X 27. In conjunction with exercising original jurisdiction in the CRA Case, the Supreme Court issued a partial stay on the enforcement of AB 1X 26 and AB 1X 27 (the "Stay Order"), and the Supreme Court has indicated its intent to issue a ruling in the case in January 2012. As such, and as more specifically set forth below, this Agreement is conditionally approved on the Date of Approval, but its effectiveness and enforceability shall be subject to the conditions subsequent that (i) the Supreme Court lifts or modifies the Stay Order, such that (ii) the lift or modification of the Stay Order results in the Agency not being subject to Chapter 1 (commencing with Section 34161) of Part 1.8 of Division 24 of the Health and Safety Code. The conditions subsequent set forth in clauses (i) and (ii) of this Recital shall be collectively the "Enforceability Conditions," and the date on which the Supreme Court lifts or modifies the Stay Order, resulting in the condition subsequent set forth in clause (ii) of this Recital being satisfied, shall be the "Enforceability Effective Date" of this Agreement.

L. The obligations of the Agency under this Agreement are authorized by City's agreeing to participate in the Alternative Voluntary Redevelopment Program and shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area.

M. City and Agency desire to enter into this Agreement to ratify and confirm the prior budget actions described in the foregoing Recital and to ensure that the duties, functions, operations, activities, programs, and projects of the Agency continue to be funded and implemented.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, Agency and City hereby agree as follows:

1. City to Provide General Administrative Services. In support of the Agency's duties, functions, operations, activities, programs, and projects in the redevelopment of the Project Area, and in furtherance of the Agency's powers under the CRL, but excluding those duties, functions, operations, activities, programs and projects to be paid as part of the Agency's affordable housing expenses described in Section 3 below, the City shall provide staffing and other administrative services through the City's Administration Service Provider Departments (collectively, "Agency Non-Housing Administrative Services").

2. Agency to Pay City for Non-Housing Agency Administration with Regular Tax Increment Funds; Annual Payment Amounts and Requirements. Agency shall pay the City annually for the costs of Agency Non-Housing Administrative Services in the amounts and fiscal years as set forth in the schedule of payments in Exhibit "A" attached hereto and incorporated herein by reference, as may be amended from time to time ("Agency Non-Housing Administration Annual Costs"). The source of funds for Agency's payments to City for the Agency Non-Housing Administration Annual Costs shall be any and all tax increment funds allocated to the Agency pursuant to Article XVI, Section 16, of the California Constitution and Section 33670 of the CRL ("tax increment") excluding tax increment deposited into the Agency's Low and Moderate Income Housing Fund required pursuant to Sections 33334.2, 33334.3, 33334.4 and 33334.6 of the CRL ("Housing Funds").

3. Affordable Housing Programs and Projects Administration Services; Source of Funds; Annual Payment Amounts and Requirements. In support of the Agency's duties, functions, operations, activities, programs, and projects to increase, improve, and provide for low- and moderate-income housing pursuant to the CRL, including but not limited to Sections 33334.2 and 33334.3 thereof, the City shall provide staffing and other administrative services not otherwise included in the Agency Non-Housing Administration Services described above through the City's Administration Service Provider Departments (collectively, "Agency Housing Administration Services"). Agency shall pay the City annually for the costs of Agency Housing Administration Services in the amounts and fiscal years as set forth in the schedule of payments in Exhibit "B" attached hereto and incorporated herein by reference, as may be amended from time to time ("Agency Housing Administration Annual Costs"). The source of funds for Agency's payments to City for the Agency Housing Administration Annual Costs shall be Housing Funds.

4. City Right to Payments. Agency payments required by this Agreement may be paid to City as costs are incurred by City or in advance, but in no event shall Agency pay City later than the end of the fiscal year for which the amounts are due of Agency Non-Housing Administration Annual Costs and Agency Housing Administration Annual Costs, as set forth in Exhibit "A" and Exhibit "B," respectively. City shall be entitled to periodically invoice Agency for payment of eligible costs and Agency shall pay eligible costs within thirty (30) days after receipt of invoice. City shall expend all payments received from Agency pursuant to this Agreement only for the costs permitted by this Agreement. Upon Agency's request, City shall account to Agency for all City costs and expenditures.

5. Restrictions to Reimbursable Administrative Costs by Operation of Law; Amendment to Agreement; Self-Executing. In the event that the CRL is amended after the Date

of Approval of this Agreement such that, by operation of law, the amounts that Agency may pay to City for either Agency Non-Housing Administration Annual Costs or Agency Housing Administrative Costs, or both, are less than those annual amounts set forth in Exhibit "A" or Exhibit "B," respectively, then this Agreement shall be amended automatically to allow for the maximum payment amount allowable by law from Agency to City for the Agency Non-Housing Administration Services and Agency Housing Administration Services, without any further action by the City Council, Agency Board of Directors, or any City or Agency officer, official, employee, agent, or representative.

6. Termination of Agreement Upon Termination of City's Participation in Alternative Voluntary Redevelopment Program; Self-Executing. In the event that City does not make a remittance as required by Part 1.9 of the CRL, and the State Director of Finance makes the determination described in Sections 34194(d)(2) or 34194.5 of the CRL that Agency shall be subject to Parts 1.8 and 1.85 of Division 24 of the CRL, this Agreement shall be terminated, and of no further force and effect, without the need for any further action by the City Council, Agency Board of Directors, or any City or Agency officer, official, employee, agent, or representative; provided, however, that this Agreement shall not terminate if this Agreement is deemed to be an "enforceable obligation" as defined pursuant to Sections 34167 or 34170.5 (as may be amended from time to time) of the CRL, and/or the City is otherwise deemed to be a Party that is entitled to receive payments for any or all unpaid Agency Non-Housing Administration Annual Costs and/or Agency Housing Administration Annual Costs, as set forth in Exhibit "A" and Exhibit "B," respectively. It is the intent of the City and Agency by agreeing to the terms and conditions of this Section 6 that, upon the termination of the City's and Agency's participation in the Alternative Voluntary Redevelopment Program, neither the City nor the Agency shall owe any payments to either Party, and that no payments from the Agency to the City pursuant to this Agreement shall be assigned to the State as contemplated by Sections 34193.2 and 34195(b) of the CRL.

7. Conditional Effective Date: Enforceability Contingent Upon Conditions Subsequent. This Agreement shall be approved and entered into on the Date of Approval, but this Agreement shall be of no force and effect, and may not be enforced or be enforceable by either Party, until the Enforceability Effective Date when the Enforceability Conditions set forth in Recital K of this Agreement have been satisfied. In the event that the Supreme Court in the CRA Case does not expressly lift or modify the Stay Order but does determine that both AB 1X 26 and AB 1X 27 are constitutional and legally valid, such that the Supreme Court upholds the constitutionality and legal validity of Part 1.9, then for purposes of this Agreement the Enforceability Effective Date shall be the date that the Supreme Court files its opinion so determining said constitutionality and legal validity.

8. Indebtedness of Agency Prior to October 1, 2011. The Agency's funding obligations in this Agreement are intended to be and shall constitute an indebtedness of the Agency, incurred prior to October 1, 2011, within the meaning of Article XVI, Section 16, of the California Constitution and Health and Safety Code Sections 33670(b) and 34194(c)(2). The Agency shall include the total estimated indebtedness incurred by Agency pursuant to this Agreement on the Agency's annual statements of indebtedness that Agency is required to annually file pursuant to Health and Safety Code Section 33675 (or successor statute). The estimated total indebtedness incurred by the Agency pursuant to this Agreement is shown on Exhibit "A" and Exhibit "B," respectively. Any increase to the total estimated indebtedness that may occur after the Date of Approval of this Agreement shall constitute indebtedness incurred prior to October 1, 2011.

9. Subordination. Agency's funding obligations hereunder shall be junior and subordinate to (i) all existing Agency tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (ii) all pledges by Agency of tax increments for tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (iii) other Agency financial agreements or other contractual obligations of Agency with any person or entity not a party to this Agreement, including but not limited to any and all tax sharing or so-called "pass-through" agreements entered into between Agency and any taxing entity; (iv) any contingent obligations of Agency; and (v) other financial agreements or other contractual obligations between the parties to this Agreement.

10. Non-Recourse Obligation. No officer, official, employee, agent, or representative of Agency or City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action herein shall be personally enforced against any such officer, official, employee, agent, or representative.

11. Indemnity. In contemplation of Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being a party to an agreement defined by Government Code Section 895, the Parties hereto, as between themselves, agree that the Agency shall indemnify, defend, and hold harmless the City for any loss, costs, or expenses that may be imposed upon the City by virtue of a third party prevailing in a legal challenge to the validity, enforceability, or administration of this Agreement. The provisions of Civil Code Section 2778 shall be applicable to this Agreement.

12. Entire Agreement and Full Integration. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof. 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.

13. Intended Parties; No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the City and the Agency, and their respective successors in interest; provided, however, that this Agreement shall be terminated in accordance with the terms and conditions set forth above in the event that the City or any other public agency becomes the "successor agency" to the Agency pursuant to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code. The City and Agency expressly covenant that there shall be no third party beneficiaries under this Agreement.

14. City and Agency Approvals or Actions. By approval of this Agreement, the City Manager and Agency Executive Director are authorized and may sign this Agreement on behalf of the City and Agency respectively. Whenever a reference is made in this Agreement to an action or approval to be undertaken by the City, the City Manager or his or her authorized designee is authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires. Whenever a reference is made in this Agreement to an action or approval to be undertaken by the Agency, the Agency Executive Director or his or her authorized designee is authorized to act on behalf of Agency unless specifically provided otherwise or the law otherwise requires.

15. Waiver. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the Parties.

16. Severability. Each provision of this Agreement shall be severable from the whole, and if any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall remain in full force and effect.

17. Counterparts. This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

“AGENCY”

TWENTYNINE PALMS REDEVELOPMENT AGENCY, a public body, corporate and politic

By: _____
Jim Harris Redevelopment Agency Chair

ATTEST:

Charlene L. Sherwood MMC, City Clerk/
Redevelopment Agency Secretary

“CITY”

CITY OF TWENTYNINE PALMS, a California municipal corporation

By: _____
Jim Harris, Mayor

ATTEST:

Charlene L. Sherwood MMC, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Its: City Attorney and Agency Counsel

EXHIBIT "A"

AGENCY NON-HOUSING ADMINISTRATION ANNUAL COSTS

Fiscal Year	Costs
2011-12	\$203,500
2012-13	\$213,675
2013-14	\$224,359
2014-15	\$235,577
2015-16	\$247,356
2016-17	\$259,723
2017-18	\$272,709

EXHIBIT "B"

AGENCY HOUSING ADMINISTRATION ANNUAL COSTS

Fiscal Year	Costs
2011-12	\$58,200
2012-13	\$61,110
2013-14	\$64,166
2014-15	\$67,374
2015-16	\$70,742
2016-17	\$74,280
2017-18	\$77,994



STAFF REPORT

TO: RDA Board of Directors
FROM: Executive Director
FOR SPECIAL COUNCIL MEETING: September 27, 2011

SUBJECT: Preliminary Draft Recognized Obligation Payment Schedule

RECOMMENDATION:

The Executive Director recommends that the Agency Board approve the attached Preliminary Draft Recognized Obligation Payment Schedule Pursuant to AB 1X 26 and authorize the Executive Director to process in accordance with AB 1X 26.

ORDER OF PROCEDURE

- Request Staff Report (Agency Director Warne)
- Agency Board Questions of Staff
- Agency Board Discussion
- Motion/Second
- Discussion of Motion
- Call the Question

Attachments:

Preliminary Draft Recognized
Obligation Payment Schedule

BACKGROUND

In response to the enactment of Assembly Bill 1X 26 and Assembly Bill 1X 27, a lawsuit challenging the constitutionality of this legislation was filed on July 18, 2011 in the Supreme Court of the State of California (Court). The Court agreed to take the case and issued an order for the partial stay of enforcement of AB 1X 26 and AB 1X 27. The Court's order does not stay the requirements of Health and Safety Code Section 34169(h), which requires redevelopment agencies to prepare a Preliminary Draft Recognized Obligation Payment Schedule (PDROPS) by September 30, 2011. Depending on the outcome of this litigation, the PDROPS could eventually serve as the basis to pay the Twentynine Palms Redevelopment Agency's (Agency) outstanding financial obligations by a successor agency. The Court has announced its intent to decide the case by or before January 15, 2012.

DISCUSSION

The PDROPS must list all of the Agency's "enforceable obligations", the minimum payment amounts, the source of payment, and the payment due dates for a six month period (January 1, 2012, through June 30, 2012). "Enforceable obligations" include:

- bonds
- loans legally required to be repaid pursuant to a payment schedule with mandatory repayment terms
- payments required by the federal government
- preexisting obligations to the state or obligations imposed by state law
- judgments, settlements or binding arbitration decisions that bind an agency
- legally binding and enforceable agreements or contracts
- contracts or agreements necessary for the continued administration or operation of an agency, including agreements to purchase or rent office space, equipment and supplies.

Although the Agency is responsible for preparing the PDROPS, a final version must be prepared by the Agency's successor agency. If the Court ruling upholds AB 1x 26 and not AB 1x 27, then the Agency may subsequently be dissolved and a successor agency will be required to retire the Agency enforceable obligations per the PDROPS and subsequent Recognized Obligation Payment Schedules that the successor agency would prepare.

The attached PDROPS presents all of the Agency's enforceable obligations. It was prepared using data from the City Finance Department and lists all of the Agency's enforceable obligations. Agency legal counsel and RSG reviewed the PDROPS prior to Agency Board consideration.

ALTERNATIVES

At this time, staff does not recommend any alternative courses of action.

FISCAL IMPACT

There is no fiscal impact associated with the recommended item.

PRELIMINARY DRAFT RECOGNIZED OBLIGATION PAYMENT SCHEDULE
 Per AB 26 - Section 34169

	Project Name / Debt Obligation	Payee	Description	Payment Period (*)			Funding Source
				10/1/11 - 12/31/11	1/1/12 - 6/30/12	Total Due	
1)	2011 Tax Allocation Bonds Series A	U.S. Bank National Association	Bonds issued to fund non-housing projects	0.00	321,381.25	\$ 321,381.25	Reserve Balances
2)	2011 Tax Allocation Bonds Series B	U.S. Bank National Association	Bonds issued to fund housing projects	0.00	109,891.88	\$ 109,891.88	Low and Moderate Income Housing Fund
3)	Contract for Consulting Services	Rosenow Spevacek Group	Project Management and Advisory Services	45,000.00	90,000.00	\$ 135,000.00	Redevelopment Property Tax Trust Fund
4)	Employee Costs	Employees of the Agency	Payroll for Employees	34,125.00	68,250.00	\$ 102,375.00	Administrative Allowance
5)	Employee Benefits	Employees of the Agency	Employee Benefits (Insurance & Retirement)	14,625.00	29,250.00	\$ 43,875.00	Administrative Allowance
6)	Contract for Legal Services	Rutan and Tucker	Agency Legal Services	60,000.00	120,000.00	\$ 180,000.00	Redevelopment Property Tax Trust Fund
7)	Contract for Consulting Services	Hogle-Ireland	Agency Portion of General Plan Update	9,750.00	19,500.00	\$ 29,250.00	Reserve Balances
8)	City/Agency Cooperation Agreement	City of Twentynine Palms	Cooperative Agreement for Non-Housing and Housing Projects	337,500.00	675,000.00	\$ 1,012,500.00	Redevelopment Property Tax Trust Fund
9)	Contract for Engineering Services	Dokken Engineering	Engineering and Studies for Hwy 62 Imps	300,000.00	0.00	\$ 300,000.00	Redevelopment Property Tax Trust Fund
10)	Reimbursement for Remittance Payment	City of Twentynine Palms	Alternative Voluntary Redevelopment Program Remittance Payment	0.00	829,353.00	\$ 829,353.00	Reserve Balances
11)						\$ -	
12)						\$ -	
13)						\$ -	
14)						\$ -	
15)						\$ -	
16)						\$ -	
17)						\$ -	
18)						\$ -	
19)						\$ -	
20)						\$ -	
21)						\$ -	
22)						\$ -	
23)						\$ -	
						\$ -	
	Grand Total			\$ 801,000.00	\$ 2,262,626.13	\$ 3,063,626.13	

* Some Payment Amounts are Estimated