

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Ron Ahlers, Finance Director *RA*

DATE: August 30, 2016 (City Council Meeting of September 7, 2016)

SUBJECT: Consider Addendum to Final Settlement and Release Agreement by and Between Moorpark Unified School District, on the One Hand, and the City of Moorpark and the Successor Agency to the Redevelopment Agency of the City of Moorpark, on the Other Hand, in Resolution of Disputes Concerning Payments and Credits Under a 1993 Pass Through Agreement

BACKGROUND

On January 26, 1993, an agreement was signed between the Moorpark Unified School District (MUSD), 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 MUSD 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 January 2013, MUSD contacted the Successor Agency regarding the calculation of the pass-through payments. MUSD's position is that the 2% payments should be calculated using a different methodology.

The Successor Agency, with the assistance of our financial advisor, Urban Futures, held numerous discussions with MUSD and their consultant, the Dolinka Group. MUSD asserted that the MRA underpaid the pass-through payments from 1993 to the date of dissolution of the MRA. The MRA asserted a credit under Section 6 of the pass-through agreement. The outcome of those discussions was two documents: Settlement Agreement and a Memorandum of Understanding. The Settlement Agreement and the Memorandum of Understanding were signed by all parties in June 2014, while the Oversight Board approved both documents in July 2014.

DISCUSSION

Section 3 of the Settlement Agreement provides that the effective date of the agreement shall be memorialized through an Addendum to the Settlement Agreement.

The Addendum is attached and has been signed by MUSD.

FISCAL IMPACT

None.

STAFF RECOMMENDATION (Roll Call Vote)

Authorize the Mayor to execute the Addendum to Final Settlement and Release Agreement with MUSD, the City and the Successor Agency, subject to final language approval by the City Manager and City Attorney.

Attachments:

Addendum to Final Settlement and Release Agreement by and Between Moorpark Unified School District, on the One Hand, and the City of Moorpark and the Successor Agency to the Redevelopment Agency of the City of Moorpark, on the Other Hand, in Resolution of Disputes Concerning Payments and Credits Under a 1993 Pass Through Agreement

ADDENDUM TO FINAL SETTLEMENT AND RELEASE AGREEMENT BY AND BETWEEN MOORPARK UNIFIED SCHOOL DISTRICT, ON THE ONE HAND, AND THE CITY OF MOORPARK AND THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF MOORPARK, ON THE OTHER HAND, IN RESOLUTION OF DISPUTES CONCERNING PAYMENTS AND CREDITS UNDER A 1993 PASS-THROUGH AGREEMENT

This Addendum ("Addendum") is made and entered into by and between the Moorpark Unified School District ("MUSD"), on the one hand, and the Successor Agency to the Redevelopment Agency of the City of Moorpark ("Successor Agency"), and the City of Moorpark ("City"), on the other hand (collectively the "Parties") and is an Addendum to the Final Settlement and Release Agreement ("Settlement Agreement") executed by the MUSD on June 17, 2014 and by the Successor Agency and City on June 27, 2014.

RECITALS

A. The Parties previously entered into the Settlement Agreement to resolve all claims concerning payments and credits due to MUSD under a 1993 pass-through agreement ("Pass-Through Agreement"), subject to certain contingencies ("Settlement Contingencies") as set forth under Section 2 of the Settlement Agreement.

B. Pursuant to Section 3 of the Settlement Agreement, the Settlement Agreement becomes effective upon the date that all Settlement Contingencies are met.

C. Section 3 of the Settlement Agreement further provides that such an effective date shall be memorialized by the Parties through an addendum to the Settlement Agreement.

D. The first Settlement Contingency required the Parties to obtain written consent from the Ventura County Auditor-Controller ("Auditor-Controller") concerning the Parties' understanding regarding the implementation of the Pass-Through Agreement, as memorialized under the Memorandum of Understanding entered into by the Parties on June 27, 2014 ("MOU"). On September 12, 2014, the Auditor-Controller provided his written consent to the MOU.

E. The second Settlement Contingency was the Oversight Board's adoption of a Resolution approving the Settlement Agreement. That Resolution was adopted on July 15, 2014.

F. The third Settlement Contingency was the Oversight Board's adoption of a Resolution approving the MOU. That Resolution was adopted on July 15, 2014.

G. The fourth Settlement Contingency was the date that the California Department of Finance (DOF) decided not to review, dispute or reject the Settlement Agreement, MOU, or both documents. That date was July 21, 2014.

H. The fifth Settlement Contingency was that the first through fourth Settlement Contingencies are all met no later than September 15, 2014.

I. As the last Settlement Contingency to be satisfied was the first Settlement Contingency referenced in Recital D, and the date that such Contingency was satisfied was September 12, 2014, and which was before September 15, 2014, then pursuant to Section 3 of the Settlement Agreement, the Effective Date of the Settlement Agreement became September 12, 2014.

In consideration of the matters set forth above, which are acknowledged as correct, and for full and valuable consideration, the Parties, agree as follows:

1. Effective Date of Settlement and Release Agreement. The Parties agree that the Effective Date of the Settlement Agreement is September 12, 2014.
2. No Other Changes. Except for the establishment of its effective date to the Settlement Agreement, the Parties agree that any and all other terms and conditions of the Settlement Agreement shall remain unchanged and shall continue in full force and effect.
3. Right of Independent Counsel; Authority Sign. Parties represent that they have read this Addendum in full and understand and voluntarily agree to all the provisions herein, free from fraud, coercion or duress. Parties represent that they were provided with ample opportunity to consult with legal counsel of their own choosing regarding this Addendum and each of its provisions. Parties further represent that they have, as of the date of execution of this Addendum, the legal capacity to understand, agree to, and sign this Addendum.
4. Counterparts. This Addendum may be executed in counterparts such that signatures appear on separate signature pages and shall be valid and binding as if all parties signed the same copy. A copy, facsimile, or original of this document with all signature pages appended together shall be deemed a fully executed and valid agreement.
5. Effective Date of Addendum. This Addendum shall be effective and implemented upon the date that the last of the Parties hereto have fully executed this Addendum.

Successor Agency to the Redevelopment
Agency of the City of Moorpark

Dated: _____

By: _____
Janice S. Parvin, Chairperson

Attest _____
Maureen Benson, City Clerk

City of Moorpark

Dated: _____

By: _____
Janice S. Parvin, Mayor

Attest _____
Maureen Benson, City Clerk

Moorpark Unified School District

Dated: _____

By: _____
President of the Board

Attest _____
Secretary