

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF MOORPARK
AGENDA REPORT**

TO: Honorable Successor Agency

FROM: Ron Ahlers, Finance Director *RA*

DATE: June 21, 2015 (Successor Agency Meeting of July 6, 2016)

SUBJECT: Consider Authorizing Settlement and Release Agreement Pursuant to Health & Safety Code Section 34171(d)(1)(F), in Resolution of Ventura County Community College District's Informal Claim of Incorrectly Calculated Pass-Through Payments Under 1993 Agreement

BACKGROUND

On February 11, 1993, an agreement was signed between the Ventura County Community College District (VCCCD), the Redevelopment Agency of the City of Moorpark (MRA) and the City of Moorpark (City) regarding the distribution of tax increment funds from the Moorpark Redevelopment Project (Project). The agreement contains two calculation procedures: the 2% payment and the 14% payment. Beginning in fiscal year (FY) 1993-94 the MRA made the 2% payment and the 14% payment to VCCCD based on this agreement. In June 2011 the Governor signed Assembly Bill x1 26 (AB 26) which dissolved the MRA and created a Successor Agency to "wind-down" the affairs of the MRA. AB 26 also transferred the duties of the pass-through payments to the Ventura County Auditor-Controller. In March 2013, VCCCD contacted the Successor Agency regarding the calculation of the pass-through payments. VCCCD's position is that the 2% payments should be calculated using a different methodology.

DISCUSSION

The Successor Agency, with the assistance of our financial advisor, Urban Futures, held numerous discussions with VCCCD and their consultant, the Dolinka Group. The outcome of those discussions are the attached Settlement Agreement and the Memorandum of Understanding (MOU). The attached Settlement Agreement resolves the dispute regarding pre-dissolution payments under the 1993 agreement, and the companion Memorandum of Understanding, which memorializes the parties' agreement

on how future payments under the agreement are calculated. Approval of both the Settlement Agreement and the Memorandum of Understanding is a condition precedent to the agreements becoming effective.

In the Settlement Agreement, the Successor Agency shall pay to VCCCD the total amount of \$224,208 ("Settlement Amount"). Payment of the Settlement Amount by the Successor Agency to VCCCD shall fully and completely settle any and all of VCCCD's claims arising out of or related in any way to payments under the Pass-Through Agreement for fiscal years 1993-94 through 2010-11. Payment of the Settlement Amount shall be solely the responsibility of the Successor Agency, and the City shall have no responsibility with respect to payment of the Settlement Amount. The Settlement Amount is based upon an agreed upon calculation of all pass through payments owed to VCCCD for fiscal years 2007-2008 through 2010-2011, adjusted for all payments actually made.

The Settlement Amount of \$224,208 was approved by the Oversight Board on ROPS 15-16A and the California Department of Finance (DOF) approved ROPS 15-16A. The Successor Agency received the money in January 2016 for the Settlement Amount. When all the contingencies of this agreement have been met, then the Successor Agency shall remit the Settlement Amount to VCCCD.

Upon payment of the Settlement Amount to VCCCD from the Successor Agency; VCCCD releases the Successor Agency and the City of Moorpark from any and all claims arising out of the payment calculations from the effective date of the pass-through agreement (1993) to the effective date of the Settlement Agreement (2014).

The VCCCD Board of Trustees authorized the agreement at its meeting of June 14, 2016. As a separate action this meeting, the City Council is considering the approval of this Settlement Agreement. Approval of both the MOU and the Settlement Agreement is a condition precedent to the agreements becoming effective.

FISCAL IMPACT

The Settlement Amount is \$224,208 and has been funded via ROPS 15-16A and the Successor Agency received the money in January 2016. Upon completion of the terms of the agreement the Settlement Amount shall be paid by the Successor Agency to VCCCD.

STAFF RECOMMENDATION (Roll Call Vote)

Authorize the Chairperson to execute the Settlement Agreement with VCCCD and the City, subject to final language approval by the Executive Director and General Counsel.

Attachments:

Settlement and Release Agreement Pursuant to Health & Safety Code Section 34171(d)(1)(F), in Resolution of Ventura County Community College District's Informal Claim of Incorrectly Calculated Pass-Through Payments Under 1993 Agreement

**SETTLEMENT AND RELEASE AGREEMENT PURSUANT
TO HEALTH & SAFETY CODE SECTION 34171(d)(1)(F),
IN RESOLUTION OF VENTURA COUNTY COMMUNITY
COLLEGE DISTRICT'S INFORMAL CLAIM OF
INCORRECTLY CALCULATED PASS THROUGH
PAYMENTS UNDER 1993 AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is made and entered into pursuant to Health & Safety Code Section 34171(d)(1)(F) by the Ventura County Community College District (“VCCCD”), the Successor Agency to the Redevelopment Agency of the City of Moorpark (“Successor Agency”), and the City of Moorpark (“City”) (collectively the “Parties”), to resolve an informal claim by VCCCD for alleged incorrect pass through payments under an agreement by and among VCCCD, the former Redevelopment Agency of the City of Moorpark (“former Agency”), and the City, dated February 11, 1993, and entitled “Agreement Between the Ventura County Community College District, the Redevelopment Agency of the City of Moorpark and the City of Moorpark for Distribution of Tax Increment Fund from the Moorpark Redevelopment Project” (“Pass Through Agreement”).

RECITALS

- A. On July 5, 1989, pursuant to City of Moorpark Ordinance No. 110, the City Council of the City of Moorpark approved and adopted the Redevelopment Plan for the Moorpark Redevelopment Project (“Redevelopment Plan”).
- B. On February 11, 1993, VCCCD, the former Agency, and the City entered into the Pass Through Agreement. A true and correct copy of the Pass Through Agreement is attached as Exhibit A to this Agreement.
- C. Pursuant to former Health & Safety Code Section 33401, the Pass Through Agreement calls for certain periodic payments of tax increment by the former Agency to VCCCD.
- D. The Pass Through Agreement calls for two different types of pass through payments, one pursuant to a formula set forth in Section 3 of the Pass Through Agreement and one pursuant to a formula set forth in Section 4 of the Pass Through Agreement (collectively “Pass Through Payments”).
- E. Beginning in fiscal year 1993-94, the former Agency made Pass Through Payments to VCCCD under the Pass Through Agreement and VCCCD accepted those payments.
- F. In June 2011, the California Legislature adopted Assembly Bill x1 26 (“AB 26”) which, among other things, provides for the dissolution of redevelopment agencies and the formation of successor entities to the former agencies.
- G. On February 1, 2012, by operation of law, the former Agency was dissolved and the Successor Agency came into being as the successor entity to the former Agency. On February 1, 2012, by operation of law and pursuant to Health & Safety Code Section 34183(a)(1), the Ventura County Auditor-Controller became responsible for allocating revenues to VCCCD in accordance with the Pass Through Agreement.

- H. On March 12, 2013, subsequent to an audit by its consultants, the Dolinka Group, VCCCD notified the Successor Agency that the former Agency allegedly had underpaid the Pass Through Payments under the Pass Through Agreement. VCCCD asserts that the former Agency underpaid the Pass Through Payments for fiscal years 1993-94 through 2010-11.
- I. The Parties are in dispute regarding VCCCD's contentions. Moreover, the Successor Agency and the City assert that even if VCCCD was underpaid for certain fiscal years, VCCCD's recovery would be limited by the four-year limitations period set forth in California Code of Civil Procedure Section 337.
- J. To avoid protracted and costly litigation, the Parties have agreed to resolve all of VCCCD's claims pertaining to the asserted underpayments under the Pass Through Agreement made by the former Agency for fiscal years 1993-94 through 2010-2011.
- K. In furtherance of the parties desire to resolve the dispute, the Successor Agency placed Item No. 37 entitled "Unfunded Prior-Year Pass-Through Payment Calculation" for payment of \$224,208.00 to the VCCCD on the Successor Agency's ROPS 15-16A for the period July through December 2015. On February 17, 2015 the Oversight Board adopted Resolution No. OB-2015-74 approving ROPS 15-16A which included Item No.37. On February 18, 2015, the Oversight Board's approved ROPS 15-16A was transmitted to the California Department of Finance (DOF). During the DOF's review of the Successor Agency's ROPS 15-16A, and in further support of that ROPS Item No. 37, the VCCCD sent a letter to the Successor Agency dated March 5, 2015 to document the request for that ROPS item and the amount of that Item. On March 24, 2015, the DOF informed the Successor Agency that Item 37 was approved and thereafter the Successor Agency obtained payment from the County Auditor for Enforceable Obligations on ROPS 15-16A which included that \$224,208.00 amount. Thereafter, on September 15, 2015, the Oversight Board adopted Resolution No. OB-2015-81 approving ROPS 15-16B for the period January through June 2016 which included Item No. 37 which included the same payment amount. On September 16, 2015 the Oversight Board's approved ROPS 15-16B was transmitted to the DOF. On October 27, 2015, the DOF informed the Successor Agency that the payment for Item 37 was to be reclassified as being paid from Reserve Balances because the payment had been obtained on the prior period ROPS and additional funding was not needed to make that payment if not expended during the ROPS 15-16A period and is instead expended during the ROPS 15-16B period.

TERMS AND CONDITIONS

In consideration of the matters set forth above, and for a full and valuable consideration, the Parties agree as follows:

1. Recitals. The Recitals above are true and correct.
2. Settlement Amount. Subject to the conditions set forth in Sections 3 and 7 below, the Successor Agency shall pay to VCCCD the total amount of \$224,208 ("Settlement

Amount”). Payment of the Settlement Amount by the Successor Agency to VCCCD shall fully and completely settle any and all of VCCCD’s claims arising out of or related in any way to payments under the Pass Through Agreement for fiscal years 1993-94 through 2010-11. Payment of the Settlement Amount shall be solely the responsibility of the Successor Agency, and the City shall have no responsibility with respect to payment of the Settlement Amount. The Settlement Amount is based upon an agreed upon calculation of all pass through payments owed to VCCCD for fiscal years 2007-2008 through 2010-2011, adjusted for all payments actually made.

3. Contingencies. Except as otherwise expressly set forth herein, the terms of this Agreement shall not become effective unless and until all of the following contingencies are met: (i) the Oversight Board to the Successor Agency (“Oversight Board”) has duly adopted a Resolution approving this Agreement; (ii) the Oversight Board Resolution approving this Agreement is transmitted to the California Department of Finance (“DOF”); and (iii) the DOF does not reject the Oversight Board’s Resolution approving this Agreement.
4. Successor Agency’s Duties Regarding Oversight Board and DOF Review. Following approval of this Agreement by each party’s respective governing body, the Successor Agency shall promptly place this Agreement before the Oversight Board for its consideration and shall recommend its approval. If the Oversight Board disapproves the Agreement, and the DOF, after receiving it, decides not to review it, the Successor Agency shall not have any further duty with respect to this Agreement, and this Agreement shall be terminate ninety (90) days after VCCCD’s receipt of notice form Successor Agency that the Oversight Board disapproved this Agreement or DOF finally disapproves this Agreement. If the DOF decides to review the Oversight Board’s approval or disapproval of this Agreement, and the DOF then initially disapproves this Agreement, the Successor Agency shall request and participate in a meet and confer session in which it shall urge DOF to approve this Agreement. If, following the meet and confer session, DOF issues a final decision disapproving this Agreement, the Successor Agency shall not have any further duty with respect to this Agreement, and this Agreement shall be terminated and all of the Successor’s duties herein due on or after the date of termination shall be excused.
5. Notices of Agreement Processing. The Successor Agency shall provide notices to VCCCD upon the following events:
 - a. The submission of this Agreement to the Oversight Board;
 - b. The date, time and place of the Oversight Board’s consideration to approve this Agreement;
 - c. The Oversight Board’s approval or disapproval of this Agreement;
 - d. The submission of this Agreement to DOF;
 - e. The DOF’s approvals or disapprovals (both preliminary and final) of this Agreement;

- f. All communications (correspondences, letters, facsimiles, emails, etc.) to and from the DOF concerning this Agreement, copies of which shall be provided by the Successor Agency to VCCCD within five (5) business days; and
 - g. All communications (correspondence, letters, facsimiles, emails, etc.) to and from the California State Controller or Ventura County-Auditor Controller concerning this Agreement, copies of which shall be provided by the Successor Agency to VCCCD within five (5) business days.
6. Notices of ROPS Processing. The Successor Agency shall provide notices to VCCCD upon the following events:
- a. The inclusion of the Settlement Amount in the draft ROPS;
 - b. The date, time and place of the City / Successor Agency's consideration to approve the draft ROPS;
 - c. The City / Successor Agency's approval or disapproval of the ROPS;
 - d. The submission of the ROPS to the Oversight Board;
 - e. The date, time and place of the Oversight Board's consideration to approve the ROPS;
 - f. The Oversight Board's approval or disapproval of the ROPS;
 - g. The submission of the ROPS to the DOF;
 - h. The DOF's approvals or disapprovals (both preliminary and final) of the Settlement Amount;
 - i. All communications (correspondence, letters, facsimiles, emails, etc.) to and from the DOF concerning the Settlement Amount, copies of which shall be provided by the Successor Agency to VCCCD within five (5) business days; and
 - j. All communications (correspondence, letters, facsimiles, emails, etc.) to and from the California State Controller or Ventura County-Auditor Controller concerning the Settlement Amount, copies of which shall be provided by the Successor Agency to VCCCD within five (5) business days.
7. Successor Agency's Duties Regarding Settlement Amount. Except as expressly provided herein, this Agreement shall become effective on the date that all contingencies set forth in Section 3 above have been met. The Successor Agency shall pay the Settlement Amount to VCCCD no later than 30 days after this Agreement becomes effective.

8. Third Party Legal Challenge. In the event any third party litigation is filed challenging the approval of, or any term of this Agreement, this Agreement shall become null and void, except as otherwise expressly provided in this Agreement.
9. Notices. Any notice, demand or other communication of any kind that a Party may be required to serve upon the other Party pursuant to this Agreement shall be given in writing and be delivered (a) in person (including express, courier, or overnight service), (b) by email with a PDF copy of the document that is required to be sent to a Party attached to the email, and then a paper copy of the document sent in the U.S. mail, or (c) by certified or registered mail, postage prepaid, return receipt requested, and, in any such case, addressed as follows:

If to VCCCD, addressed to:

Chancellor
Ventura County Community College District
255 W. Stanley Avenue
Ventura, California 93001
Telephone: (805) 652-5502
Facsimile: (805) 652-7701

With a copy to:

Sharon Suarez, Esq.
Orbach Huff Suarez & Henderson LLP
1901 Avenue of the Stars, Suite 575
Los Angeles, California 90067-6007
Telephone: (310) 788-9200
Facsimile: (310) 788-9210

If to City or Successor Agency, addressed to:

Steven Kueny, City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021
Telephone: (805) 532-2212
Facsimile: (805) 532-2205

With a copy to:

T. Peter Pierce, Esq.
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071

Telephone: (213) 626-8484
Facsimile: (213) 626-0078

or to such other address or to such other person as a Party shall have last designated by such notice to the other Party. Each such notice, demand or other communication, if addressed as aforesaid and delivered by one of the options specified in this paragraph, shall be effective upon the date of delivery, whether or not accepted by the addressee.

10. Suspension of Claims. Upon the last date executed by any of the Parties hereto (“Tolling Date”), this Agreement shall toll the running of time under any legal or equitable statutes of limitation, statutes of repose, periods of limitation, doctrine of laches, or any other statutory or equitable time (collectively, “statutes of limitations”) that has not expired as of the Tolling Date and that applies to any claims arising out of or related in any way to the Pass Through Agreement or the 2008 Settlement Agreement. The tolling period shall commence on the Tolling Date and shall be in effect unless and until any contingency set forth in Section 3 is not met. If all Section 3 contingencies are met, the tolling period shall continue from the Tolling Date until the Settlement Amount is paid in full to VCCCD, unless this Agreement is rendered null and void because of third party litigation challenging it; or in the event the ROPS item reflecting payment of Settlement Amount is disapproved under paragraph 5. In the event of third party litigation challenging this Agreement, the tolling period will terminate on the date such litigation is filed. In the event a ROPS item reflecting payment of the Settlement Amount is disapproved, the tolling period will terminate either on the thirtieth (30th) day after the DOF decides not to review the Oversight Board’s disapproval of the Settlement Amount, or on the thirtieth (30th) day after the DOF renders a final decision rejecting the Settlement Amount as a ROPS item.
11. VCCCD Release of Claims. Except with respect to enforcement of the terms of this Agreement, and effective upon the date that the Settlement Amount has been paid in full by the Successor Agency to VCCCD
12. VCCCD, on behalf of VCCCD, its successors, affiliates, and assigns, hereby waives and releases the Successor Agency, its officers, employees, agents, attorneys and consultants; the City, its officers, employees, agents, attorneys and consultants (collectively “Successor Agency and City Released Parties”), and each of them, of and from any and all claims, demands, disputes, damages, liabilities, causes of action, and other claims or rights to relief, legal or equitable, of every kind and nature, whether known or unknown, past or present, which VCCCD has or may have against the Successor Agency and City Released Parties, or any of them, arising out of, or in any way related to payments under the Pass Through Agreement due for fiscal years 1993-94 through 2010-2011.
13. VCCCD Waiver of Cal. Code Civ. Proc. Section 1542. Effective upon the date that the Settlement Amount has been paid in full by the Successor Agency to VCCCD, VCCCD, being fully aware of the meaning of Cal. Civil Code §1542, and on the risks attendant with waiver thereof, expressly waives any rights it may have, or claims to

have against the Successor Agency and City Released Parties, or any of them, under the provisions of Cal. Civil Code §1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

VCCCD

14. Joint Drafting and Mutual Interpretation. This Agreement shall be construed and interpreted in a neutral manner. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against a particular party based on the assumption or contention that the Agreement was drafted by one of the Parties. In this regard, the provisions of Cal. Civil Code § 1654 are waived and deemed inapplicable to the interpretation of this Agreement.
15. Right to Independent Counsel. The Parties acknowledge and represent that they have had the right to and benefit of consultation with independent legal counsel and expert consultants. The Parties have read and understand the entirety of this Agreement, and have been advised as to the legal effects of this Agreement, as to, for example, their rights and obligations, and hereby willingly and voluntarily agree to every term of this Agreement.
16. Entire Agreement. This Agreement and attached exhibits, together contains the entire understanding of the Parties with respect to the matters addressed in it and incorporated herein, and supersedes any and all oral agreements between or among the Parties regarding the matters resolved herein, which are hereby merged into this final Agreement. There are no representations, covenants, or undertakings other than those expressly set forth or expressly incorporated herein. The Parties acknowledge that no Party, or any agent or attorney of any Party has made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce any other Party to execute this Agreement. The Parties acknowledge that they have not executed this Agreement in reliance on any promise, representation, or warranty not specifically contained herein or expressly incorporated herein. The Parties, and each of them, fully represent and declare that they have carefully read this Agreement and all exhibits hereto, and that they have voluntarily signed this Agreement.
17. Severability. Should any provision of this Agreement be declared or determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement and the remainder of the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.

18. Applicable Law. The validity of this Agreement and the interpretation of any of its terms or provisions shall be governed by the laws of the State of California.
19. Change in State Law or Other Event Materially Affecting Agreement. If a change in state law occurs that materially affects the Parties' obligations or rights under this Agreement or under the Pass Through Agreement, whether such change occurs through enactment of a statute or by virtue of a final judicial decision, the Parties shall have the duty to take such actions as may be reasonably necessary to modify such agreement(s) so that the Parties' duties and rights under such agreement(s) are consistent with any such change in law.
20. Amendments or Modifications. This Agreement may be amended or modified only by the mutual agreement of the Parties and only when all Parties memorialize in writing their consent to amend or modify.
21. No Admission of Liability. Nothing in this Agreement shall be construed as an admission of liability or wrongdoing by any Party to this Agreement or an admission of any claim against any Party hereto.
22. Effective Date. This Agreement shall become effective on the date that all contingencies set forth in Section 3 above have been met.
23. Attorneys' Fees Provision. If any of the Parties breach any of the provisions of this Agreement, necessitating the filing of a civil action or any other proceeding to enforce any or all of the terms of this Agreement, the prevailing party may recover reasonable attorneys' fees and costs incurred in enforcing the terms and provisions of this Agreement.
24. Captions and Interpretations. Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement.
25. Counterparts. This Agreement may be signed in counterparts and the executed counterparts shall together form the executed Agreement. A facsimile version of any Parties' signature shall serve as an original thereof.
26. Copy Admissible. In any action or proceeding relating to this Agreement, the Parties stipulate that a copy of the Agreement may be admissible to the same extent as the original Agreement, unless the exceptions set forth in Section 1521 of the Cal. Evidence Code are found to be applicable.

Successor Agency to the Redevelopment Agency of
the City of Moorpark

By: _____
Janice S. Parvin, Chairperson

Attest:

Maureen Benson, Secretary

City of Moorpark

By: _____
Janice S. Parvin, Mayor

Attest:

Maureen Benson, City Clerk

Ventura County Community College District

By: _____
President of the Board

Attest:

Secretary