

**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 Memorandum of Understanding Regarding Future Implementation of Payment Terms of 1993 Pass-Through Agreement Between the Ventura County Community College District, the Former Redevelopment Agency of the City of Moorpark, and the City of Moorpark

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 Settlement Agreement and the attached Memorandum of Understanding (MOU). The MOU clearly articulates the calculation methodology the parties agree shall be implemented by the Ventura County Auditor-

Controller for tax increment pass-through payments from the Project to VCCCD under the 1993 Agreement, and is contingent on the County Auditor-Controller's consent to implementing that methodology.

This MOU methodology will increase the annual tax increment pass-through payments to VCCCD. Initially, there will be an increase of approximately \$60,000 annually. In future years the increase will be greater if the property tax revenue from the Project is greater than generated currently.

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 MOU. Approval of both the MOU and the Settlement Agreement is a condition precedent to the agreements becoming effective.

FISCAL IMPACT

The MOU provides for a different calculation of the pass-through payment to VCCCD. The Ventura County Auditor-Controller is responsible for making the pass-through payment to VCCCD. By adopting the MOU, the estimated pass-through payment to VCCCD is about \$120,000 annually, subject to increase in years when the property tax revenue from the Project increases.

STAFF RECOMMENDATION (Roll Call Vote)

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

Attachments:

Memorandum of Understanding Regarding Future Implementation of Payment Terms of 1993 Pass Through Agreement Between the Ventura County Community College District, The Former Redevelopment Agency of the City of Moorpark, and the City of Moorpark

**MEMORANDUM OF UNDERSTANDING REGARDING
FUTURE IMPLEMENTATION OF PAYMENT TERMS OF
1993 PASS THROUGH AGREEMENT BETWEEN THE
VENTURA COUNTY COMMUNITY COLLEGE DISTRICT,
THE FORMER REDEVELOPMENT AGENCY OF THE
CITY OF MOORPARK, AND THE CITY OF MOORPARK**

This Memorandum of Understanding (“MOU”) is made and entered into 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 memorialize the Parties mutual understanding regarding future implementation of the payment terms of an agreement by and between the Parties 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 Redevelopment Agency of the City of Moorpark (“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 (“2% payments”) and one pursuant to a formula set forth in Section 4 of the Pass Through Agreement (“14% payments”) (at times, 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 to the Redevelopment Agency of the City of Moorpark (“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. Since February 1, 2012, the Ventura County Auditor-Controller has made certain Pass Through Payments under the Pass Through Agreement to VCCCD. VCCCD asserts that since the Ventura County Auditor-Controller began making Pass Through Payments under the Pass Through Agreement, those payments have not been calculated correctly.
- I. In or around March 2013, in connection with an audit by VCCCD's consultant, the Dolinka Group, VCCCD brought to the attention of the Successor Agency and the Ventura County Auditor-Controller VCCCD's position that the Pass Through Payments should be computed with a different methodology than has been used in the past for calculating the payments.
- J. The Parties have met and conferred regarding proper implementation of the payment provisions of the Pass Through Agreement on a go forward basis. The Parties have arrived at a consensus regarding how the Pass Through Payments should be calculated on a go forward basis.
- K. To memorialize the Parties' agreement as to how the pass through payments under the Pass Through Agreement are to be calculated on a go forward basis, and to avoid litigation and minimize the risk of future disputes regarding the payment provisions, the Parties have entered into this Memorandum of Understanding on the terms set forth below.

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. Effective Date. Providing this MOU has been executed by all the Parties, and that the Ventura County Auditor-Controller has consented as evidenced by signing below, this MOU will become effective when all of the contingencies referenced in Section 6 below have been satisfied. ("Effective Date").
3. Memorandum of Understanding. This MOU shall be in effect from the Effective Date until the Pass Through Agreement terminates pursuant to its terms.
4. Future Payment Terms.

(a) 2% Payments: Beginning with the first semi-annual Pass Through Payment following the Effective Date of this MOU, and in each fiscal year going forward, the 2% payments due under Section 3 of the Pass Through Agreement are to be calculated by comparing that fiscal year's inflationary assessed valuation for the Project with the 1988-89 base year's assessed valuation, and fiscal year 1989-90 shall be assumed as the initial year for such calculation. The formula applied shall be the relevant fiscal year's inflationary assessed valuation times the inflation factor, less the base year assessed valuation times the 1% tax rate, times VCCCD's percentage share.

(b) 14% Payments: Beginning with the first semi-annual Pass Through Payment following the Effective Date of this MOU, and in each fiscal year going forward, the 14% payments under Section 4 of the Pass Through Agreement shall be determined by calculating VCCCD's percentage share of the gross ad valorem real property taxes from the Project for that fiscal year, subtracting from that percentage share the 2% payments due VCCCD under Section 3 of the Pass Through Agreement for that fiscal year, and applying 14% to that difference ("Annual 14% Amount").

5. Methodology of Section 4 Binding. By its signature below, each Party expressly and specifically agrees to be bound by the methodologies set forth in Section 4 above for purposes of future Pass Through Payments under the Pass Through Agreement as long as this MOU is in effect.
6. Contingencies. Except as otherwise expressly set forth herein, the terms of this MOU 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 MOU; (ii) the Oversight Board Resolution approving this MOU is transmitted to the California Department of Finance ("DOF"); (iii) the DOF has decided not to review, dispute, or reject, within the statutory time for review, the Oversight Board's Resolution approving this MOU; (iv) the Oversight Board has duly adopted a Resolution approving the "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"); (v) the Oversight Board Resolution approving the Settlement and Release Agreement is transmitted to the California Department of Finance ("DOF"); and (vi) the DOF has decided not to review, dispute, or reject, within the statutory time for review, the Oversight Board Resolution approving the Settlement and Release Agreement.
7. Successor Agency's Duties Regarding Oversight Board and the DOF. Following approval of this MOU by each party's respective governing body, and its consent thereto by the Ventura County Auditor-Controller, the Successor Agency shall promptly place this MOU before the Oversight Board for its consideration and shall recommend its approval. The Successor Agency shall request and recommend approval of this MOU by the Oversight Board and the DOF.
 - a. Notices of MOU Processing. The Successor Agency shall provide notices to VCCCD upon the following events:
 - i. The submission of this MOU to the Oversight Board;
 - ii. The date, time and place of the Oversight Board's consideration to approve this MOU;
 - iii. The Oversight Board's approval or disapproval of this MOU;
 - iv. The submission of this MOU to the DOF;

- v. The DOF's approvals or disapprovals (both preliminary and final) of this MOU;
 - vi. All communications (correspondence, letters, facsimiles, emails, etc.) to and from the DOF concerning this MOU, copies of which shall be provided by the Successor Agency to VCCCD within five (5) business days; and,
 - vii. All communications (correspondence, letters, facsimiles, emails, etc.) to and from the California State Controller or Ventura County Auditor-Controller concerning this MOU, copies of which shall be provided by the Successor Agency to VCCCD within five (5) business days
8. Third Party Challenge. In the event any litigation challenging this MOU or any term thereof is brought by any person or entity not a party to this MOU, this MOU shall become null and void upon the date any such litigation is filed with the court.
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 e-mail with a PDF copy of the document that is required to be sent to a Party attached to the e-mail and then a paper copy of the document sent by 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. Joint Drafting and Mutual Interpretation. This MOU shall be construed and interpreted in a neutral manner. This MOU 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 MOU.
11. 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 MOU, and have been advised as to the legal effects of this MOU, as to, for example, their rights and obligations, and hereby willingly and voluntarily agree to every term of this MOU.
12. Entire Agreement. This MOU 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 MOU. 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 MOU. The

Parties acknowledge that they have not executed this MOU 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 MOU and all exhibits hereto, and that they have voluntarily signed this MOU.

13. Severability. Should any provision of this MOU 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 MOU and the remainder of the MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been included.
14. Applicable Law. The validity of this MOU and the interpretation of any of its terms or provisions shall be governed by the laws of the State of California.
15. Change in State Law or Other Event Materially Affecting MOU or Pass Through Agreement. If a change in state law occurs that materially affects the Parties' obligations or rights under this MOU 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 the MOU or Pass Through Agreement so that the Parties' duties and rights are consistent with any such change in law.
16. Amendments or Modifications. This MOU 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.
17. No Admission of Liability. Nothing in this MOU shall be construed as an admission of liability or wrongdoing by any Party to this MOU or an admission of any claim against any Party hereto.
18. Attorneys' Fees Provision. If any of the Parties breach any of the provisions of this MOU, necessitating the filing of a civil action or any other proceeding to enforce any or all of the terms of this MOU, the prevailing party may recover reasonable attorneys' fees and costs incurred in enforcing the terms and provisions of this MOU.
19. Captions and Interpretations. Paragraph titles or captions contained in this MOU are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this MOU.
20. Counterparts. This MOU may be signed in counterparts and the executed counterparts shall together form the executed MOU. A facsimile version of any Parties' signature shall serve as an original thereof.
21. Copy Admissible. In any action or proceeding relating to this MOU, the Parties stipulate that a copy of the MOU may be admissible to the same extent as the original MOU, 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

The Ventura County Auditor-Controller consents to the methodology set forth in Section 4
above.

Dated: _____

By: _____

Jeffrey S. Burgh
Auditor-Controller
County of Ventura