

RESOLUTION NO. OB-2016-16

**A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE TAFT COMMUNITY DEVELOPMENT AGENCY APPROVING A SETTLEMENT AGREEMENT AND MUTUAL RELEASE REGARDING STATUTORY PASS THROUGH OBLIGATIONS AMONG THE SUCCESSOR AGENCY, THE KERN COUNTY SUPERINTENDENT OF SCHOOLS AND THE TAFT CITY SCHOOL DISTRICT AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH**

**WHEREAS**, prior to February 1, 2012, the Taft Community Development Agency (the “Former Agency”) was a community redevelopment agency duly organized and existing under the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.), and was authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council of the City of Taft; and

**WHEREAS**, Assembly Bill 1x 26, chaptered and effective on June 28, 2011, added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code, which caused the dissolution of all redevelopment agencies and winding down of the affairs of former agencies (as amended from time to time, the “Dissolution Act”); and

**WHEREAS**, as of February 1, 2012 the Former Agency was dissolved pursuant to the Dissolution Act and the Successor Agency to the Taft Community Development Agency (“Successor Agency”) serves as the successor agency to the Former Agency; and

**WHEREAS**, the Successor Agency administers the enforceable obligations of the Former Agency and otherwise unwinds the Former Agency’s affairs, all subject to the review and approval by a seven-member oversight board (“Oversight Board”); and

**WHEREAS**, the Former Agency was obligated to make certain statutory pass through payments to various affected taxing agencies, including the Kern County Superintendent of Schools and the Kern County School District, pursuant to Health and Safety Code Section 33676 (“Tax Sharing Payments”); and

**WHEREAS**, at all relevant times, the Tax Sharing Payments were calculated and disbursed by the Kern County Auditor-Controller (“KCAC”) on the behalf of the Former Agency; and

**WHEREAS**, the Kern County Superintendent of Schools and the Kern County School District (collectively, the “Taxing Agencies”) and the Successor Agency are currently parties (together with other entities that have not asserted claims against the Successor Agency) to the following legal proceeding: *Kern County Superintendent of Schools, et al. v. Successor Agency to the Dissolved Arvin Redevelopment Agency, et al.*, pending in the Kern County Superior Court (Case No. BCV-15-100357) (the “Action”); and

**WHEREAS**, the Action includes, among other things, claims by the Taxing Agencies that the Successor Agency owes the Taxing Agencies certain monetary amounts due to underpayment of the Tax Sharing Payments for fiscal years 2008-09, 2009-10 and 2010-11; and

**WHEREAS**, the Taxing Agencies allege that the underpayments of the Tax Sharing Payments were the result of KCAC incorrectly calculating the Tax Sharing Payments; and

**WHEREAS**, the Successor Agency and the Taxing Agencies have negotiated the terms of a Settlement Agreement and Mutual Release Regarding Statutory Pass Through Obligations ("Agreement"), in substantially the form attached to this Resolution as Exhibit A and incorporated herein; and

**WHEREAS**, the Agreement provides that the Successor Agency will place certain payments (defined in the agreement as the "Payments") on ROPS 16-17 (covering the period from July 1, 2016 through June 30, 2017) and, subject to approval by the Oversight Board and the California Department of Finance ("DOF"), will make the Payments to the Taxing Agencies as provided in the Agreement; and

**WHEREAS**, in consideration of the Successor Agency's agreement to place the Payments on the ROPS and, subject to Oversight Board and DOF approval, to make the Payments, the Agreement requires the Taxing Agencies to indemnify the Successor Agency and the City from and against all claims or damages relating to the Payments, the Tax Sharing Payments, the Taxing Agency Allegations or the Agreement, and to release and waive any further claims relating to the Tax Sharing Payments; and

**WHEREAS**, the Oversight Board has duly considered all terms and conditions of the proposed Agreement and believes that the Agreement is in the best interests of the taxing agencies and in accord with the public purposes and provisions of applicable State and local law requirements.

**NOW, THEREFORE, BE IT RESOLVED** by the Oversight Board to the Successor Agency to the Taft Community Development Agency as follows:

1. Each of the foregoing recitals is true and correct.
2. The Oversight Board hereby finds and determines that the Agreement is in the best interests of the affected taxing agencies.
3. The Oversight Board hereby approves the Agreement in substantially the form submitted herewith and authorizes the Successor Agency to place the Payments on the ROPS 16-17 (covering the period from July 1, 2016 through June 30, 2017).
4. The Chair and Secretary of the Oversight Board shall sign the passage and adoption of this Resolution.
5. The Successor Agency is hereby directed to transmit this Resolution and the accompanying staff report and all exhibits thereto, each of which is incorporated herein, to the DOF pursuant to Health and Safety Code Sections 34179(h).

6. This Resolution shall take effect upon approval hereof by the DOF or failure of DOF to request review within five days following receipt of this Resolution.

*[Signatures on subsequent page]*



**SETTLEMENT AGREEMENT AND MUTUAL RELEASE  
REGARDING  
STATUTORY PASS THROUGH OBLIGATIONS**

This Settlement Agreement and Mutual Release Regarding Statutory Pass Through Obligations ("Agreement") is dated for reference purposes only as of January 28, 2016.

**PARTIES**

This Agreement is entered into by and among the following parties, which are at times referred to herein collectively as the "Parties" and individually as a "Party":

1. The Successor Agency to the Taft Community Development Agency (the "Successor Agency");
2. The Kern County Superintendent of Schools (the "Superintendent");
3. The Taft City School District (the "School District").

The Superintendent and School District are at times collectively referred to herein collectively as the "Taxing Agencies" and individually as a "Taxing Agency."

**RECITALS**

The Parties hereby represent, acknowledge and agree as follows:

A. WHEREAS, prior to February 1, 2012, the Taft Community Development Agency (herein referred to as the "Former Agency") was a community redevelopment agency duly organized and existing under the California Community Redevelopment Law (Health and Safety Code Section 33000, *et seq.*), and was authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council of the City of Taft.

B. WHEREAS, the Former Agency was obligated to make certain statutory pass through payments to the Taxing Agencies pursuant to Health and Safety Code Section 33676 ("Tax Sharing Payments").

C. WHEREAS, at all relevant times, the Tax Sharing Payments were calculated and disbursed by the Kern County Auditor-Controller ("KCAC") on the behalf of the Former Agency.

D. WHEREAS, Assembly Bill 1x 26, chaptered and effective on June 28, 2011, added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code, which caused the dissolution of all redevelopment agencies and winding down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484, chaptered and effective on June 27, 2012 (together, the "Dissolution Act").

E. WHEREAS, as of February 1, 2012 the Former Agency was dissolved pursuant to the Dissolution Act and the Successor Agency succeeded to all rights, title and interest held by the Former Agency.

F. WHEREAS, the Successor Agency administers the enforceable obligations of the Former Agency and otherwise unwinds the Former Agency's affairs, all subject to the review and approval by a seven-member oversight board (the "Oversight Board").

G. WHEREAS, the Parties are currently parties (together with other entities that are not Parties to this Agreement) to the following legal proceeding: *Kern County Superintendent of Schools, et al. v. Successor Agency to the Dissolved Arvin Redevelopment Agency, et al.*, pending in the Kern County Superior Court (Case No. BCV-15-100357) (the "Action").

H. WHEREAS, the Action includes, among other things, claims by the Taxing Agencies that the Successor Agency owes the Taxing Agencies certain monetary amounts due to underpayment of the Tax Sharing Payments for fiscal years 2008-09, 2009-10 and 2010-11.

I. WHEREAS, the Taxing Agencies allege that the underpayments of the Tax Sharing Payments were the result of KCAC incorrectly calculating the Tax Sharing Payments.

J. WHEREAS, subject to the terms and conditions hereof, the Parties desire to compromise and settle all claims and terminate all disputes that have been or could have been asserted by and among the Parties relating to the Action, all without admitting liability on behalf of any of the Parties.

## A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Effective Date. This Agreement shall become effective (the "Effective Date") upon all of the following occurring: (A) execution of this Agreement by all of the Parties, (B) approval of this Agreement by resolution of the Oversight Board and (C) following Oversight Board approval, upon passage of the time periods prescribed by applicable law, either by no review of such Oversight Board action being timely requested by the State of California Department of Finance ("DOF"), or by DOF approval or lack of objection thereto.

2. If DOF initially disapproves of the Payments on ROPS 16/17, or on any future ROPS as the case may be, Successor Agency shall timely request a meet and confer session with DOF. The Successor Agency shall notify the Superintendent and the School District of DOF's initial disapproval, of the meet and confer request, and of the meet and confer date, time, and location, and shall invite the Superintendent and the School District to participate in the meet and confer session. The Successor Agency shall urge DOF in the meet and confer session to approve the Payments. If, following the meet and confer session, DOF issues a final decision disapproving the Payments, the Successor Agency shall not have any further duty with respect to this Agreement.

3. Dismissal of Successor Agency. The Taxing Agencies hereby agree to dismiss, and cause all other petitioners to dismiss, the Successor Agency from the Action not later than fifteen (15) days after the Effective Date of this Agreement. Such dismissal shall be with prejudice.

4. Payments to Taxing Agencies. The Successor Agency hereby agrees to tender a lump sum of \$6,637 to the Superintendent and a lump sum of \$31,900.00 to the School District (collectively, the "Payments"). The Payments shall be made within thirty (30) days following the Successor Agency's receipt of moneys from the KCAC for the applicable fiscal year covered by the first Recognized Obligation Payment Schedule ("ROPS") on which the Payments are approved as a line item following the Effective Date hereof.

A. Subordinate Obligation; Distribution of RPTTF. The Parties acknowledge and agree that all Redevelopment Property Tax Trust Fund ("RPTTF") moneys attributable to the Former Agency's redevelopment project areas will be distributed by the KCAC in accordance with Health & Safety Code Section 34183. The Payments shall be satisfied out of excess RPTTF moneys ("Excess RPTTF") available after payment of the County administration fee, all pass through payments, all enforceable obligations including bonds and other indebtedness, and the Successor Agency's administrative expenses (collectively, the "Prior Obligations"). Further, the Taxing Agencies acknowledge that the City has in the past, and may in the future, loan money to the Successor Agency to cover Successor Agency administrative expenses and the City shall be entitled to repayment of such loaned amounts, with interest as provided in the Dissolution Act, as a Prior Obligation. To the extent Excess RPTTF is available after payment of all Prior Obligations, such Excess RPTTF shall be applied to payment of the Payments. If the Excess RPTTF from a January 2 or June 1 RPTTF distribution is insufficient to enable the Successor Agency to make the Payments due during that ROPS period, the insufficiency shall be paid from future Excess RPTTF, without interest, as and when sufficient Excess RPTTF moneys are available.

B. Subject to Prior Obligations. The Parties acknowledge and agree that the Payments under this Agreement are junior to all obligations of the Successor Agency with a prior claim on, or pledge of, moneys in the RPTTF, pursuant to Health & Safety Code Section 34183 or other laws, including all Prior Obligations on each applicable ROPS.

5. Mutual Release.

A. Release by Taxing Agencies. Except for the obligations imposed under this Agreement, the Taxing Agencies, on behalf of themselves, their predecessors, successors, assigns, agents, relatives, heirs, beneficiaries, affiliates, attorneys, insurers and all others claiming by and through each respective Taxing Agency, do hereby release, discharge and covenant not to sue the Successor Agency and the City, as well as their board members, staff, officers, directors, partners, employees, shareholders, members, managers, subsidiaries, parent and related corporations or entities, agents, representatives, attorneys, successors, assigns, heirs, relatives, descendants, administrators, executors, beneficiaries, trustees, insurers and predecessors and successors-in-interest, from and for all actions, claims, charges, liabilities, obligations, benefits, compensation, damages, fees, expenses, or suits of any kind whatsoever, known or unknown, which the Taxing Agencies now have, or may ever have had, arising out of or relating to the Tax Sharing Payments and/or the Action.

B. Release by Successor Agency. Except for the obligations imposed under this Agreement, the Successor Agency, on behalf of itself, its predecessors, successors, assigns, agents, relatives, heirs, beneficiaries, affiliates, attorneys, insurers and all others claiming by and



through the Successor Agency, does hereby release, discharge and covenant not to sue the Taxing Agencies, as well as their board members, officers, directors, partners, employees, shareholders, members, managers, subsidiaries, parent and related corporations or entities, agents, representatives, attorneys, successors, assigns, heirs, relatives, descendants, administrators, executors, beneficiaries, trustees, insurers and predecessors and successors-in-interest from and for all actions, claims, charges, liabilities, obligations, benefits, compensation, damages, fees, expenses, or suits of any kind whatsoever, known or unknown, which the Successor Agency now has, or may ever have had, arising out of or relating to the Tax Sharing Payments and/or the Action.

C. Full Defense. The provisions of this Section 4 may be pleaded as a full and complete defense to, and may be used as the basis for any injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Section 4.

D. Waiver of Civil Code Section 1542. The Parties acknowledge and understand that the matters released herein may involve facts and circumstances currently unknown to them, but nevertheless the Parties intend that the releases provided herein shall be general releases, and that they shall effectively release all actions, claims, charges, liabilities, obligations, benefits, compensation, damages, fees or suits of any kind whatsoever in connection with, arising out of or relating to the Tax Sharing Payments and/or the Action, even if they involve unknown facts and circumstances. The Parties hereby acknowledge that they have been fully advised of the contents of Section 1542 of the Civil Code of the State of California, which reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.**

The Parties hereby expressly waive and relinquish any and all rights and benefits under Civil Code Section 1542 and any law or legal principle of similar effect in any jurisdiction with respect to the releases granted in this Section 4.

JAG  
School District

MCB  
Superintendent

\_\_\_\_\_  
Successor Agency

E. Non-Parties. It is the express intention of the Parties that except as specifically provided in this Section 4, nothing in this Agreement is intended to release, waive or alter any right, claim or defense any Party may have against anyone who is not a party to this Agreement.

6. Indemnification by Taxing Agencies. The Taxing Agencies hereby agree to indemnify and hold harmless Successor Agency, City and their respective affiliates, officers, directors, agents, servants, employees, contractors and subcontractors and the employees of any

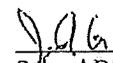
through the Successor Agency, does hereby release, discharge and covenant not to sue the Taxing Agencies, as well as their board members, officers, directors, partners, employees, shareholders, members, managers, subsidiaries, parent and related corporations or entities, agents, representatives, attorneys, successors, assigns, heirs, relatives, descendants, administrators, executors, beneficiaries, trustees, insurers and predecessors and successors-in-interest from and for all actions, claims, charges, liabilities, obligations, benefits, compensation, damages, fees, expenses, or suits of any kind whatsoever, known or unknown, which the Successor Agency now has, or may ever have had, arising out of or relating to the Tax Sharing Payments and/or the Action.

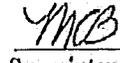
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Superintendent

  
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6. Indemnification by Taxing Agencies. The Taxing Agencies hereby agree to indemnify and hold harmless Successor Agency, City and their respective affiliates, officers, directors, agents, servants, employees, contractors and subcontractors and the employees of any

of the foregoing (each, "Indemnitees"), from and against any and all liabilities, claims, losses, fines, damages, costs and expenses (including costs and expenses of defense), which are caused in whole or in part by or arise out of this Agreement, including without limitation the Payments required by this Agreement, and further expressly including claims or damages asserted against the Indemnitees by other affected taxing agencies or other third parties. If any provision of this indemnity is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this indemnity will remain in effect to the maximum extent permitted by law.

7. No Material Reliance. There are no unwritten, oral or verbal understandings, agreements, promises or representations of any kind whatsoever as between the Parties that are not contained in this Agreement. The Parties each represent and acknowledge that, in executing this Agreement, they have not relied upon any representation, statement, omission, agreement or promise made by any other Party except as set forth in this Agreement, nor have they relied upon any representation, statement, agreement, omission or promise made by the other Party's agents, representatives, or attorneys, except as set forth in this Agreement.

8. Final and Binding Agreement. The Parties have each made such investigation of the facts pertaining to this Agreement as they have deemed necessary. This Agreement is intended to be and is the final, binding and fully integrated agreement of the Parties, regardless of any claims of any claims of any of the Parties of misrepresentation, concealment of fact, or mistake of law or fact.

9. Modifications. This Agreement may only be changed or modified and any provisions hereof may only be waived by a writing signed by the Party against whom enforcement of any waiver, change or modification is sought. This Agreement may be amended only in writing by mutual consent of the Parties.

10. No Admission of Liability. The Parties stipulate that this Agreement does not constitute an admission of liability, does not constitute any factual or legal precedent whatsoever, and may not be used as evidence in any subsequent proceeding of any kind, except in an action alleging a breach of this Agreement.

11. Entire Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements, understandings, and representations, if any, between the Parties concerning the Tax Sharing Payments or the Action.

12. Neutral Interpretation. The Parties each acknowledge that they are entering into this Agreement having fully reviewed its terms and legal effect, in consultation with their respective legal counsel. The wording of this Agreement was reviewed and accepted by each Party and their legal counsel prior to execution. This Agreement was drafted equally by all Parties, and no Party shall be entitled to have any wording construed for or against any other Party in the event of a dispute.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and together constitute the same agreement, whether each Party executes a separate counterpart.

14. Notices. All notices and requests required or permitted under this Agreement shall be made in writing by email and United States mail to the following:

Successor Agency:	Successor Agency to the Taft Community Development Agency 209 E. Kern Street Taft, CA 93268 Attention: Craig Jones, Executive Director
Superintendent:	Kern County Superintendent of Schools 1300 17 <sup>th</sup> Street Bakersfield, CA 93301 Attention: Debbie Riedmiller, Chief Financial Operations Officer
School District:	Taft City School District 820 Sixth Street Taft, CA 93268 Attention: Julie Graves, Superintendent

15. Parties Shall Bear Their Own Fees And Costs. Each Party shall bear its own attorneys' fees and costs relating to this Agreement.

16. Attorneys' Fees. In the event it is necessary for any Party to this Agreement to initiate legal proceedings to enforce this Agreement or adjudicate any issues under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, costs and disbursements, including reasonable expert fees and costs, if any.

17. Choice of Law; Venue. Enforcement of this Agreement shall be governed by the laws of the State of California. Any action concerning this Agreement must be brought in a state or federal court in the County of Kern, State of California.

18. Successor and Assigns. This Agreement shall be binding upon and inure to the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

19. Severability. In the event any term, clause, or provision of this Agreement is found to be waived or invalid, the validity and enforceability of the remaining terms, clauses and provisions shall not be affected.

20. Authority to Execute. Each of the persons signing below on behalf of the Parties specifically represents and acknowledges that he or she has been authorized to do so by the Party on whose behalf he or she has executed this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

SUCCESSOR AGENCY TO THE TAFT  
COMMUNITY DEVELOPMENT AGENCY

KERN COUNTY SUPERINTENDENT OF  
SCHOOLS

By: [Signature]  
Its: \_\_\_\_\_

By: Mary Baylow  
Title: Associate Superintendent

ATTEST

By: Juette Mayfield  
Title: City Clerk

TAFT CITY SCHOOL DISTRICT

By: Jill A. Graves  
Its: Superintendent

APPROVED AS TO FORM

STRADLING YOCCA CARLSON & RAUTH

\_\_\_\_\_  
Vanessa S. Locklin, Special Counsel

APPROVED AS TO FORM

SCHOOLS LEGAL SERVICE

\_\_\_\_\_  
Christopher P. Burger, Senior Counsel

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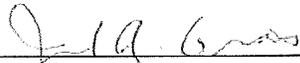
By: \_\_\_\_\_  
Its: \_\_\_\_\_

  
By: Mary Baylow  
Title: Associate Superintendent

ATTEST

TAFT CITY SCHOOL DISTRICT

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

  
By: Julie Graves  
Its: Superintendent

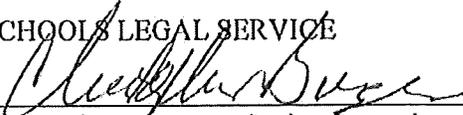
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SCHOOLS LEGAL SERVICE

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Vanessa S. Locklin, Special Counsel

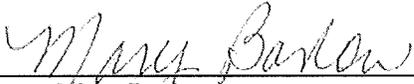
  
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SUCCESSOR AGENCY TO THE TAFT  
COMMUNITY DEVELOPMENT AGENCY

KERN COUNTY SUPERINTENDENT OF  
SCHOOLS

By: \_\_\_\_\_  
Its: \_\_\_\_\_

  
By: Mary Baylow  
Title: Associate Superintendent

ATTEST

TAFT CITY SCHOOL DISTRICT

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
By: Julie Graves  
Its: Superintendent

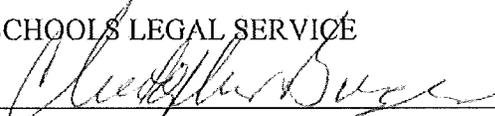
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SCHOOLS LEGAL SERVICE

\_\_\_\_\_  
Vanessa S. Locklin, Special Counsel

  
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Christopher P. Burger, Senior Counsel

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**SUCCESSOR AGENCY TO THE TAFT  
COMMUNITY DEVELOPMENT AGENCY**

**KERN COUNTY SUPERINTENDENT OF  
SCHOOLS**

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Its: \_\_\_\_\_

By: \_\_\_\_\_  
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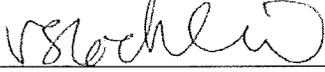
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STRADLING YOCCA CARLSON & RAUTH

  
\_\_\_\_\_  
Vanessa S. Locklin, Special Counsel

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**TAFT CITY SCHOOL DISTRICT**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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