

RESOLUTION NO. \_\_\_\_\_

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY MILPITAS,  
THE MILPITAS SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT  
AGENCY, AND THE MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

**WHEREAS**, the City of Milpitas had planned for over 10 years and envisioned a plan to bring Transit Oriented Development to the south area of Milpitas near the Great Mall of California where there currently exists a Santa Clara Valley Transit Authority Light Rail Line and Station and where there is also planned for operation in 2017, a Bay Area Rapid Transit Line and Station; and

**WHEREAS**, Transit Oriented Development calls for higher residential densities than otherwise exist in the City of Milpitas and its environs in order to take advantage of the aforementioned public rail transit systems and reduce the carbon footprint of residents within Milpitas and commuters within the greater Bay Area, meeting statewide pollution and transportation goals and to that end has developed and adopted the Transit Area Specific Plan, including plans for high density housing and attendant streets, sidewalks, landscaping and parks necessary for public convenience and livability; and

**WHEREAS**, the Transit Area Specific Plan is consistent with the General Plan for the City of Milpitas which calls for “providing a park and recreation system designed to serve the needs of all residents of the community” and consistent with City Ordinance requirements mandates the provision of 3.5 acres of parks for every 1000 residents within the Transit Area Specific Plan area; and

**WHEREAS**, according to the General Plan, the Transit Area Plan ensures the conservation, development and use of natural resources by providing “smart growth” through infill development and providing for the improvement of parks and creek-side trails designed to serve the needs of all residents of the community; and

**WHEREAS**, in fulfillment of these goals of the General Plan and State law as set forth in the Quimby Act, providing for setting aside land or the payment of fees to create open space, parks and recreational facilities to serve the community needs, the Transit Area Specific Plan requires parks within the plan area at a ratio of 3.5 acres per 1000 people, noting that “The amount of parkland in the Transit Area is treated as an overall total with the amount of acreage based on buildout projections of the future population on 20 years time”; and

**WHEREAS**, in calculating the amount of parkland necessary to meet the 20-year buildout of the Transit Area, “the Plan includes one or two public parks in each subdistrict, approximating the mandated minimum open space acreage per 1,000 residents...” and calculating that parkland need has determined that approximately 36 acres of parkland is necessary to meet the parkland requirements for the Transit Area Specific Plan Area as required by City Ordinance and the General Plan; and

**WHEREAS**, integral to this plan for parkland, constituting almost one-third of the park area designated in the Transit Area Specific Plan, is the McCandless Property (10.9 acres), subject of Resolution #25 of the Oversight Board to the Successor Agency of the Redevelopment Agency of the City of Milpitas, adopted at its meeting of September 12, 2013; and

**WHEREAS**, Oversight Board Resolution #25 seeks City and Milpitas Economic Development Corporation (MEDC) consideration of the draft First Amendment to the Standstill Agreement; and

**WHEREAS**, the draft First Amendment to the Standstill Agreement seeks to set aside the Standstill Agreement with regard to the McCandless Property on specific terms and conditions including the sale of the entire McCandless Property to the Milpitas Unified School District for school purposes; and

**WHEREAS**, the City, the Successor Agency and the MEDC are philosophically in agreement with setting aside the Standstill Agreement with regard to the McCandless Property as it is in the best interests of the community, but proposes it be done on terms and conditions not yet negotiated between the City, MEDC and the School District; and

**WHEREAS**, The City, the Successor Agency and the MEDC approve setting aside the Standstill Agreement, but do so on different terms and conditions than those proposed by the Oversight Board as follows.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milpitas, the Successor Agency and the MEDC hereby adopt the Modified First Amendment to the Standstill Agreement, as attached hereto as Exhibit A.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk/Agency Secretary/Secretary

\_\_\_\_\_  
Jose S. Esteves, Mayor/Chair/Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney/Agency Counsel/  
Corporate Counsel

**MODIFIED FIRST AMENDMENT  
TO  
AGREEMENT BETWEEN THE CITY OF MILPITAS, THE SUCCESSOR AGENCY TO  
THE CITY OF MILPITAS AND THE MILPITAS ECONOMIC DEVELOPMENT  
CORPORATION REGARDING PRESERVATION OF ASSETS PER OVERSIGHT  
BOARD REQUEST ("STANDSTILL AGREEMENT")**

**THIS MODIFIED FIRST AMENDMENT TO THE STANDSTILL AGREEMENT ("Modified First Amendment")** is entered into by the City of Milpitas ("**City**"), the Successor Agency to the Milpitas Redevelopment Agency ("**Successor Agency**") and the Milpitas Economic Development Corporation ("**MEDC**"), as a proposed alternative to that requested and approved by the Milpitas Redevelopment Oversight Board ("**Oversight Board**") on September 12, 2013.

**RECITALS**

- A. The City, the Successor Agency, the MEDC and the Milpitas Unified School District ("**MUSD**") agree that the McCandless Property (as hereafter defined) is an appropriate site upon which a joint use be constructed of a City Park and a MUSD school.
- B. The City's Milpitas Transit Area Specific Plan (adopted June 2008 and amended December 2011) designated properties with APN Nos. 86-41-016, -017 and -018 (collectively, "**McCandless Property**") as the site for a new City park and elementary school.
- C. The approximately 10.9 acre McCandless Property site is an ideal location for a joint use City Park and elementary school, since it lies within walking distance of the areas of highest population growth in the City.
- D. The McCandless Property is currently owned by the MEDC under a March 7, 2011 assignment of the "Agreement for Purchase and Sale and Joint Escrow Instruction for Real Property, APNs: 86-41-016, 017, and -018," dated February 15, 2011, between Mission West Properties, LLC ("**Mission West**") as the seller and the Milpitas Redevelopment Agency ("**MRDA**") as the buyer for a total price of Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000) ("**Purchase Agreement**").
- E. The Purchase Agreement calls for: (1) an initial payment of Three Million Dollars (\$3,000,000); (2) annual payments of Three Million Dollars (\$3,000,000) on the anniversary of the effective date for four years; and (3) payment of the unpaid portion on the fifth anniversary of the effective date.
- F. On January 9, 2012, Mission West conveyed the McCandless Property to the MEDC in exchange for the initial Three Million Dollar (\$3,000,000) payment and a Promissory Note for the remainder Eighteen Million Seven Hundred Eighty Thousand Dollars (\$18,780,000).
- G. Currently there is litigation between the City, the MEDC, the Milpitas Housing Authority ("**MHA**") and the Successor Agency on one side and the California Department of Finance, the State Controller's Office, the County of Santa Clara and the County Office of Education on the other, which involves property and assets (Case Nos. 34-2013-80001436 and 34-2013-80001508 in Superior Court of California, County of Sacramento.) ("**Milpitas Litigation**").
- H. The McCandless Property is among the real property and cash assets listed in the February 25, 2013 "Standstill Agreement" requested and approved by the Oversight Board, and entered into by the Successor Agency, the City, and the MEDC. The Standstill Agreement prohibits the MEDC from transferring, encumbering, selling, or conveying the McCandless Property.

I. MUSD and City wish to negotiate a joint use of the McCandless Property for both a City Park and an elementary school, a joint project providing the greatest benefit to the Transit Area community and the greater Milpitas community for use of the site, as soon as possible to meet the pressing needs for Park and Recreation facilities and school facilities.

J. In order to consummate a joint use of the McCandless Property, it is necessary to release the McCandless Property from the list of properties subject to the Standstill Agreement.

K. The Oversight Board has agreed that an amendment to the Standstill Agreement is appropriate.

**NOW, THEREFORE**, the Standstill Agreement is amended as follows:

1. The above recitals are true and correct and shall be treated as appended to existing recitals in the Standstill Agreement.

2. At such time as negotiations for a joint use of the McCandless Property as both a Park of the City of Milpitas and an elementary school site of MUSD are completed and evidenced by a binding agreement between the MEDC and MUSD for that joint development of the McCandless Property, the Standstill Agreement shall no longer be a restraint upon the transfer, selling, encumbrance or conveyance of the McCandless Property nor shall that Agreement in any other way affect or limit the McCandless Property.

**IN WITNESS WHEREOF**, the Parties have executed this Modified First Amendment as of the date first above written.

**SUCCESSOR AGENCY TO THE MILPITAS REDEVELOPMENT AGENCY**

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

**CITY OF MILPITAS**

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

**MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

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

AS REQUESTED AND APPROVED BY:

**MILPITAS REDEVELOPMENT AGENCY OVERSIGHT BOARD**

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

**Mary Lavelle**

**From:** Rob Means [rob.means@electric-bikes.com]  
**Sent:** Thursday, October 03, 2013 6:29 PM  
**To:** Mary Lavelle  
**Subject:** 10/15 Council agenda item on sale of property to MUSD

City Clerk's Office

OCT 04 2013

RECEIVED

Mary,

Please forward this e-mail to the Council members and include in the Council packet for the 10/15 meeting. Thanks.

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Dear City Council,

Take the deal! The Milpitas Unified School District (MUSD) has offered to buy a critical property at the same price that you paid for it. Please agree to sell it to them at your October 15 meeting. Our city needs a new school on that property now. Further delay hurts our community.

Yes, I understand that the appraised market price has risen about 10%, and you would like to profit from that fact. But, how real is that estimate? One could argue that property values in the Transit Area are above-market partly because of the school and park that are planned there. Without the school and park, those values drop. Or one could point out that real estate prices generally have been artificially re-inflated. Either way, the City will not be able to sell that land for that price to any other buyer for many years to come. So, take the deal!

Take the money and run. Get it off the books of the Oversight Committee and courts. Remember, if (when) the courts rule against the City's arguments about RDA assets, fewer assets means less City liabilities. And we all know how much the City has bet on this court case. This deal is a chance to reduce our exposure to loss. So, take the deal!

Sincerely,  
Rob Means  
1421 Yellowstone Avenue  
Milpitas, CA 95035

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Rob Means, 1421 Yellowstone Ave., Milpitas, CA 95035-6913  
408-262-0420h, 408-262-8975w, [rob.means@electric-bikes.com](mailto:rob.means@electric-bikes.com)

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