

**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 Resolution Approving and Authorizing Reimbursement Agreement Between the Redevelopment Agency of the City of Moorpark and the City of Moorpark for the Construction of the High Street Streetscape Project, a Neighborhood Park located at 161 Second Street; Purchase of 161 Second Street and Accept Grant Deed

BACKGROUND AND DISCUSSION

Staff is proposing the Redevelopment Agency of the City of Moorpark ("Agency") finance the acquisition of 161 Second Street ("Property"), construction of a 15,000 square foot neighborhood park and construction of the High Street Streetscape Improvements ("Streetscape"). The proposed park would be larger than Magnolia Park and have similar amenities. The design of the park would not begin until the Property has been acquired by the City of Moorpark. The Streetscape has already been conceptually designed and is ready to process with construction drawings. The proposed neighborhood park and Streetscape are collectively called "Public Improvements".

The Property is partially improved with a single family dwelling. The purchase price of the Property is \$520,000.00, which includes escrow related costs to this transaction. The cost to remove the improvements is estimated at \$10,000.00 and the cost to relocate the tenants is estimated to be \$30,000.00. The cost of a professional service agreement to conduct the relocation would be approximately \$20,000.00. Staff anticipates the cost to construct the park with contingencies to be approximately \$420,000.00. The total cost to acquire the Property and construct the park is \$1,000,000.00 from the MRA 2006 Tax Allocation Bond Fund, which currently has \$2,500,000.00 available for projects.

The cost to construct the Streetscape as planned is approximately \$5,000,000.00. Staff is proposing to encumber \$1,500,000.00 from the MRA 2006 Tax Allocation Bond Fund

for the first phase and utilizing any net available tax increment to finance the remainder of the project.

Attachment B is a reimbursement agreement between the Agency and the City of Moorpark in the amount of \$2,500,000.00. This agreement provides the City of Moorpark with the needed funds to construct the Public Improvements consistent with the City's Park Master Plan and Five Year Implementation Plan.

FISCAL IMPACT

The Agency will reimburse the City for the construction of the proposed Public Improvements from the MRA 2006 Tax Allocation Bond Fund up to \$2,500,000.00 for park and phase one of street improvements and balance of street improvements from future available tax increments.

STAFF RECOMMENDATION (ROLL CALL VOTE REQUIRED)

1. Adopt Resolution No. 2011 - _____; and
2. Authorize the Mayor to execute the reimbursement agreement, subject to final language approval by the City Manager and City Attorney.

Attachment "A" Resolution No. 2011 - _____
Attachment "B" Reimbursement Agreement

Attachment A

RESOLUTION NO. 2011 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA APPROVING AND AUTHORIZING EXECUTION OF A PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MOORPARK AND THE REDEVELOPMENT AGENCY OF THE CITY OF MOORPARK, FOR THE CONSTRUCTION OF THE HIGH STREET STREETScape AND PURCHASE OF 161 SECOND STREET, ACCEPTANCE OF GRANT DEED AND CONSTRUCTION OF A NEIGHBORHOOD PARK

WHEREAS, the Redevelopment Agency of the City of Moorpark ("Agency") is carrying out the Redevelopment Plan ("Redevelopment Plan") for the Moorpark Redevelopment Project ("Project"); and

WHEREAS, under the Redevelopment Plan, the City of Moorpark ("City") shall aid and cooperate with the Agency in carrying out the Project, and shall take actions necessary to ensure the fulfillment of the purposes of the Redevelopment Plan and to eliminate and prevent the recurrence or spread of conditions causing blight within the area of the Project ("Project Area"); and

WHEREAS, pursuant to Section 33320 of the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) (the "CRL"), for the purposes of aiding and cooperating in the planning, undertaking, construction or operation of redevelopment projects within the Project Area, the City may, among other things, exercise the following powers: sell or lease any of its property to the Agency; cause public improvements to be furnished in connection with redevelopment projects; plan or replan and zone or rezone any part of a redevelopment project; facilitate the production and rehabilitation of affordable housing and enter into agreements with the Agency respecting actions to be taken pursuant to any such powers; and

WHEREAS, pursuant to Section 33445(a) of the CRL, the Agency may, with the consent of the City Council of the City of Moorpark ("City Council"), pay all or part of the value of the land for and the cost of the installation and construction of any buildings, facilities, structures or other improvements which are publicly owned and located inside or contiguous to a project area upon a determination by the City Council that such building, facilities, structures or other improvements are of benefit to the project area by helping to eliminate blight within the project area, that no other reasonable means of financing the acquisition of the land or installation or construction of such buildings, facilities, structures or other improvements that are publicly owned are available to the community, that the payment of funds for the acquisition of the land or installation or construction of the building, facilities, structure or other improvements that are publicly owned is consistent with the implementation plan adopted by the Agency pursuant to Section 33490 of the CRL; and

WHEREAS, pursuant to Section 33445(c) of the CRL, when the value of the land or the cost of installation and construction of a building, facility, structure, or other

improvement that is publicly owned, or both, has been, or will be, paid or provided for initially by the City, the Agency may enter into a contract with the City under which the Agency agrees to reimburse the City for all or part of the value of the land or all or a part of the cost of the building, facility, structure or other improvement that is publicly owned, or both, by periodic payments over a period of years; and

WHEREAS, the Agency will have a remaining balance of \$2,500,000.00 in the MRA 2006 Tax Allocation Bond Fund (2905) available for additional projects after the construction of the Ruben Castro Human Services Center; and

WHEREAS, the Agency and City Council have prepared and wish to enter into a Public Improvement Reimbursement Agreement ("Agreement") to provide for City's construction of the High Street Streetscape and acquisition of property and construction of a neighborhood park located at 161 Second Street ("Public Improvements"), and Agency's reimbursement of City for the costs of the Public Improvements; and

WHEREAS, a program Final Environmental Impact Report was prepared and certified on the Redevelopment Plan ("Final EIR") in accordance with the California Environmental Quality Act ("CEQA"), which included analysis of the public improvements on a programmatic level; and

WHEREAS, at this time there are no preliminary drawings, plans or other sufficient information to enable a meaningful environmental assessment of the specific Public Improvement, therefore, the Agreement provides that commitment of funds to and commencement of the specific projects set forth therein shall be subject to completion of additional environmental review and analysis, as required by CEQA;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby finds and determines that the provision of the proposed Public Improvements are of benefit to the Project Area as they will help to eliminate blight within the Project Area, that no other reasonable means of financing the Public Improvements are available to the community; and that the payment of funds for the Public Improvements are consistent with the Agency's Implementation Plan for the Project adopted pursuant to Section 33490 of the CRL. These findings and determinations are based upon the following facts:

- a. The Public Improvements are located within the Project Area and will assist in eliminating the blighting condition of inadequate recreation facilities in the downtown neighborhoods.
- b. Although the City is able to aid and assist the Agency by undertaking the Public Improvements and initially providing the funds necessary for the acquisition of land or the construction or installation of the Public Improvements, the

City lacks the resources necessary to fund the Public Improvements from the General Fund, and other potential sources of funds are not available at this time.

- c. The Implementation Plan for the Moorpark Redevelopment Project contains the specific goals and objectives of the Agency for the Project Area, the specific programs, including potential projects, and estimated expenditures proposed to be made during the next five years, and an explanation of how the goals and objectives, programs, and expenditures will eliminate blight within the Project Area set forth in the Community Redevelopment Law. The Public Improvement is consistent with the Implementation Plan, as the goals and programs provide funding for public facilities, such as parking facilities, parks and recreation facilities, landscaping and other amenities, which serve properties and people in the Project Area.

Section 2. The City Council hereby approves the Public Improvement Reimbursement Agreement and hereby authorizes and directs the Mayor to execute the Agreement on behalf of the City, subject to any minor, technical or clarifying changes that may be approved by the City Attorney. The City Council hereby further authorizes and directs the City Manager to take all actions and execute all other documents as necessary to carry out the Agreement and accomplish the Public Improvements as provided for in the Agreement.

SECTION 3. The City Clerk shall accept and consent to the recordation of the grant deed.

SECTION 4. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original Resolutions.

PASSED AND ADOPTED this ____ day of February, 2011.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

**PUBLIC IMPROVEMENT REIMBURSEMENT
AGREEMENT**

THIS PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT ("Agreement") is entered into this _____ day of _____, 2011, by and between the CITY OF MOORPARK ("City") and the REDEVELOPMENT AGENCY OF THE CITY OF MOORPARK ("Agency"), with reference to the following facts:

A. Agency has prepared Redevelopment Plans ("Redevelopment Plans") for the Moorpark Redevelopment Project Area ("Project Area"), which result in the allocation of property taxes from the Project Area to the Agency ("Tax Increment") pursuant to Section 33670(b) of the California Community Redevelopment Law (Health & Safety Code Section 33000 et seq.) ("CRL") for purposes of redevelopment.

B. The intent of the Redevelopment Plan is, in part, to provide for the construction and installation of necessary public infrastructure and facilities and to facilitate the restoration and/or replacement of existing public facilities; to take all other necessary actions to implement the Redevelopment Plan for the respective Project Area and to expend Tax Increment to accomplish the goals and objectives of the respective Redevelopment Plan.

C. The Agency has adopted a Five-Year Implementation Plan for the Project Area ("Implementation Plan") establishing goals for elimination of blight, production of affordable housing, construction of infrastructure and public improvements and community and commercial revitalization. To implement the programs and activities associated with each goal, the Agency has committed redevelopment funds from the Project Area based on estimated available Tax Increment revenue and debt financing structures. The Redevelopment Plan, the Implementation Plan and all official records of the Agency, as amended from time to time, are incorporated herein by reference.

D. Pursuant to Section 33220 of the CRL, certain public bodies, including the City, may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Agency desires assistance and cooperation of the City to carry out the construction of the High Street Streetscape and acquisition of property and construction of a neighborhood park located at 161 Second Street ("Public Improvements"). The programs and activities associated with the Public Improvements include but are not limited to acquisition of property, development of design criteria, design, planning, preparation of construction bid documents, financial analysis, financing, project administration and new construction.

E. The City is willing to aid and cooperate with the Agency to expeditiously implement the Public Improvements in accordance with the Redevelopment Plan and Implementation Plan, on the condition that Agency pledge \$2,500,000.00 of MRA 2006 Tax Allocation Bond Proceeds ("TAB") Fund (2905) and Net Available Tax Increment,

as defined in Recital F below, to finance the Public Improvements in this current fiscal year and in fiscal year 2011/2012.

F. For purposes of this Agreement, "Net Available Tax Increment" means any and all Tax Increment revenues, including (1) any and all Tax Increment funds currently held by the Agency, which are not budgeted or appropriated for payment of other indebtedness or obligations of the Agency; (2) any and all net proceeds of bonded indebtedness currently or hereafter held by the Agency or any lawful successor of Agency (except to the extent otherwise determined by the City Manager on behalf of the City and the Executive Director on behalf of the Agency), to pay indebtedness of the Agency after the Agency or its successor has made all necessary annual payments with respect to other outstanding debt obligations of the Agency, including without limitation bonded indebtedness, pass-through payments owed to affected taxing entities under written agreement or Sections 33607.5 or 33607.7 of the CRL, written agreements with other persons or entities, and any other statutorily required payment obligations of the Agency; provided, however, with respect to those Projects that are not affordable housing related, the Agency's pledge of Net Available Tax Increment shall only include those Tax Increment revenues which Agency is not required pursuant to Section 33334.3 of the CRL, to deposit into the Agency's Low and Moderate Income Housing Fund.

G. The City Council ("Council") and the Agency Board by resolution have each found that the use of Agency's 2006 TAB and Net Available Tax Increment for the publicly-owned improvements is in accordance with Section 33445 of the CRL and other applicable law. Said Council and Agency resolutions are each based on the authority of the Agency, with the consent of the Council, to pay all or part of the cost of the land and the installation and construction of any facility, structure, or other improvements which are publicly owned either inside or contiguous to a project area, if the Council makes certain determinations.

H. By approving and entering into this Agreement, the Agency has approved the pledge of 2006 TAB and Net Available Tax Increment from the Project Area to pay for the Public Improvements. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plans for the Project Area and a pledge of 2006 TAB and Net Available Tax Increment received by the Agency from the Project Area to pay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the CRL, and the Redevelopment Plans.

J. This Agreement is in addition to, and does not supersede any other cooperative, repayment or reimbursement agreements entered into between the Agency and the City.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. INTRODUCTORY PROVISIONS

1.1 The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement and are incorporated into the terms and conditions of this Agreement.

2. AGENCY'S OBLIGATIONS

2.1 The Agency agrees to pay to the City the amount of \$2,500,000.00, or such lesser amounts to the extent the costs incurred by City to carry out the Public Improvements, to reimburse City for all costs incurred by the City in connection with the Project, including without limitation all costs of planning, land acquisition, financing, development, permitting, design, site testing, bidding, project administration, construction and construction management. The Agency's obligations under this Agreement, including without limitation the Agency's obligation to make the payments to the City required hereunder, shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment of the Project Area and are obligations to make payments authorized and incurred pursuant to Section 33445 and other applicable statutes. The obligations of the Agency set forth in this Agreement are contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies.

2.2 The obligations of Agency under this Agreement shall be payable out of 2006 TAB and Net Available Tax Increment, as defined in Recital F above allocated to the Agency or any lawful successor of the Agency to carry out the Redevelopment Plans and/or pay indebtedness of the Agency pursuant to Section 33670 *et seq.* of the CRL, Article XVI, Section 16 of the Constitution of the State of California, and any other applicable constitutional provision, statute or other provision of law now existing or adopted in the future.

2.3 The indebtedness of Agency under this Agreement shall be subordinate to the rights of the holder or holders of any outstanding bonds, notes or other instruments of indebtedness (all referred to herein as "indebtedness") of the Agency incurred or issued to finance redevelopment of the Project Area, including without limitation any pledge of 2006 TAB and Net Available Tax Increment revenues from the Project Area to pay any portion of the principal and interest (and otherwise comply with the obligations and covenants) of any bond or bonds heretofore issued or sold in the future by the Agency with respect to the Project Area.

2.4 All payments due to be made by the Agency to the City under this Agreement shall be made by the Agency and as otherwise necessary to reimburse the City for the costs incurred by City in performing its obligations hereunder. City shall provide Agency with a report from time to time as requested by Agency, accompanied by evidence reasonably satisfactory to the Agency's Executive Director that the City's progress in the development and construction of the Public Improvements for which

payment is requested is commensurate with the amount of the requested payment and that City has incurred costs or obligations equal to or greater than the amount requested.

3. CITY'S OBLIGATIONS

3.1 The City shall accept and devote any and all funds offered by the Agency pursuant to this Agreement solely to completion of the Public Improvements by (i) reimbursing the City's accounts or using such funds to make City expenditures to perform the work required to carry out and complete the Public Improvements; (ii) utilizing such funds to pay debt service on bonds or other indebtedness or obligations that the City has or will incur for such purposes; and/or (iii) paying such funds into a special fund of the City to be held and expended only for the purpose of satisfying the obligations of the City hereunder.

3.2 It is the responsibility of City to pay all development and construction costs in connection with the Public Improvements from funds paid to the City by the Agency under this Agreement.

3.3 Prior to commencement of work on the Public Improvements, all necessary environmental review required by CEQA shall be completed. This Agreement in no way limits the discretion of the Planning Commission, the Agency Board, or the City Council in completing environmental review of the Projects.

3.4 The City shall perform its obligations hereunder in accordance with the applicable provisions of federal, state and local laws, and shall timely complete the work required for the Project.

4. LIABILITY AND INDEMNIFICATION

4.1 In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, costs or expenses that may be incurred by such other party solely by reason of Government Code Section 895.2.

5. DEFAULT

5.1 If either party fails to perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the

non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this Agreement, including without limitation the right to sue for damages for breach of contract. The rights and remedies of the non-defaulting party enumerated in this section are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party. All notices of defaults shall clearly indicate a notice of default under this Agreement.

6. MODIFICATION OF PUBLIC IMPROVEMENTS

6.1 The City and Agency may modify the Public Improvements from time to time to provide for the use of additional federal, state and local funds; to account for unexpected changes in available revenues; to modify or delete a particular project; to maintain consistency with the City's General Plan or the Redevelopment Plans; or to take into consideration unforeseen circumstances including circumstances that may come to light as a result of subsequent CEQA review. Any such modifications shall be in writing and subject to approval by the City Council and Agency Board.

7. TERMINATION OF AGREEMENT

7.1 This Agreement and the obligations of the City and Agency hereunder, shall terminate upon the earlier of completion of the Projects by the City and Agency's reimbursement of City's costs incurred in connection therewith, or December 30, 2016.

8. MISCELLANEOUS

8.1 This Agreement may be executed in multiple originals, each of which is deemed to be an original.

8.2 This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

8.3 This Agreement is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Agreement.

8.4 All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

8.5 If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect.

8.6 This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

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

CITY OF MOORPARK

REDEVELOPMENT AGENCY OF THE
CITY OF MOORPARK

By: _____
Mayor

By: _____
Executive Director

Attest: _____
City Clerk

Attest: _____
Agency Secretary