

RESOLUTION 3335-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TAFT ACCEPTING TRANSMITTAL OF THE TAFT COMMUNITY DEVELOPMENT AGENCY (TCDA) PRELIMINARY DRAFT RECOGNIZED OBLIGATION PAYMENT SCHEDULE; APPROVING AN AGREEMENT TO TRANSFER TAX INCREMENT BETWEEN THE CITY AND THE TCDA; AND, MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

WHEREAS, the Community Development Agency of the City of Taft ("TCDA") is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* ("CRL") and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Taft ("City"); and

WHEREAS, the City Council adopted the Community Development Plan ("Community Development Plan") for the Taft Community Development Project No. 1 ("Project Area") that was adopted by the City Council by Ordinance No. 522 on July 15, 1986. Since its adoption, the Community Development Plan has been amended on four subsequent occasions for the purpose of establishing or modifying various time limitations and adding territory to the existing project area included with the Community Development Plan; and

WHEREAS, the TCDA is responsible for implementation of the Community Development Plan, and the Community Development Plan sets forth a plan for redevelopment of the Project Area consistent with the policies and standards of the General Plan of the City; and

WHEREAS, AB 1X 26 and AB 1X 27 are trailer bills to the 2011-12 budget bills and were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, "2011 Redevelopment Legislation"); and

WHEREAS, Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purported to become effective immediately; and

WHEREAS, Part 1.8 of the CRL ("Part 1.8") provides for the restriction of activities and authority of the TCDA in the interim period prior to dissolution to certain "enforceable obligations" and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8; and

WHEREAS, Part 1.85 of the CRL ("Part 1.85") provides for the statewide dissolution of all redevelopment agencies, including the TCDA, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the TCDA and otherwise wind up the TCDA's affairs, all subject to the review and approval by an oversight committee; and

WHEREAS, Part 1.9 of the CRL ("Part 1.9") provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 ("Program"); and

WHEREAS, the City is aware that the 2011 Redevelopment Legislation is the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* ("CRA Action"); and

WHEREAS, the Supreme Court accepted original jurisdiction of the CRA Action on August 11, 2011, notified the parties of the briefing schedule, and, importantly, issued a stay order affecting Part 1.85 and Part 1.9, but the court did not stay Sections 34161 to 34167 of Part 1.8, then on August 17, 2011, the Supreme Court modified its stay order, which released the stay on Sections 34167.5 to 34169.5 of Part 1.8 and on Section 34194(b)(2) of Part 1.9, making those laws now effective ("Supreme Court Stay"); and

WHEREAS, Section 34169(h) of the CRL, which was added to the CRL by AB 1X 26 and is set forth in Part 1.8 of the CRL, requires the TCDA to prepare an Preliminary Draft Recognized Obligation Payment Schedule, no later than September 30, 2011, and provide it to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170); and

WHEREAS, while Part 1.85 (which provides for the dissolution of redevelopment agencies and the creation of successor agencies) and Part 1.9 (which authorizes the City to opt into the Program) are both stayed by order of the California Supreme Court, Part 1.8, specifically including Section 34169, of the CRL, currently remains in full force and effect; and

WHEREAS, the City desires to confirm its election to become the successor agency in the event the TCDA is dissolved; and

WHEREAS, the TCDA by resolution has adopted an Preliminary Draft Recognized Obligation Payment Schedule ("PDROPS") and has directed the Executive Director to transmit the PDROPS to the City, as required by Section 34169(h) of the CRL; and

WHEREAS, the City desires to accept the transmittal of the PDROPS; and

WHEREAS, each city and county electing to participate in the Program, as a condition of its redevelopment agency's continued existence and operation, is required to make certain annual remittances ("Program Remittances") to the county auditor-controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with a larger upfront remittance for FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012; and

WHEREAS, the City expects it will have sufficient moneys and revenues to fund an amount equal to the City's payment of the First Remittance and further expects to have sufficient moneys and revenues to fund the subsequent annual remittances required by Part 1.9; and

WHEREAS, the City is opting into Part 1.9 in order to allow the TCDA to continue in operation and perform its functions; and

WHEREAS, the City and TCDA desire to enter into an agreement pursuant to CRL Section 34194.2 whereby the TCDA shall make an initial transfer of a portion of its tax increment to the City in an amount equal the First Remittance, and thereafter transfer amounts of tax increment equal to any subsequent remittance which the City is required to make to the CAC pursuant to the City's participation in the Program ("Agreement to Transfer Tax Increment"); and

WHEREAS, the City, by the adoption of this Resolution, does not represent, disclaim, or take any position whatsoever on the issue of the validity of AB 1X 26 or AB 1X 27, but rather the City seeks to comply with the Constitution and laws of the State of California, in order to preserve the ability of the TCDA to continue to operate and thereby benefit the community; and

WHEREAS, the dissolution of the TCDA would be detrimental to the health, safety, and economic well-being of the residents of the City and cause irreparable harm to the community, because, among other reasons, the redevelopment activities and projects made possible, implemented, and funded by the TCDA are highly significant and of enduring benefit to the community and the City, and are a critical component of its future; and

WHEREAS, the City has duly considered all other related matters and has determined that the City's acceptance of the PDROPS and the approval and execution of the Agreement to Transfer Tax Increment is in the best interests of the City and the TCDA and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAFT:

Section 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

Section 2. The City Council hereby accepts transmittal by the TCDA of the PDROPS on behalf of the City, as successor agency, pursuant to Section 34169(h) of the CRL.

Section 3. The City Council hereby approves that certain Agreement to Transfer Tax Increment in substantially the form attached hereto as Attachment No. 1 and incorporated herein, with such changes mutually agreed upon by the City Manager, the Executive Director, the City Attorney, and Special Counsel, respectively, as are minor and in substantial conformance with the form of the Agreement to Transfer Tax Increment submitted herewith. The Mayor and the City Clerk are hereby authorized to execute and attest the Agreement to Transfer Tax Increment on behalf of the City. In such regard, the Mayor is authorized to sign the final version of the Agreement to Transfer Tax Increment after completion of any such non-substantive, minor revisions completed by the Executive Director, City Manager, City Attorney and Special Counsel. Copies of the final form of the Agreement to Transfer Tax Increment, when duly executed and attested, shall be placed on file in the office of the City Clerk. Further, the City Manager (or his duly authorized representative) is authorized to implement the Agreement to Transfer Tax Increment and take all further actions and execute all documents referenced therein and/or necessary and appropriate to implement the purposes of the Agreement to Transfer Tax Increment. The City Manager (or his duly authorized representative) is hereby authorized to the extent necessary during the implementation of the Agreement to Transfer Tax Increment to make technical or minor changes, modifications, amendments and interpretations thereto after execution, as necessary to properly implement and carry out the Agreement to Transfer Tax Increment; provided any and all such changes shall not in any manner materially affect the rights and obligations of the City thereunder.

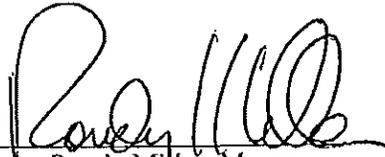
Section 4. This Resolution shall in no way be construed as requiring the City (or the TCDA) to abide by the 2011 Redevelopment Legislation in the event either, or both, bills are found unconstitutional or otherwise legally invalid in whole or in part, nor shall this Resolution effect or

give rise to any waiver of rights or remedies the City (and/or the TCDA) may have, whether in law or in equity, to challenge 2011 Redevelopment Legislation. This Resolution shall not be construed as the City's (and/or the TCDA's) willing acceptance of, or concurrence with the 2011 Redevelopment Legislation, either AB 1X 26 or AB 1X 27; nor does this Resolution evidence any assertion or belief whatsoever on the part of the City (and/or TCDA) the 2011 Redevelopment Legislation is constitutional or lawful.

Section 5. This Resolution shall be effective immediately upon adoption.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED on this 20 day of September 2011.


Randy Miller, Mayor

Attest:

Debra L. Elliott, Deputy City Clerk

STATE OF CALIFORNIA }
COUNTY OF KERN }SS
CITY OF TAFT }

I, Debra L. Elliott, ^{Deputy City Clerk} of the City of Taft, California, do hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting thereof held on the 20th day of September, 2011, by the following vote:

AYES: Councilmembers: Krier, Liner, Noerr, Waldrop, Miller
NOES: Councilmembers: None
ABSENT: Councilmembers: None
ABSTAIN: Councilmembers: None


Debra L. Elliott, Deputy City Clerk

AGREEMENT TO TRANSFER TAX INCREMENT

This AGREEMENT TO TRANSFER TAX INCREMENT ("Agreement") is entered into as of September 20, 2011 ("Date of Agreement"), by and between the CITY OF TAFT, a municipal corporation ("City") and the COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TAFT, a public body, corporate and politic ("TCDA").

RECITALS

A. The Community Development Agency of the City of Taft ("TCDA") is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* ("CRL") and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Taft ("City").

B. The City Council adopted the Community Development Plan ("Community Development Plan") for the Taft Community Development Project No. 1 ("Project Area") that was adopted by the City Council by Ordinance No. 522 on July 15, 1986. Since its adoption, the Community Development Plan has been amended on four subsequent occasions for the purpose of establishing or modifying various time limitations and adding territory to the existing project area included with the Community Development Plan.

C. The TCDA receives and has available to it tax increment revenues in accordance with and pursuant to CRL Section 33670(b) and Article XVI Section 16 of the California Constitution ("Tax Increment").

D. Assembly Bills X1 26 and X1 27, which are trailer bills to the 2011-12 budget bills, were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, "2011 Redevelopment Legislation").

E. Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purport to have become effective immediately.

F. Part 1.8 of the CRL ("Part 1.8") provides for the restriction of activities and authority of the TCDA in the interim period prior to dissolution to certain "enforceable obligations" and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8.

G. Part 1.85 of the CRL ("Part 1.85") provides for the statewide dissolution of all redevelopment agencies, including the TCDA, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the TCDA and otherwise wind up the TCDA's affairs, all subject to the review and approval by an oversight committee.

H. Part 1.9 of the CRL ("Part 1.9") provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 ("Program").

I. The City and TCDA are aware that the 2011 Redevelopment Legislation is the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* ("CRA Action").

J. The Supreme Court accepted original jurisdiction of the CRA Action on August 11, 2011, notified the parties of the briefing schedule, and, importantly, issued a stay order affecting Part 1.85 and Part 1.9, but the court did not stay Sections 34161 to 34167 of Part 1.8, then on August 17, 2011, the Supreme Court modified its stay order, which released the stay on Sections 34167.5 to 34169.5 of Part 1.8 and on Section 34194(b)(2) of Part 1.9, making those laws now effective ("Supreme Court Stay"). The City and TCDA recognize that this Agreement is subject to the Supreme Court Stay.

K. Those cities or counties electing to participate in the Program, as a condition of its redevelopment agency's continued existence and operation, are required to make certain annual remittances ("Program Remittances") to the county auditor-controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with an larger upfront remittance for FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012.

L. The City will have sufficient funds and revenues to fund and pay the First Remittance and expects to have funds and revenues sufficient to fund amounts equal to the subsequent fiscal years' remittances required by Part 1.9.

M. The City and TCDA desire to enter into this Agreement pursuant to CRL Section 34194.2 whereby the TCDA shall transfer portions of Tax Increment to the City in an amount equal to the First Remittance, and thereafter to transfer amounts of Tax Increment equal to each and all subsequent fiscal years' remittances that the City is required to make to the CAC pursuant to the City's participation in the Program.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

Section 1. The TCDA shall be liable to City for the payment of the Program Remittances in connection with the City's participation in the Program. The TCDA agrees that no later than fifteen (15) days prior to the date upon which the City shall be statutorily required to make any full or partial payment of a Program Remittance in any fiscal year, the TCDA shall transfer funds to the City in an amount equal to such payment; each such payment by the TCDA shall be referred to herein as a "Required TCDA Payment" and, as such payments are combined, "Required TCDA Payments." Interest shall accrue on any unpaid balance of the Required TCDA Payments at an annual interest rate equal to the maximum rate permitted by Section 53531 of the Government Code. Interest on amounts paid as Required TCDA Payments shall be deemed to begin accruing on the date upon which the City makes any required Program Remittance to the County Auditor-Controller.

Section 2. The TCDA pledges revenues available to the TCDA under Section 33670(b) of the California Health & Safety Code ("Tax Increment") to repayment of its indebtedness to the City hereunder; provided that such pledge is junior and subordinate to all outstanding bonds of the TCDA (including without limitation the TCDA's obligations under the following: (a) 1998 Refunding Bonds (Police Department and Redevelopment Project) and any refunding thereof, and (b) any

refunding bonds issued by or through the TCDA, and (c) any additional bonds issued hereafter by or through the TCDA. The City and TCDA agree that such obligation by TCDA to City may be further subordinated by agreement of the City and the TCDA (or their joint powers public financing authority).

(a) As used in this Section 2, "Tax Increment" means all taxes annually allocated to the TCDA with respect to the Project Area in each year following the Date of Agreement, pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Redevelopment Law and Section 16 of Article XVI of the Constitution of the State of California and as provided in the Community Development Plan for the Project Area, including all payments, subventions and reimbursements (if any) to the TCDA specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations; but excluding (i) all amounts of such taxes required to be deposited into the Low and Moderate Income Housing Fund of the TCDA in any Fiscal Year pursuant to Sections 33334.2 or 33334.6 of the Redevelopment Law, (ii) all amounts of such taxes required to be paid to taxing entities under Sections 33607.5 and 33607.7 of the Redevelopment Law to the extent such required payments create a prior lien on such taxes, (iii) amounts, if any, payable by the State of California to the TCDA under and pursuant to the provisions of Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the Government Code of the State of California, (iv) amounts retained by the County of Kern as costs of collection pursuant to Chapter 466, Statutes of 1990, and (v) such taxes, to the extent subject to a prior express pledge by the TCDA.

Section 3. Pursuant to Sections 34194.2 and 34194.3 and for FY 2011-12 only, the TCDA finds that that there are insufficient other moneys to meet its debt and other obligations, current priority program needs, and/or its obligations under Section 34194.2 therefore the TCDA is exempted from making the annual deposit to the Housing Fund and an amount equal thereto shall be part of the tax increment transfer hereunder. The TCDA's debts and obligations are set forth and summarized in the EOPS, the Statement of Indebtedness and reports and information presented to the City and TCDA in actions relating to the 2011 Redevelopment Legislation.

Section 4. The obligations of the TCDA under this Agreement shall constitute an indebtedness of the TCDA within the meaning of Section 33670, *et seq.* of the Community Redevelopment Law.

Section 5. The City agrees to spend those funds received under this Agreement or otherwise pursuant to CRL Section 34194.2 "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals" or as otherwise determined by the courts or subsequent law and in accordance with the laws of the United States and the State of California, all as applicable.

Section 6. This Agreement shall become effective upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption hereof, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 are valid and enforceable.

Section 7. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable. The City Council and TCDA hereby declare that it would have approved this Agreement irrespective of the invalidity of any particular portion thereof so long as and subject to Part 1.9 being declared valid and enforceable.

Section 8. An event of default occurs under this Agreement when: (a) there is a breach of any condition, covenant or promise set forth herein; (b) written notice thereof has been given to the defaulting party; and (c) such breach has not been cured within thirty (30) days after such notice was given to the defaulting party or, if such breach cannot reasonably be cured within such thirty (30) day period, the defaulting party fails to commence to cure the breach and/or fails thereafter to diligently proceed to complete such cure. A waiver, if any, by a party must be in writing; and, such waiver by a party of a breach shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise.

Section 9. The occurrence of an event of default hereunder shall give the non-defaulting party the right to proceed with any and all remedies available at law or equity, including without limitation an action for damages, an action or proceeding for specific performance, and/or an action or proceeding for injunctive relief.

Section 10. City shall maintain authority of this Agreement and the authority to implement this Agreement through City Manager and Finance Director (or duly authorized representative(s)) and TCDA shall maintain authority of this Agreement and the authority to implement this Agreement through the Executive Director and Treasurer (or duly authorized representative(s)); each shall have the authority to make approvals, issue interpretations, waive provisions hereof.

Section 11. This Agreement shall be binding upon City and TCDA and their successors and assigns. Whenever the terms "City" or "TCDA" are used in this Agreement, such terms shall include any other successors and assigns as herein provided.

Section 12. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 13. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

Section 14. Any amendment, alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed by a duly authorized representative on behalf of each party. Each party agrees to consider in good faith and exercise reasonable discretion in its consideration of a request by another party to amend this Agreement.

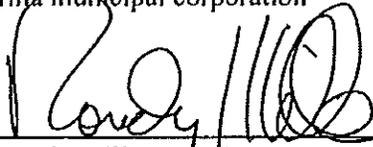
[signature blocks on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement to Transfer Tax Increment as of the date first above written.

CITY:

CITY OF TAFT,
a California municipal corporation

By: _____


Randy Miller, Mayor

ATTEST:

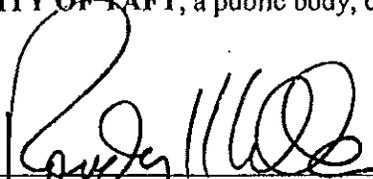


Debra L. Elliott
Deputy City Clerk

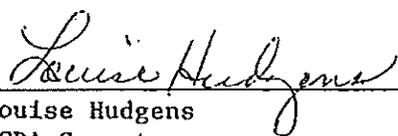
TCDA:

COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF TAFT, a public body, corporate and
politic

By: _____


Randy Miller, Chairman

ATTEST:



Louise Hudgens
TCDA Secretary