

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**To:** Honorable City Council

**From:** David C. Moe II, Redevelopment Manager *DCM*

**Date:** January 27, 2011 (CC Meeting of 2/2/11)

**Subject:** Consider Option Agreement with the Moorpark Redevelopment Agency of the City of Moorpark to Purchase Agency Land Held for Resale

**BACKGROUND & DISCUSSION**

On Monday, January 10, 2011, Governor Jerry Brown released his FY 2011-12 State budget proposal. The proposed budget has a \$25.4 billion deficit. The Governor proposes \$26.4 billion in solutions to close the budget deficit. One of the solutions would completely eliminate redevelopment agencies in an effort to divert \$1.7 billion to the State General Fund. The elimination of redevelopment agencies raises many legal, technical, and political issues.

The Governor's proposal to abolish redevelopment agencies as of July 1, 2011, also calls for urgency legislation to prohibit existing agencies from creating new contracts or obligations. On January 12, the Legislative Analyst released an analysis of the Governor's Budget proposals and suggested that the Legislature take action as soon as possible to pass urgency legislation prohibiting redevelopment agencies "from taking further actions that increase their debt." State budget actions may prevent a redevelopment agency's control of land acquired for Redevelopment purposes. Therefore, Staff recommends entering into an agreement with the Redevelopment Agency of the City of Moorpark (Agency) to safeguard the Agency's land held for resale. Attachment A is an option agreement between the Agency and the City of Moorpark (City). This agreement will provide the City an option to purchase all of the Agency's land held for resale.

This proposed action does not increase the Agency's debt and is intended to allow completion of planned Agency activities consistent with the Five-Year Implementation Plan. These activities include affordable housing and economic development objectives that could not be accomplished without the acquisition and public ownership of the land. The activities, when completed would return the land to private ownership or hold it for general public benefit such as street widening, parking facilities and parks.

If in the future the City exercises its options it would be because the Agency is no longer in a financial position to do the projects, no longer exists, or has been legally prohibited from doing so.

Regardless of the Agency's legal existence, the intended uses of the land affected by this Option Agreement would facilitate not only Agency objectives but long-standing identified community objectives as well.

According to the California Redevelopment Association and the State Building and Construction Trades Council of California, AFL-CIO, if Governor Brown's budget is adopted:

- It will kill 300,000 jobs a year provided by redevelopment projects, most of them construction jobs; and
- It will encourage sprawl development and increase greenhouse gas emissions in the future and limit the construction of affordable housing; and
- It will deprive the state and local agencies of \$2 billion in new revenues generated from these projects.

### **FISCAL IMPACT**

The City will purchase the option from the Agency for \$1.00 for each parcel. No budget amendment is need as the funds needed for this transaction can be found in the existing FY 2010/11 adopted budget.

### **STAFF RECOMMENDATIONS**

1. Approve option agreement with the Redevelopment Agency of the City of Moorpark for the right to purchase Agency's land held for resale, subject to final language approval by the City Manager and City Attorney; and
2. Authorize the Mayor to execute any documents necessary to facilitate granting the option to the City.

Attachment "A": Option Agreement

## ATTACHMENT A

### OPTION AGREEMENT

This Option Agreement (the "Agreement") is made on \_\_\_\_\_, 2011 ("Effective Date") by and between the City of Moorpark, California (the "Optionee"), and the Redevelopment Agency of the City of Moorpark (the "Optionor"), who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts and circumstances:

a. The Optionor is the present owner of certain real property located in Ventura County, California, and more particularly described on Exhibit "A" attached to this Agreement. The real property is referred to herein as the "Agency Property."

b. Optionee desires to acquire the exclusive right to purchase the Agency Property without becoming obligated to purchase it.

c. Optionor and Optionee agree on the prices and conditions of purchase for the Agency Property.

2. Grant of Option. Optionor grants to Optionee the exclusive right and option (the "Option") to purchase the Agency Property, or any portion of the Agency Property, at a purchase price and under the terms and conditions set forth in this Agreement. A memorandum of the Option in the form of Exhibit "B" hereto will be recorded concurrently with execution of this Agreement.

3. Option Period. The Option will commence on the Effective Date and will remain in effect and continue for a period of 1 year thereafter ("Option Period"). Upon written notification presented to the Agency prior to the expiration of the initial Option Period or the expiration of an extended Option Period, the City may unilaterally extend this Option for two (2) additional one-year periods.

4. Consideration. The Option is granted in consideration of the payment by Optionee to Optionor of the sum of \_\_\_\_\_ Dollars and No Cents (\$\_\_\_\_\_.00) (the "Option Price"), receipt of which is hereby acknowledged by Optionor.

5. Retention of Option Price. If the Option is not exercised, or if the Option is not exercised in accordance with the terms of this Agreement, then the Option Price will be retained by Optionor in consideration of the granting of this Option.

6. Method of Exercise. Optionee may exercise this option as to the entirety of the Agency Property or as to any individual parcel constituting the

Agency Property by giving written notice to Optionor (the "Exercise Notice"). To be effective, the Exercise Notice must include justification for the public purpose of the Agency Property to be acquired sufficient for Optionor to make findings pursuant to that version of California Health and Safety Code section 33445 in effect on the Effective Date so as to justify the transfer of the property to Optionee. The Exercise Notice shall be accompanied by the sum of One Dollar and No Cents (\$1.00) for each parcel of Agency Property to be acquired pursuant to the Exercise Notice. The foregoing shall not be construed to disallow the making of multiple Exercise Notices if Optionee determines that it is best served by making multiple purchases of the parcels constituting the Agency Property during the term of the Option Period.

7. Contract for Purchase and Sale of Real Property. In the event that the Optionee exercises the Option as provided for herein, Optionor agrees to sell and Optionee agrees to buy an interest in the Agency Property, or any portion of the Agency Property denoted in an Exercise Notice, and both parties agree to execute a contract for such purchase and sale.

8. Automatic Termination. If Optionee fails to exercise the Option in accordance with the terms contained in this Agreement, then this Agreement and the Option will automatically and immediately terminate without notice. In that event, Optionee agrees to execute, acknowledge and deliver to Optionor, within five (5) days of request, a release, quitclaim deed or any other document required by Optionor or a title insurance company to verify or confirm the termination of this Agreement.

9. Assignment. This Agreement and the Option granted under it are personal to the Optionee. The Optionee may not assign, convey or in any other manner transfer or encumber all or any part of this Agreement, the rights and duties of Optionee under this Agreement or the Option granted under this Agreement, without prior written permission from Optionor. If such an assignment, conveyance or other transfer is attempted or made by Optionee without prior written permission from Optionor, the Optionee's rights under this Agreement and the Option will automatically terminate without notice.

10. Notices. All notices and other communications required or permitted to be given under this Agreement by one party to the other shall be in writing addressed to the recipient party's Notice Address set forth below and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to the party's Notice Address, then as of the date delivered (or if delivery is refused, upon presentation), or (b) if mailed by certified mail to the party's Notice Address, postage prepaid and return receipt requested, then at the time received at the party's Notice Address as evidenced by the return receipt, or at the time shown on the return receipt as the date on which the post office determined the notice could not be delivered, or (c) if mailed by first class mail to the party's Notice Address, postage prepaid, then at the time received

at the party's Notice Address. A party may only change its Notice Address by a notice given in the foregoing form and manner. The Notice Addresses of the parties are as follows:

Optionor	Executive Director Community Redevelopment Agency of the City of Moorpark 799 Moorpark Avenue Moorpark, CA 93021
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Optionee	City Manager City of Moorpark 799 Moorpark Avenue Moorpark, CA 93021
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11. Other Provisions.

a. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The terms of this Agreement were freely and voluntarily negotiated between the parties and none of the parties to it shall have any term or provision construed against it solely by reason of its having drafted the same.

b. This Agreement and all exhibits attached to it constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior or contemporaneous agreements, promises, negotiations, representations or understandings (whether written or oral) with respect thereto.

c. If either party hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing party as fixed by the court.

d. No amendment of this Agreement and no waiver of any term or condition of this Agreement shall be effective or enforceable unless contained in a writing signed by Optionor and Optionee.

e. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Agreement as of the date written by their signatures.

CITY OF MOORPARK ("OPTIONEE"):

By: \_\_\_\_\_  
Janice Parvin, Mayor

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Maureen Benson, City Clerk

Dated: \_\_\_\_\_

REDEVELOPMENT AGENCY OF THE CITY OF MOORPARK ("OPTIONOR"):

By: \_\_\_\_\_  
Steven Kueny, Executive Director

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Maureen Benson, Agency Secretary

Dated: \_\_\_\_\_

# **EXHIBIT A**

## **Agency Owned Properties:**

511-0-050-140 / 661 Moorpark Avenue  
511-0-050-080 / 47 West High Street  
511-0-050-175 / 83 West High Street  
512-0-062-120 / 798 Moorpark Avenue  
512-0-062-020 / 782 Moorpark Avenue  
512-0-093-080 / 296 Charles Street  
512-0-090-105 / Azkenazy  
68 High Street / Old BBQ Joint  
104 High Street/Maria's Family Restaurant  
18 High Street/Chamber of Commerce  
220 & 222 High Street/Moorpark Active Seniors  
512-0-081-110 / 81 Charles Street  
511-0-101-350 / 347 Moorpark Avenue  
512-0-081-110 / 467 High Street  
512-0-091-080 / 45 High Street  
512-0-103-040 / 81 First Street  
511-0-050-090  
511-0-090-230 / West of Moorpark  
512-0-090-100 / West of Moorpark  
512-0-150-765 / Fitch Avenue  
512-0-171-225  
512-0-171-245  
506-0-020-130 / 250 E. Los Angeles Avenue  
512-0-081-020, 030, 040 / 396 Charles Street  
512-0-081-080 / 484 Charles Street  
512-0-081-050 / 450 Charles Street  
512-0-081-060 / 460 Charles Street  
511-0-030-300 / 1063 Walnut Canyon  
511-0-030-290 / 1073 Walnut Canyon  
511-0-030-270 / 1095 Walnut Canyon  
511-0-030-260 / 1113 Walnut Canyon  
511-0-040-130, 140 / 1293 Walnut Canyon  
512-0-091-090 / 33 E. High Street  
511-0-040-120 / 1331 Walnut Canyon  
512-0-062-110 / 765 Walnut Street  
512-0-063-010 / 780 Walnut Street  
506-0-050-080 / Surplus parcel DD2-03-01  
511-0-030-280/1083 Walnut Canyon  
513-0-024-105, 135 / Princeton - 2 parcels  
512-0-102-100 / 112 First Street  
512-0-102-110 / 124 First Street  
450 High Street

**EXHIBIT "B"**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Executive Director  
Community Redevelopment Agency  
of the City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021

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**MEMORANDUM OF OPTION**

This Memorandum of Option Agreement for Purchase of Real Property ("**Memorandum**") is made and entered into as of \_\_\_\_\_, 2011, by and between the Community Redevelopment Agency of the City of Moorpark ("**Optionor**"), and the City of Moorpark, California ("**Optionee**").

1. Optionor hereby grants to Optionee an option (the "**Option**") to purchase the real property and improvements described in Schedule "1" attached hereto (collectively, the "**Optioned Property**") on the terms and conditions set forth in that certain Option Agreement of even date herewith between Optionor and Optionee, and as mores specifically set forth therein (the "**Option Agreement**"). Capitalized terms not expressly defined herein shall have the meaning set forth in the Option Agreement.

2. Optionee shall have the right to exercise the Option in the manner provided in the Option Agreement at any time during the Option Period(as defined in the Option Agreement).

3. The parties have executed and recorded this instrument to give notice of the Option Agreement and the respective rights and obligations of Optionee and Optionor. The price and other terms are in the unrecorded Option Agreement, which is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the Option Agreement, the Option Agreement shall control. This Memorandum and the Option Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Option Agreement on assignment.

4. This Memorandum and the Option Agreement are governed by California law.

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

**“Optionor”**

**“Optionee”**

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

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

Name: Steven Kueny

Name: Janice Parvin

Title: Executive Director

Title: Mayor

## **SCHEDULE "1" to MEMORANDUM**

### **Agency Owned Properties:**

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511-0-030-300 / 1063 Walnut Canyon  
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511-0-030-260 / 1113 Walnut Canyon  
511-0-040-130, 140 / 1293 Walnut Canyon  
512-0-091-090 / 33 E. High Street  
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512-0-062-110 / 765 Walnut Street  
512-0-063-010 / 780 Walnut Street  
506-0-050-080 / Surplus parcel DD2-03-01  
511-0-030-280/1083 Walnut Canyon  
513-0-024-105, 135 / Princeton - 2 parcels  
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