

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Ron Ahlers, Finance Director *RA*

DATE: June 22, 2015 (City Council Meeting of July 6, 2016)

SUBJECT: Consider Authorizing Settlement and Release Agreement Regarding Remittance of Pass-Through Payments from the Ventura County Community College District to 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 May 2008, VCCCD and the City entered into an agreement entitled "Settlement Agreement and Mutual Release" (2008 Agreement). Under the 2008 Agreement, VCCCD agreed to contribute to the costs of constructing certain traffic improvements in the City ("2008 Settlement Payment"). The 2008 Agreement provided that the MRA would pay to the City, rather than to VCCCD as otherwise required by the Pass Through Agreement, the Pass Through Payments due for fiscal year 2006-07 through fiscal year 2024-25, or until the total amount of Pass Through Payments received by the City reached One Million Dollars (\$1,000,000.00), whichever occurred first. The MRA consented to this arrangement.

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 (CAC). Beginning in 2012 the CAC calculates the pass-through amount and remits the dollars to VCCCD. VCCCD has made one payment to the City in compliance with the 2008 agreement.

DISCUSSION

The Successor Agency, with the assistance of our financial advisor, Urban Futures, held numerous discussions with VCCCD and their consultant, the Dolinka Group. This was a result of VCCCD disputing the interpretation of the language on how the pass-through payments were to be calculated. The outcome of those discussions allow for the payment of back pass-through amounts from the Successor Agency to VCCCD in the amount of \$224,208, and a Memorandum of Understanding (MOU). VCCCD has stated that they will forward the pass-through payments required under the 2008 agreement once they receive the \$224,208. This other agreement and the MOU are on the agenda for both the City Council and the Successor Agency at this meeting.

The table below details the payments made by the MRA and VCCCD to the City in compliance with the 2008 agreement. The City has received \$602,827 to date. There remains \$397,173 out of the \$1 million owed as stipulated in the 2008 Agreement. VCCCD received pass-through payments in the amount of: \$52,530 in June 2015, \$0 in January 2016 and \$190,177 in June 2016. These amounts, along with the \$224,208 mentioned above, total to \$466,916; which is greater than the amount remaining of \$397,173. Staff anticipates the \$1 million to be paid-off in full once these transactions are consummated.

CITY of MOORPARK RECEIVED

Fiscal Year	Tax Increment Allocation	Date	Paid by
2006 - 2007	\$ 54,577.13	01-26-2009	MRA
2007 - 2008	\$ 59,110.09	01-26-2009	MRA
2008 - 2009	\$ 60,420.01	10-01-2009	MRA
2009 - 2010	\$ 57,859.68	06-30-2010	MRA
2010 - 2011	\$ 58,506.83	06-30-2011	MRA
2011 - 2012	\$ 29,622.92	01-31-2012	MRA
ROPS III	\$ 50,614.79	04-06-2015	VCCCD
ROPS 13-14A	\$ 39,177.65	04-06-2015	VCCCD
ROPS 13-14B	\$ 67,532.71	04-06-2015	VCCCD
ROPS 14-15A	\$ 52,832.66	04-06-2015	VCCCD
ROPS 14-15B	\$ 72,572.99	04-06-2015	VCCCD
TOTAL	\$ 602,827.46		

This Settlement and Release Agreement states that VCCCD shall pay \$52,530 to the City along with any money received from the Successor Agency (\$224,208), plus future pass-through payments from the CAC until the \$1 million is paid in full.

Upon completion of these transactions, the City releases VCCCD from any and all claims and VCCCD releases the City from any and all claims.

The VCCCD Board of Trustees approved the agreement at its meeting of June 14, 2016.

FISCAL IMPACT

The City shall receive \$397,173 in pass-through payments from VCCCD over the term of this agreement.

STAFF RECOMMENDATION (Roll Call Vote)

Authorize the Mayor to execute the Settlement and Release Agreement with VCCCD and the City, subject to final language approval by the City Manager and City Attorney.

Attachments:

Settlement and Release Agreement Regarding Remittance of Pass-Through Payments from the Ventura County Community College District to the City of Moorpark

**SETTLEMENT AND RELEASE AGREEMENT
REGARDING REMITTANCE OF PASS THROUGH
PAYMENTS FROM THE VENTURA COUNTY
COMMUNITY COLLEGE DISTRICT TO THE CITY OF
MOORPARK**

This Settlement and Release Agreement (“Agreement”) is made and entered into by the Ventura County Community College District (“VCCCD”) and the City of Moorpark (“City”) (collectively the “Parties”) regarding remittance of Pass Through Payments from VCCCD to the City in accordance with a “Settlement Agreement and Mutual Release” entered into between the Parties in 2008.

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 an agreement 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”). 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. On or about May 27, 2008, VCCCD and the City entered into an agreement entitled “Settlement Agreement and Mutual Release” (“2008 Settlement Agreement”) to resolve a California Environmental Quality Act (“CEQA”) action filed by the City against VCCCD arising from VCCCD’s Facilities Master Plan 2005-15. A true and correct copy of the 2008 Settlement Agreement is attached as Exhibit B to this Agreement.
- G. Under the 2008 Settlement Agreement, VCCCD agreed to contribute to the costs of constructing certain traffic improvements in the City (“2008 Settlement Payment”). The 2008 Settlement Agreement provided that the former Agency would pay to the City, rather than to VCCCD as otherwise required by the Pass Through Agreement, the Pass Through Payments due for fiscal year 2006-07 through fiscal year 2024-25, or until the

total amount of Pass Through Payments received by the City reached One Million Dollars (\$1,000,000.00), whichever occurred first. The former Agency consented to this arrangement.

- H. In accordance with the 2008 Settlement Agreement, the former Agency paid to the City the Pass Through Payments due for fiscal years 2006-07 through 2011-2012. The total amount paid by the former Agency to the City for fiscal years 2006-2007 through 2011-2012 was \$320,096.66.
- I. 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.
- J. 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.
- K. Since February 1, 2012, the Ventura County Auditor-Controller has made certain Pass Through Payments under the Pass Through Agreement to VCCCD. As of the latest date on which a party signed this settlement Agreement, VCCCD has received a total of \$335,261.29 in Pass Through Payments allocated by the Ventura County Auditor-Controller for fiscal years 2011-12, 2012-13, 2013-14 and 2014-15. VCCCD has transferred \$282,730.80 to the City on April 6, 2015.
- L. On March 12, 2013, subsequent to an audit by its consultants, the Dolinka Group, VCCCD notified the Successor Agency that the former Agency had underpaid the Pass Through Payments under the Pass Through Agreement. VCCCD asserts that the former Agency underpaid the Pass Through Payments made directly to VCCCD for fiscal years 1993-94 through 2005-06, and that the former Agency underpaid the Pass Through Payments made to the City under the 2008 Settlement Agreement for fiscal years 2006-07 through 2010-11.
- M. 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.
- N. The City contends that in the wake of redevelopment dissolution, VCCCD became responsible for remitting directly to the City, in accordance with the 2008 Settlement Agreement, the Pass Through Payments received by VCCCD from the Ventura County Auditor-Controller. VCCCD does not assert otherwise, but contends that it is not required to begin remitting the Pass Through Payments to the City unless and until the Successor Agency corrects the alleged underpayments it made to the City for fiscal years 2006-07 through 2010-11, and until the corrected payments are credited toward VCCCD’s 2008 Settlement Payment.

- O. 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.
- P. To avoid protracted and costly litigation, VCCCD and the City have agreed to resolve their differences under the terms of this Agreement.

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. VCCCD shall pay to the City \$52,530.49 (“Settlement Amount”) no later than thirty (30) days after this Agreement is signed by all parties. The Settlement Amount consists of the Pass Through Payments distributed to VCCCD by the Ventura County Auditor-Controller for fiscal year 2014-15 ROPS 15-16A. The Settlement Amount shall be credited to the 2008 Settlement Payment owed by VCCCD to the City.
3. Additional Money Owed. If VCCCD receives from the Successor Agency any amount under 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,” VCCCD shall pay that amount to the City within thirty (30) days of receipt from the Successor Agency.

4. Memorandum of Understanding. VCCCD and the City shall execute the Memorandum of Understanding (“MOU”) attached here as Exhibit A and shall seek written consent of the Ventura County Auditor-Controller as to its terms.
5. VCCCD’s Duties With Respect To 2008 Settlement Agreement. Beginning with the distribution of property tax revenues by the Ventura County Auditor-Controller on June 1, 2016, VCCCD shall remit to the City the Pass Through Payments received by VCCCD from the Auditor-Controller. VCCCD shall remit to the City, no later than July 1, 2016, the Pass Through Payments received from the June 1, 2016 distribution of Redevelopment Property Tax Trust Fund (RPTTF) revenues. VCCCD shall thereafter remit Pass Through Payments to the City within thirty (30) days after VCCCD receives its semi-annual distribution of RPTTF revenues. VCCCD shall continue to remit the Pass Through Payments to the City after each semi-annual distribution of RPTTF revenues through fiscal year 2024-25, or until the total amount of Pass Through Payments received by the City reaches One Million Dollars (\$1,000,000.00), whichever occurs first. VCCCD shall remit Pass Through Payments to the City in accordance with this paragraph regardless of whether the Ventura County Auditor-Controller distributes RPTTF revenues to VCCCD consistent with the calculations in the MOU.
6. City’s Release of Claims. Effective on the date when the City has received both the Settlement Amount set forth in paragraph 2 above, and the full amount of the additional payment from VCCCD under paragraph 3 above, the City hereby waives and releases VCCCD, its officers, employees, agents, attorneys and consultants, 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, which the City has or may have against VCCCD arising out of the Settlement Amount. If VCCCD does not receive from the Successor Agency any payment under paragraph 3 above, the City’s waiver and release of VCCCD is effective on the date the City received the Settlement Amount. The City expressly does not waive any claims against VCCCD that might arise out of VCCCD’s failure to comply with any of its duties set forth in paragraph 5 above.
7. VCCCD Release of Claims. Except with respect to enforcement of the terms of this Agreement, VCCCD, on behalf of VCCCD, its successors, affiliates, and assigns, hereby waives and releases the City, its officers, employees, agents, attorneys and consultants, 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 City, arising out of, or in any way related to payments under the Pass Through Agreement.
8. Consequences Of Failure To Sign Agreement. Unless and until VCCCD signs this Agreement, neither the separate “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” (“separate Settlement Agreement”), nor

the “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” (“MOU”) shall be effective. VCCCD’s signature on this Agreement is a contingency in addition to those listed in Section 3 (“Contingencies”) of the separate Settlement Agreement, and in addition to those listed in Section 6 (“Contingencies”) of the MOU.

9. Mutual Waiver of Cal. Code Civ. Proc. Section 1542. The City and VCCCD, being fully aware of the meaning of Cal. Civil Code §1542, and of the risks attendant with waiver thereof, expressly waive any rights they may have, or asserts they may have against each other, 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.”

City

VCCCD

10. 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.
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 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.
12. Entire Agreement. This Agreement 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.

13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. Effective Date. This Agreement shall become effective on the date that all Parties to this Agreement have signed it.
19. 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.
20. 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.
21. 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.
22. 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.

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

**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 of 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