ORDINANCE NO. 2011-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMOORE, CALIFORNIA, DETERMINING IT WILL COMPLY WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE LEMOORE REDEVELOPMENT AGENCY

WHEREAS, the City Council of the City of Lemoore ("City") approved and adopted the Redevelopment Plan for the Redevelopment Project ("Redevelopment Plan") covering certain properties within the City (the "Project Area"); and

WHEREAS, the Redevelopment Agency of the City of Lemoore ("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 Section 33000, *et seq.*) ("CRL"); and

WHEREAS, 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 industries to create jobs and expand the local economy; and

WHEREAS, 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, to name a few; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills 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, 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; and

WHEREAS, 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; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be two million, eight hundred and seventy-nine thousand, nine hundred and fifty-three dollars ($2,879,953), as well as the subsequent annual community remittances as set forth in the CRL; and

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in Health and Safety Code Section 34194; and

WHEREAS, City understands that an action challenging the constitutionality of AB 1X 26 and AB 1X 27 has been filed on behalf of cities, counties and redevelopment agencies; and

WHEREAS, while the City currently intends to make these community remittances, they 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 that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise invalid; and

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

WHEREAS, 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; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LEMOORE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. **Recitals.** The Recitals set forth above are true and correct and made a part of this Ordinance.

Section 2. **Participation in the Alternative Voluntary Redevelopment Program.** In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

Section 3. **Payment Under Protest.** Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances set forth in Health and Safety Code Section 34194 *et seq.* under protest.

Section 4. **Effect of Stay or Determination of Invalidity.** City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise invalid. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. **Implementation.** The City Council hereby authorizes and directs the City Manager to take any action and execute any documents necessary to implement this

Ordinance, including but not limited to notifying the Kings County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.

Section 6. **Additional Understandings and Intent.** It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the CRL, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 7. **CEQA.** The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Kings in accordance with CEQA Guidelines.

Section 8. **Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk's office located at 119 Fox Street, Lemoore, CA. The custodian for these records is City Clerk Nanci C.O. Lima, MMC.

Section 9. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 10. **Certification; Publication.** The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Lemoore, and shall post a certified copy of this Ordinance, including the vote for and

against the same, in the Office of the City Clerk in accordance with Government Code Section 36933. Any summary of this Ordinance must be approved by the City Attorney before its publication. The City Clerk is further directed to cause this Ordinance to be codified after its adoption.

Section 11. **Effective Date.** This Ordinance shall take effect thirty (30) days after its adoption.

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The foregoing Ordinance was introduced at a Regular Meeting of the City Council of the City of Lemoore held on the 2nd day of August, 2011 and was passed and adopted at the Regular Meeting of the City Council held on the 16th day of August, 2011 by the following vote:

AYES: Plourde, Murray, Rodarmel
NOES: Gordon, Siegel
ABSENT: None
ABSTAIN: NOne

Willard J. Rodarmel, Mayor

ATTEST:

Nanci C.O. Lima, MMC
City Clerk

CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF KINGS) SS
CITY OF LEMOORE)

I, NANCI C.O. LIMA, City Clerk of the City of Lemoore do hereby certify the forgoing Ordinance was introduced at a Regular Meeting of the City Council of the City of Lemoore held on the 2nd day of August, 2011 and was passed and adopted at a Regular Meeting of the City Council held on the 16th day of August, 2011.

Date: August 17, 2011

Nanci C. O. Lima, MMC
City Clerk