

MEMORANDUM

Office of the City Attorney, Agency Counsel

And the Milpitas Economic Development Corporation Counsel



Date: March 23, 2011

To: Mayor Esteves and Members of the City Council

From: Bryan Otake, Assistant City Attorney
Michael J. Ogaz, City Attorney

Subject: Staff Report on proposed Joint Resolution Authorizing the Conveyance and Acceptance of Certain Real Property from the Redevelopment Agency to the City for Public and Redevelopment Purposes

Property Conveyances From Redevelopment Agency to City

At its March 7, 2011 special meeting, the City Council and the Agency Board of Directors authorized the conveyance of certain parcels of real property from the Agency to the City. Staff now recommends that the additional properties listed below also be conveyed to the City from the Agency.

PROPERTY STREET ADDRESS	DESCRIPTION
1265 North Milpitas Boulevard, Milpitas, California	Public Works Corporate Yard
1325 East Calaveras Boulevard, Milpitas, California	Milpitas Sports Center
540 South Abel Street, Milpitas, California	Sal Cracolice Building

The property conveyances will ensure that the above-listed properties are kept, maintained and used for the maximum benefit of the community in the City of Milpitas.

As summarized in previous reports, in implementing the Redevelopment Plans (collectively, the "Redevelopment Plans") for the Great Mall Redevelopment Project Area and Milpitas Redevelopment Project Area No. 1 (collectively the "Project Areas"), the Agency acquired the above-listed properties for various public purposes, including the provision of recreational facilities and public infrastructure redevelopment. In doing so, title was sometimes taken in the name of the Agency. However, ultimate ownership and operation of such properties was always intended for the City, since state redevelopment law bars the expenditure of Agency funds for certain ongoing costs, such as maintenance.

State law permits a redevelopment agency to dispose and convey interests in real property to the community and the public that it has acquired. Accordingly, Agency properties designated for public purposes and already owned by the Agency should be conveyed to the City. In doing so, it is

appropriate under state law for the Agency Board and the City Council to make certain findings when expending or memorializing current or past expenditures of Agency funds for the purposes of acquisition of real property and/or the construction of improvements thereon.

State law allows the use of Agency funds to pay for all or a part of the value of the land and the cost of the installation and construction of any building, facility, structure or other improvement that is publicly owned and which is located inside or contiguous to the Project Areas if the City Council determines: (1) that the acquisition of land or the installation or construction of the buildings, facilities, structures or other improvements that are publicly owned are of benefit to the Project Areas by helping to eliminate blight within the Project Areas or providing housing for low- or moderate-income persons; (2) that no other reasonable means of financing the acquisition of the land or installation or construction of the buildings, facilities, structures or other improvements that are publicly owned are available to the community; and (3) that the payment of funds for acquisition of land or the cost of buildings, facilities, structures or other improvements that are publicly owned is consistent with the Implementation Plan for the Project Areas.

These conditions were found to exist for the properties described herein and listed in the attached proposed Resolution. The properties benefit the Project Areas by eliminating blight and facilitating affordable housing. The properties provide recreational amenities, urban improvements, and facilities for the provision of essential public services. Such amenities and improvements provide the essential features needed to attract new residents and encourage business development and investment in the Project Areas. Furthermore, no other reasonable means exist today or existed in the past at the time of the properties' acquisition by the Agency to finance such land acquisitions and improvements. The City's General Fund has been under great distress for years and opportunities for private financing have been limited. Finally, the acquisitions and expenditures for the properties listed in the Resolutions are consistent with the latest Implementation Plans. The land and improvement expenditures related thereto are and were aimed at addressing the public infrastructure and utilities goals of the latest Implementation Plan. The actions are also consistent with the recreational, open space, park, and affordable housing goals listed therein.

In addition, the Agency is permitted under state law to delegate any powers or functions it may have with respect to planning and undertaking redevelopment projects and to convey properties intended for future redevelopment.

Based upon the foregoing, Staff requests that the City Council and the Agency Board adopt the resolution authorizing the conveyance of certain real property and improvements from the Agency to the City, on the condition that the property and improvements be used for economic development purposes.

Options to Purchase

In addition to the conveyance of properties outlined above, it is also recommended that City staff be authorized to convey options to purchase certain real property to the Milpitas Economic Development Corporation. As consideration, the EDC shall pay a total of \$150,000.00 (One Hundred Fifty Thousand Dollars) to the City and also undertake commercially reasonable efforts to analyze possible use and reuse options for those parcels and to market those parcels to private

developers and entities for possible economic development and community improvement opportunities.

The properties that are recommended to be subject to EDC options to purchase are as follows:

PROPERTY STREET ADDRESS OR NEAREST INTERSECTION	DESCRIPTION
1265 North Milpitas Boulevard, Milpitas, California	Public Works Corporate Yard
1325 East Calaveras Boulevard, Milpitas, California	Milpitas Sports Center
540 South Abel Street, Milpitas, California	Sal Cracolice Building
86 North Milpitas Boulevard, Milpitas, California	Vacant Lot Near the Milpitas Library Entrance
230 North Milpitas Boulevard, Milpitas, California	Vacant Lot North of the Milpitas Library
Near Intersection of Barber Lane and Alder Drive	Vacant Lot

The options to purchase the listed properties would be valid for up to 20 years and are assignable.

Fiscal Impact:

\$150,000.00. A budget appropriation from the Milpitas Economic Development Corporation funds will be needed to pay for the purchase of the options and to undertake the contractually-required marketing efforts.

Recommendation:

1. Adopt the Joint Resolution Authorizing the Conveyance and Acceptance of Certain Real Property from the Redevelopment Agency to the City for Public and Redevelopment Purposes;
2. Authorize the City Manager and the Milpitas Economic Development Corporation President to Execute the Options to Purchase Certain Real Properties and take all other necessary related actions; and
3. Authorize a Budget Appropriation of \$150,000.00 from the Milpitas Economic Development Corporation funds for the Options to Purchase Certain Real Properties.

Attachments:

1. Proposed Joint Resolution Authorizing the Conveyance and Acceptance of Certain Real Property from the Redevelopment Agency to the City for Public and Redevelopment Purposes
2. Form of Option to Purchase Real Property

RESOLUTION NO. _____

A JOINT RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY AND THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CONVEYANCE AND ACCEPTANCE OF CERTAIN REAL PROPERTY FROM THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS TO THE CITY OF MILPITAS FOR PUBLIC AND REDEVELOPMENT PURPOSES

WHEREAS, the Redevelopment Agency of the City of Milpitas (“Agency”) is a redevelopment agency formed, existing and exercising its powers pursuant to California Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.* (“CRL”); and

WHEREAS, the City Council of the City and the Agency Board of Directors have adopted and amended, from time to time, the Redevelopment Plans (collectively, the “Redevelopment Plans”) for the Great Mall Redevelopment Project Area and Milpitas Redevelopment Project Area No. 1 (collectively the “Project Areas”); and

WHEREAS, in implementation of the Redevelopment Plans for the Project Areas, the Agency has acquired certain properties described in the staff report submitted to the Agency Board and listed in Exhibit A of this Resolution (the “Properties”), for parkland, open space, public facilities, public infrastructure redevelopment, and other public uses; and

WHEREAS, pursuant to Section 33445 and other provisions of the CRL, the Agency may pay for the acquisition of real property and for the construction of improvements thereon, but may not pay for the maintenance of publicly-owned facilities. Furthermore, under Sections 33430 and 33432 of the CRL, the Agency may dispose and convey such interests in real property that it has acquired to the community and the public. In conformity with these provisions, the Properties were and are being acquired for ultimate ownership and operation by the City and use by the public; and

WHEREAS, to the extent that Agency funds were used to acquire the Properties and/or to pay for the cost and installation of any improvements thereon, Section 33445 of the CRL provides that the Agency is authorized, with the consent of the City Council, to pay for all or a part of the value of the land and the cost of the installation and construction of any building, facility, structure or other improvement that is publicly owned and that is located inside or contiguous to the Project Areas if the City Council determines: (1) that the acquisition of land or the installation or construction of the buildings, facilities, structures or other improvements that are publicly owned are of benefit to the Project Areas by helping to eliminate blight within the Project Areas or providing housing for low- or moderate-income persons; (2) that no other reasonable means of financing the acquisition of the land or installation or construction of the buildings, facilities, structures or other improvements that are publicly owned are available to the community; and (3) that the payment of funds for acquisition of land or the cost of buildings, facilities, structures or other improvements that are publicly owned is consistent with the Implementation Plan for the Project Areas adopted pursuant to CRL Section 33490. Such findings were made by the City and the Agency in the past acquisition of the Properties and are hereby made and/or affirmed herein again, based upon the materials and information previously presented to the Agency Board and incorporated herein by reference and in the staff report supporting this Resolution; and

WHEREAS, furthermore, pursuant to Section 33205 of the CRL, the Agency is authorized to delegate to the City any of the powers or functions of the Agency with respect to the planning and undertaking of a redevelopment project and the City is authorized to carry out and perform such powers and functions; and

WHEREAS, for purposes of aiding and co-operating in the planning, undertaking, construction or operation of redevelopment projects, the City is authorized under Sections 33220 and 33430 of the CRL to receive land and improvements upon the terms determined by the Agency Board and the City Council and with or without consideration; and

WHEREAS, the acts contemplated hereunder comply with the provisions of the California Environmental Quality Act (“CEQA”).

NOW, THEREFORE, the Board of the Redevelopment Agency and the City Council of the City of Milpitas hereby find, determine, and resolve as follows:

1. The Agency Board and City Council have considered the full record before them, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The acquisition of the Properties was and is of benefit to the Project Areas because the properties will help aid in the elimination of blight within the Project Areas. This determination is based on the facts set forth in the staff report accompanying this Resolution and the materials and information previously presented to the City Council and incorporated herein by reference.
3. No other reasonable means of financing the acquisition of the Properties was or is available to the community. This determination is based on the facts set forth in the staff report accompanying this Resolution and the materials and information previously presented to the City Council and incorporated herein by reference.
4. The payment of funds by the Agency for the acquisition of the Properties is and was consistent with the Implementation Plan adopted by the Agency pursuant to Section 33490 of the CRL. This determination is based on the facts set forth in the staff report accompanying this Resolution and the materials and information previously presented to the City Council and incorporated herein by reference.
5. The actions contemplated herein comply with the requirements of CEQA. The transfer in interests in property by grant deed and other instruments are ministerial, documentary acts that do not constitute a "project" pursuant to Section 15378(b)(4)-(5),(c) of the CEQA Guidelines.
6. The transfer of the Properties from the Agency to the City by grant deed, the form of which shall be satisfactory to Agency Counsel and the City Attorney, is hereby approved. The Agency Executive Director and the City Manager are hereby authorized and directed to convey the Properties from the Agency to the City, and to execute a certificate of acceptance and such other documents and take such other actions as are necessary to carry out and implement the transfer of the Properties to the City.

PASSED AND ADOPTED this ___ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary/City Clerk

Jose S. Esteves, Chair/Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, Agency Counsel/City Attorney

**EXHIBIT A
PROPERTIES TRANSFERRED FROM AGENCY TO CITY**

ASSESSOR'S PARCEL NUMBER	STREET ADDRESS	DESCRIPTION
22-020-12	1265 North Milpitas Boulevard, Milpitas, California	Public Works Corporate Yard
2917004, 2917005, 2917006, 2917007, 2917008, 2917009, 2917010, 2917011, 2917012, 2917013, 2917015	1325 East Calaveras Boulevard, Milpitas, California	Milpitas Sports Center
86-100-25	540 South Abel Street, Milpitas, California	Sal Cracolice Building

DRAFT—FORM OF AGREEMENT

OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT ("Option Agreement") is made this day of March 28, 2011 (the "Effective Date") by the City of Milpitas ("Optionor"), a municipal corporation of the State of California, and the Milpitas Economic Development Corporation, a nonprofit public benefit corporation ("Optionee"). The Optionor and the Optionee are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, Optionor owns certain real Property at _____ in Milpitas, California (the "Property"), and more particularly described in Exhibit A, attached hereto; and

WHEREAS, Optionee desires to acquire the exclusive right to purchase, without becoming obligated to purchase until the option is exercised in accordance with this Option Agreement, the Property at an agreed price and under specified terms and conditions;

NOW, Therefore, it is agreed as follows:

1. GRANT OF OPTION

Optionor grants to Optionee the exclusive right to purchase the Property.

2. TERM OF OPTION

The term of the option shall commence on March 28, 2011 and shall continue until 5:00 p.m. on March 28, 2031("Term"), at which time it will expire.

3. CONSIDERATION

As consideration for the grant of this option for the Term, Optionee shall pay Optionor the sum of Twenty Five Thousand Dollars (\$25,000.00) and also undertake commercially reasonable efforts to analyze possible use and reuse options for the Property and to market the Property to private developers and other entities for possible economic development and community improvement opportunities.

4. EXERCISE OF OPTION

Optionee may exercise this option, after complying with the notice requirements of Section 14 herein, by tender to Optionor of a purchase and sale agreement in conformity with the terms set forth herein. The purchase price for the Property shall be the fair market value at the time of the exercise of the Property.

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The fair market value of the Property shall be determined in accordance with the Uniform Standards of Professional Appraisal Practice then in effect, using the following procedure.

Within thirty (30) days of the delivery of notice of the exercise of the Option, the Parties shall meet and confer to seek agreement upon the fair market value. If the Parties are unable to agree within sixty (60) days after the commencement of such discussions (or such longer period as they may mutually agree upon), the Parties shall each select one appraiser within fifteen (15) days thereafter to determine the fair market value. If a Party does not identify its appraiser in writing to the other within such fifteen (15) day period, the lone appraiser shall determine the fair market value, and that appraiser's valuation shall be binding on the Parties. Assuming both Parties timely designate an appraiser, the two appraisers then shall meet within fifteen (15) days to select a neutral third appraiser (the "Referee"). The initial two appraisers shall furnish the Parties with a written determination of the fair market value within forty-five (45) days after their selection. If the two appraisals differ by less than fifteen percent (15%) of the lower of the two, the average of the two appraisals shall be the fair market value, and shall be final and binding on the Parties. If the two appraisals differ by fifteen percent (15%) of the lower of the two, the Parties shall deliver copies of both appraisals to the Referee. The Referee shall first prepare his or her own independent appraisal and shall then determine the fair market value by taking the average of: (A) the appraised determination of the fair market value of the Property by the Referee and (B) the average of the Optionor's valuation and the Optionee's valuation. This averaged, combined valuation shall be determined within thirty (30) days after receipt by the Referee and constitute the final and binding determination on the Parties of the fair market value.

The cost of each appraisal shall be paid by the Party for whom it is performed, and the cost of the Referee shall be shared equally.

The Parties may prepare such further instructions and procedures as they deem appropriate to establish the fair market value of the Property by mutual agreement.

5. RETENTION OF CONSIDERATION

In the event this option is not exercised, all sums paid will be retained by Optionor in consideration of the granting of this option.

6. COVENANTS AND WARRANTIES OF OPTIONOR

Through the term of this option, and any extension thereof, Optionor warrants it shall:

- A. Maintain the Property in a marketable state, including all necessary operating services, utilities, maintenance, and repair at Optionor's sole cost.
- B. Refrain from committing any waste or nuisance upon the Property.
- C. Observe all laws, ordinances, regulations, and restrictions affecting the Property and its use.
- D. Preserve the use, possession, and management of the Property.
- E. Provide upon request to Optionee copies of all documents, reports, studies, maps, surveys, current leases, current maintenance agreements, historical data, or other

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materials that are in Optionor's possession or control that pertain to the Property and that are subject to disclosure under the California Public Records Act.

7. CONDITION OF TITLE

Optionor's covenants with respect to title during the Term or any extension thereof are set forth in Section 6, above. If the option is exercised, Optionee's obligation to close the purchase and sale under the Purchase Agreement shall be conditioned upon First American Title, or a title company reasonably substituted by Optionee, issuing an ALTA owner's extended title insurance policy.

8. INVESTIGATION OF PROPERTY

At any time and from time to time during the term of this option or any extension thereof, Optionee may enter the Property for the purposes of inspection, survey, tests, design of improvements, and other actions ("Due Diligence") reasonably related to the investigation by Optionee of the suitability of the Property for the Optionee's business purposes. By executing this Option Agreement, Optionor grants to Optionee and Optionee's consultants, employees, and agents a license to enter the Property to conduct such investigation and planning. Such license shall commence upon Optionor's execution of this Agreement and terminate upon the earlier of the Close of Escrow or other termination or expiration of this Agreement. Optionee shall indemnify, defend and hold Optionor harmless from any and all expenses, costs, losses, damages, claims or liability, or for any damage to Property, or injury, illness or death of any person, occurring in, on or about the Property or any part thereof, arising out of or relating to Optionee's Due Diligence and resulting from the negligent acts or willful misconduct of Optionee, its employees, or agents or consultants, other than to the extent caused by the negligence or willful misconduct of Optionor, its employees or agents. In the event Optionee desires to drill into the Property, take core samples from the Property, cut into enclosed areas of the building, or perform any other tests or inspections of an intrusive nature (collectively "Tests"), Optionee shall first notify Optionor of the nature, extent, and location of such Tests, and shall obtain Optionor's advance approval of such Tests, which approval shall not be unreasonably withheld or delayed by Optionor. Optionee shall, at Optionee's sole expense, promptly repair any damage to the Property caused by Optionee, its agents, employees or consultants during the course of Optionee's Due Diligence, and restore any area or component of the Property, the building, or other improvements located thereon to the condition in which they were in prior to the performance of any such Tests. All costs of Due Diligence shall be borne by Optionee.

9. ASSIGNMENT

Optionee may assign this option and the rights under it if and only if Optionee gives prior written notice and Optionor so consents, which consent shall not be unreasonably withheld. An assignment shall be effective only if the assignee assumes all the duties and obligations of Optionee under this Option Agreement in a writing duly executed and delivered to Optionor.

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10. RISK OF LOSS

If material loss or damage occurs to the Property during the term or any extension thereof, but before exercise of the option, Optionee may elect to terminate this option by delivering written notice to Optionor after discovery of such loss in accordance with the notice provisions of Section 14, below. Optionee shall have no other right or remedy in event of such loss or damage.

11. MEMORANDUM OF OPTION TO BE RECORDED

On execution of this Option Agreement, Optionor and Optionee shall execute and record in the official records of the County of Santa Clara a memorandum of option in the form of Exhibit “B”, attached hereto. Optionee covenants to execute and deliver to Optionor said memorandum for the Property.

12. TIME OF ESSENCE

Time is of the essence of this Option Agreement and is a material term of this Option Agreement. If the option is not exercised as required by the Option Agreement before expiration of the term or any extension thereof, as herein provided, the option and all rights of Optionee shall automatically and immediately terminate without notice, and Optionee shall have no interest whatsoever in the Property. All exhibits attached hereto are incorporated herein by this reference.

13. ATTORNEY FEES

In the event of any action at law or in equity between the parties arising from or in connection with this Option Agreement, the prevailing party shall recover reasonable attorney fees and other reasonable costs incurred in that action in addition to any other relief, and such attorney fees and costs shall be included in and as part of any judgment in such action.

14. NOTICES

All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid. Any such notice shall be effective as of the date it is transmitted and mailed or delivered. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

To Seller:

City Manager
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

To Buyer:

President
Milpitas Economic Development
Corporation
455 East Calaveras Boulevard
Milpitas, CA 95035

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15. ENTIRE AGREEMENT

This Option Agreement contains the entire agreement between the parties pertaining to the subject matter in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Option Agreement shall be binding unless executed in writing by all parties.

16. RIGHT TO TERMINATE

The Optionee shall have the right to terminate this Agreement at any time without cause upon delivery of notice to the Optionor in conformity with the provisions of Section 14, above.

17. CAPTIONS

The captions to the Sections of this Option Agreement are inserted for convenience only and shall not affect the intent of this Option Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement the day and year first above written.

OPTIONOR
CITY OF MILPITAS

Date _____
Thomas C. Williams,
City Manager

OPTIONEE
MILPITAS ECONOMIC DEVELOPMENT CORPORATION

Date _____
Thomas C. Williams,
President

LIST OF EXHIBITS

Exhibit A: Property Legal Description
Exhibit B: Memorandum of Option

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EXHIBIT A

Property legal description

Real Property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

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EXHIBIT B

MEMORANDUM OF OPTION

This Memorandum of Option is made on March 28, 2011, between the City of Milpitas ("Optionor"), a municipal corporation of the State of California, and the Milpitas Economic Development Corporation, a nonprofit public benefit corporation, ("Optionee"), who agree as follows:

1. Optionor grants to Optionee the option to lease the real property described in Exhibit "A" (the "Option Property"), more commonly known as _____, Milpitas, California.
2. The term of the option is for a period of twenty (20) years beginning on March 28, 2011 and terminating on March 28, 2031.
3. The option that is the subject of this Memorandum of Option is granted in accordance with an Option Agreement between Optionor and Optionee concerning the Option Property and dated March 28, 2011 ("Option Agreement"). This Memorandum of Option is prepared for the purpose of recordation and shall not alter or affect in any way the rights and obligations of Optionor and Optionee under the Option Agreement. In the event of any inconsistency between this Memorandum of Option and the Option Agreement, the terms of the Option Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Option Agreement.

OPTIONOR
CITY OF MILPITAS

Date _____
Thomas C. Williams,
City Manager

OPTIONEE
MILPITAS ECONOMIC DEVELOPMENT CORPORATION

Date _____
Thomas C. Williams,
President