

# LOZANO SMITH

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## MEMORANDUM

*By E-Mail: PMugan@ci.greenfield.ca.us*  
*Cc: RWong@ci.greenfield.ca.us*

**DATE:** August 4, 2010 **CLIENT/MATTER:** 1908-01  
**TO:** Paul Mugan, Director  
Redevelopment and Housing Department  
City of Greenfield  
**CC:** Roger Wong, City Manager  
City of Greenfield  
**FROM:** Dale E. Bacigalupi  
**RE:** Yanks Museum Agreements

Paul,

I have reviewed the several agreements you have provided and the analysis which follows pertains to the various agreements.

Please note that since the agreements between the City and County are not signed and, as noted below, contain inconsistencies, the interpretation which follows is necessarily contingent on a review of the fully executed and final agreements.

It would be wise to secure from County records as soon as possible the fully executed agreements so that there is no confusion about the various payments to the County which the City has apparently agreed to.

I have reviewed the following:

A. Resolution No. 00-168 (involving a property tax transfer between the County of Monterey and the City of Greenfield pertaining to the annexation of the Yanks Museum site. I note that this Resolution is incomplete and does not have the usual certification by the County Clerk of the Board of Supervisors nor does it have an adoption date);

B. Memorandum of Understanding (Agreement No. 08-204, dated April 25, 2000, which is not signed by the City);

C. I am also in possession of a Staff Report to the Board of Supervisors dated April 25, 2000, which describes the payments to the County which the City had apparently agreed to in April 2000. I note that the Staff Report make reference to a "Draft MOU".

Subject to the questions listed above, the MOU and the related documents provide for the following revenue sharing and payments:

1. With regard to property taxes, Resolution No. 00-168 contains various formulas which are the basis for the calculation of the portion of sharing of property taxes in the area of the Yanks Museum annexation, after annexation.

In summary, after annexation, the County and City will share the "base" property tax and the "tax increment" in the following ratios: County of Monterey: 14.6%; City of Greenfield: 11.58%.

These percentages of course are those percentages which are to be applied in the new tax rate area, which will be created only as the property is annexed.

There is some consistency, however, between the Resolution No. 00-168 and the MOU and related staff report. In the latter 2 documents, there is a reference to using percentages of 51.7% for the County and 48.3% for the City in determining the ultimate tax rate; on the other hand; Resolution No. 00-168 uses 55.8% for the County and 44.2% for the City (resulting in a final 11.58% property tax entitlement for the City and a 14.6% property tax entitlement for the County). As you can see, using the ratios described in the MOU and related staff report would result in a higher percentage of the ultimate property tax inuring to the City and a correspondingly smaller percentage of the ultimate property tax inuring to the County.

This is a discrepancy which needs to be cleared up and will require some investigation.

2. In addition to the property tax shift described above, the MOU describes an additional payment to be made by the City to the County.

That payment is in the amount of \$100,000 per year, each year, following annexation, in which the City's "revenues" (which is a defined term in the MOU) from the Yanks Museum Project Area exceed \$150,000. Please note that in calculating the City "revenues", the City will be required to consider property tax income, sales tax income, and transient occupancy taxes).

To the extent that the City's "revenues" do not exceed \$150,000, then no payment is due to the County.

This formula also lacks some certainty. For example, the formula does not address the situation in which the City "revenues" from the Yanks Air Museum Project Area exceed \$150,000 in one year but fall below \$150,000 in the next year. Apparently, this is a 20-year payment obligation to the County that begins on the year of first payment, and ends 20 years later whether or not

additional payments are triggered. Obviously, this may come with a different interpretation by the County.

The ERAF Resolution mentioned above, Resolution No. 00-168, in arriving at the property tax formulas, takes into account mandatory state mandated ERAF payments by the City and the County as of the year 2000. Obviously, the legislature has enacted additional mandatory ERAF payments and contributions by the City and the Redevelopment Agency since 2000 but the Resolution is unclear how, or whether, these additional ERAF contributions play into the tax allocation formula, apparently, they do not even though the document itself says "the formula recognizes that all future growth will be subject to a shift to educational revenue augmentation fund in the of 40% for the County and 29% for the City. This description of the ERAF shift is a reference to a 1992 statute, which is largely still in place.

Please contact me for further discussions after you review this memorandum.

Note: you have also provided me with a Memorandum of Agreement, dated July 30, 2001, by and between the Nichols family and the City of Greenfield. I have not provided an analysis of this Memorandum of Agreement only because you have not asked for it. Please advise if you would also like a summary or analysis of this Memorandum of Agreement.

Resolution No. - 00-168  
 INVOLVING PROPERTY TAX TRANSFERS )  
 BETWEEN THE COUNTY OF MONTEREY )  
 AND THE CITY OF GREENFIELD FOR THE )  
 PROPOSED YANKS AIR MUSEUM )  
 REORGANIZATION INVOLVING )  
 ANNEXATION OF APPROXIMATELY 111 )  
 ACRES TO THE CITY OF GREENFIELD AND )  
 DETACHMENT FROM THE MONTEREY )  
 COUNTY RESOURCE CONSERVATION )  
 DISTRICT )

WHEREAS, Assembly Bill 8 (Chapter 282) Statutes 1979, as amended by Senate Bill 180 (Chapter 801), provides for the Monterey County Board of Supervisors to determine an appropriate tax transfer for all jurisdictional changes of organization occurring within Monterey County and for the city council of any affected City to concur on the transfer prior to the proposal being considered by the Local Agency Formation Commission (LAFCO); and

WHEREAS, the current distribution of property taxes within tax rate area 78-001 is as follows:

26.18% - Monterey County's Share  
73.82% - Non-affected District's Share  
 100.00% total; and

WHEREAS, Senate Bill 180 (Chapter 801) requires that non-affected local agencies percentage share will remain constant; and

WHEREAS, the County of Monterey and the City of Greenfield wish to agree to a fair share distribution of remaining property tax revenues; and

WHEREAS, the County of Monterey has realized a 40% reduction and the City has realized a 29% reduction in property tax revenue imposed by the State under Senate Bill 617 (Chapter 699) Statutes 1992; and whereas each year thereafter both the County and the City continue to shift revenues to the Education Revenue Augmentation Fund;

NOW, THEREFORE, BE IT RESOLVED that the Monterey County Board of Supervisors, DOES HEREBY AGREE to the following formulas for property tax base and increment distribution within Tax Rate Area 78-001 after change of organization/reorganization.

**A. DISTRIBUTION OF PROPERTY TAX BASE:**

The County's property tax revenues have realized a 40 percent reduction imposed by the State under Senate Bill 617 (Chapter 699) Statutes 1992.

Reduction of Property Tax due to ERAF

Monterey County's Share -	26.18%
ERAF Reduction -	-40.00%
Adjusted Share -	15.71%
Share Available for Distribution	15.71%

Property tax base is the property tax revenue that is available prior to change of organization/reorganization.

Prior to Change of Organization/Reorganization:

(City of Greenfield,  
Tax Rate Area 8-000)

		<u>Current Ratio</u>
City of Greenfield	- 19.63%	48.27%
Monterey County	- 21.04%	51.73%

After Change of Organization/Reorganization:

(New Tax Rate Area  
- To Be Assigned)

15.71% - Property Tax Available for Distribution

**1. City of Greenfield's Share of Total Property Taxes Collected:**

	15.71%	-	Property Tax Available for distribution
X	48.27%	-	City of Greenfield's Current Ratio
=	7.58%		

2. Monterey County's Share of Total Property Taxes Collected:

$$\begin{array}{rcl}
 & 15.71\% & - \text{ Property Tax Available for Distribution} \\
 \text{X} & 51.73\% & - \text{ Monterey County's Current Ratio} \\
 = & 8.13\% &
 \end{array}$$

plus

$$\begin{array}{rcl}
 & 10.47\% & - \text{ The adjustment for State Tax Shift} \\
 = & 18.60\% &
 \end{array}$$

Formula for property tax base allocation to the City of Greenfield from tax rate area

78-001 after change of organization/reorganization.

City of Greenfield's Property Tax Revenue =

$$\begin{array}{rcl}
 \text{Total Property Taxes Collected} & \times & 7.58\% \\
 \text{Full Months Remaining in Tax year} & \div & 12
 \end{array}$$

**B. DISTRIBUTION OF PROPERTY TAX INCREMENT:**

Property tax increment is the increase in property tax revenue above the base resulting from the increase in assessed value of property after the change in organization/reorganization.

The formula recognizes that all future growth will be subject to a shift to Education Revenue Augmentation Fund (ERAF) in the amount of 40% for the County and 29% for the City. After the shift, the County and the City will be in the same relative position as before dividing the remainder.

Prior to Change of Organization/Reorganization:

(City of Greenfield,  
Tax Rate Area 8-000)

	Current Rate	ERAF Adjustment	Resulting Rate	Resulting Ratio
City of Greenfield	19.63%	71%	27.80%	44.2%
Monterey County	21.04%	60%	35.07%	55.8%

Based on existing Tax Rate Area 78-001, Monterey County's share of property tax is 26.18%. The total property tax available for distribution in the proposal area is 26.18%. The new Resulting Ratios calculated above are applied to the increment.

After Change of Organization/Reorganization:

(New Tax Rate  
Area to be Assigned)

26.18% = Property Tax Available for Distribution

1. City of Greenfield's Share of Property Tax Increment:

	26.18%	-	Property Tax Available for Distribution
X	44.20%	-	City of Greenfield's New Resulting Ratio
=	11.58%		

2. Monterey County's Share of Property Tax Increment:

	26.18%	-	Property Tax Available for Distribution
X	55.80%	-	Monterey County's New Resulting Ratio
=	14.60%		

Formula for property tax increment to the City of Greenfield from Tax Rate Area 78-001 after change of organization/reorganization:

City of Greenfield's Property Tax Increment =  
 Total Property Tax Increment Collected X 11.58 % X  
 Full Months Remaining in Tax year divided by 12.

AGREEMENT NO. A- 08204  
MEMORANDUM OF UNDERSTANDING  
County of Monterey and City of Greenfield

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made an entered into on April 25, 2000, by an between the COUNTY OF MONTEREY ("County") and the CITY OF GREENFIELD ("City"), as follows:

Recitals

This MOU is entered into with reference to the following facts and circumstances:

- a) Sphere of Influence Amendment. Both the City and the County concur that the inclusion of approximately 111 acres of unincorporated land located north of the City and east of Highway 101, as more specifically shown on Exhibit A which is attached hereto (hereinafter referred to as the "site") within the City's Sphere of Influence is appropriate as a future expansion area of the City.
- b) Yanks Air Museum Project. The City and County generally agree that development of the site will occur in the unincorporated area and in accordance with the Board of Supervisors approved and certified Yanks Air Museum and Visitor Serving Environmental Impact Report. The intended uses include an aircraft museum, runway, winery with tasting room, two gasoline stations, and a 150 room hotel/motel and restaurant (hereinafter referred to as the "Project").
- c) Purpose and Intent. It is the purpose and intent of the MOU, therefore, to set forth certain agreements between the parties to express their intent to jointly pursue a course of action to ensure the development of the Project, facilitate the provision of water and sewer services to the Project by the City in anticipation of future annexation, and to provide a means of financing and constructing project related facilities.
- d) It is recognized that numerous further actions must be taken to comply with federal, state and local laws and regulations which may affect certain provisions contained herein (e.g., grant approvals, environmental review, LAFCO process, etc.), however, both parties agree to make a good faith effort to comply with and implement the terms and conditions of this MOU, as follows:



## Terms and Conditions

1. Provision of Water and Sewer Service by the City. The City shall immediately apply to LAFCO for approval to extend City water and sewer service to the site, and the County agrees to and will fully support the application to LAFCO.
2. Annexation of the Site to the City. The development will occur through phasing. The County agrees to support annexation to the City of Greenfield for each phase of development upon the issuance of certificates of occupancy for all structures within the phase, or two (2) years after the first certificate of occupancy is issued for any structure in the phase, whichever event occurs first. Notwithstanding the aforesaid phased plan for annexation, the County agrees to support annexation of the entire parcel to the City of Greenfield no later than ten (10) years after the issuance of the first certificate of occupancy.
3. Tax Transfer Agreement. The parties hereto agree to prepare and execute a Property Tax Transfer Agreement that a) recognizes that all future growth in property tax revenues will be subject to a shift to the Education Revenue Augmentation Fund and b) provides for the proportional sharing of available property taxes within the tax rate area for the site whereby 51.7 percent of such taxes will be received by the County and 48.3 percent will be received by the City, in perpetuity as shown in Exhibit B.
4. Development Standards. All planning and building permits and development applications shall be consistent with the County General Plans and development plans for the site. In addition, the project will be designed, to the extent possible, to be consistent with all applicable City regulations so long as these regulations are not in conflict with applicable County regulations.
5. Revenue Sharing. After annexation of the project site, the City agrees to pay to the County \$100,000 each year if annual city revenues from the project exceed \$150,000, as determined by the City no later than March 1 of each year. The City's obligation under this provision shall terminate twenty (20) years after the first year of payment to County.
6. EDA and State Grants for Water and Sewer Improvements. The City and County agree to cooperate on the preparation and submission of grants for water and sewer infrastructure improvements, at no cost to either party.
7. First Source Hiring Agreement. The County and the City agree to a first Source Hiring Agreement for the Project that gives job preference to residents of the City.

8. Agreement Reopener. The City and County agree to renegotiate this agreement if new revenue sharing policies are developed by the City Managers and County Administrative Officer.
9. Further Actions. Each of the parties agree to execute and deliver to the other all such documents and instruments, and to take such further actions, as may reasonably be required to give effect to the terms and conditions of this MOU.
10. Interpretation. It is agreed and understood by the parties hereto that this agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this agreement within the meaning of Civil Code § 1654. The provisions of this MOU shall be interpreted in a reasonable manner to effect the purpose of the parties and this MOU.
11. Definitions. For the purpose of this MOU, the following words and phrases shall have the meaning as described in this paragraph:
  - a) "City revenues" shall mean the total of all property, sales and transient occupancy taxes due and payable to the City from the Project.
  - b) "Administrators" shall mean the City Manager of Greenfield, or the City Manager's designee, and the "County Administrative Officer, or such Officer's designee.
12. Duty to meet and confer. If any dispute under this MOU arises the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. Each party shall make all reasonable efforts to provide to the other party all the information that the party has in its possession that is relevant to the dispute, so that both parties will have ample information with which to reach a decision.
13. Amendment or Modification. This MOU may be amended, altered or modified only in writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.
14. Attorney's Fees and Costs. In the event it should become necessary for either party to enforce any of the terms and conditions of this MOU by court action or administrative enforcement, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

15. Relationship of the Parties. Nothing in this MOU shall create a joint venture, partnership or principal-agent relationship between the parties.
16. Counterparts. This MOU may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.
17. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

IN\_WITNESS WHEREOF, this MOU has been executed by the duly authorized officers of each of the parties on the date first shown above.

COUNTY OF MONTEREY

By Louis R. Calayan  
Chair, Board of Supervisors

CITY OF GREENFIELD

By M. Roman  
Mayor

ATTEST:

Carrie Wilkinson  
Clerk of the Board  
Carrie Wilkinson

ATTEST:

Ann S. Josten  
City Clerk