

MILPITAS OVERSIGHT BOARD

TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

MILPITAS OVERSIGHT BOARD MEETING

Thursday, February 20, 2014, at 4:00 PM

Milpitas City Hall, Committee Room
455 E. Calaveras Blvd., Milpitas, CA

MEMBERS:

Mike Mendizabal, Chairman
Armando Gomez
Emma Karlen
Bruce Knopf
Mike McInerney
Maribel Medina
Glen Williams

AGENDA

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

II. PUBLIC FORUM:

Public comments regarding any subject not on the agenda, limited to three minutes.

III. APPROVAL OF MINUTES FOR SEPTEMBER 12, 2013, MEETING

IV. APPROVAL OF AGENDA

V. OLD BUSINESS:

- A. Continued Workshop Regarding the Disposition and Conveyance of Specified Governmental Use Buildings and Public Improvements to the City of Milpitas for Continued Governmental Use, Operation, and Maintenance, and Consider Directing Successor Agency Staff and Oversight Board Counsel to Provide Additional Information

VI. NEW BUSINESS:

- A. Approve Successor Agency's Administrative Budget for July to December 2014 (FY 14-15A)
- B. Allocate Funds for Appraisal Services on the Recognized Obligation Payment Schedule for July to December 2014 (ROPS 14-15A)

- C. Approve Recognized Obligation Payment Schedule for July to December 2014 (ROPS 14-15A)

VII. AGENDA ITEMS FOR NEXT MEETING

VIII. SET NEXT MEETING DATE

IX. MEETING ADJOURNMENT

Pursuant to the Brown Act, the public has an opportunity to speak on any matter on the agenda, or to any matter not on the agenda within the subject matter jurisdiction of the agency. Comments are limited to no more than 3 minutes per speaker, unless modified by the Board Chair. By law, no action may be taken on any item raised during public comment on items not on the agenda, although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the agency.

Note: The Board may take action on any matter, however listed on the Agenda, and whether or not listed on this Agenda, to the extent permitted by applicable law.

If requested, this agenda can be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact the Oversight Board Clerk for further information. In addition, a person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting, should contact the Board Clerk as soon as possible. The Board Clerk may be reached at barb.crump@gmail.com.

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455 E. Calaveras Blvd., Milpitas, CA

MEMBERS:

Michael Mendizabal, Chairman
Armando Gomez
Marsha Grilli
Emma Karlen
Bruce Knopf
Mike McInerney
Glen Williams

ALTERNATES:

Felix Reliford
Nimrat Johal
Jane Corpus Takahashi
John Guthrie
Michael Murdter
Alan Minato

DRAFT Minutes of the September 12, 2013, Meeting

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Chair Mendizabal called the meeting to order at 4:03 pm.

ROLL CALL

MEMBERS PRESENT: Mike Mendizabal, Marsha Grilli, Emma Karlan,
Bruce Knopf, Mike McInerney, Armando Gomez, & Glen Williams

MEMBERS ABSENT: None

II. PUBLIC FORUM None.

III. APPROVAL OF MEETING MINUTES FOR MAY 13, 2013

Moved by Mr. Knopf and seconded by Mr. McInerney, the draft minutes from the May 13, 2013, meeting were approved unanimously.

IV. APPROVAL OF AGENDA

Moved by Mr. Gomez and seconded by Mr. Knopf, the agenda, as revised to allow Item V.F. to be heard first, followed by Item VI.A., was approved unanimously.

V. NEW BUSINESS

F. Approve Resolution Directing the Successor Agency to Consider the Proposed Amendment No. 1 to the Standstill Agreement and to Present Amendment No. 1 to the MEDC and City for Consideration.

Ms. Gore introduced Milpitas Unified School District (MUSD) Superintendent Cary Matsuoka, who made a presentation to the Oversight Board requesting approval of a resolution to amend the "Standstill Agreement" between the Oversight Board and the Milpitas Entities to allow the sale of the McCandless Property to the Milpitas Unified School District.

Superintendent Matsuoka explained that the District has experienced a five (5) percent growth in enrollment over the last five school years and expects continued growth. Construction of a new school would meet the needs of the growing student community.

After a lengthy discussion between the Oversight Board, its Counsel, Ms. Jennifer Gore, Legal Counsel for MUSD, Ms. Kathy McKee, and City Staff, it was moved by Mr. Gomez and seconded by Ms. Grilli to accept the Resolution as drafted, which passed unanimously.

VI. OLD BUSINESS

A. Workshop Regarding the Disposition and Conveyance of Specified Governmental Use Buildings and Public Improvements to the City of Milpitas for Continued Governmental Use, Operation, and Maintenance, and Consider Directing Successor Agency Staff and Oversight Board Counsel to Provide Additional Information.

The City Attorney for the City of Milpitas presented the item. Members of the Oversight Board repeated their requests for information, and expressed that they were not prepared to move forward with this item until the information requested is provided to the Board.

After a lengthy discussion between the Oversight Board, City Staff, and Legal Counsel, it was determined that this item should be continued to a later meeting to allow the Board sufficient time to formulate questions for its Legal Counsel to investigate and answer at a future meeting.

V. NEW BUSINESS (Continued)

A. Update on Status of Payment for Oversight Board's expenses, including Administrative Support and Legal Services and Approve Revised Successor Agency Administrative Budget for July to December 2013.

Ms. Gore presented the staff report recommending approval of the revised Administrative Budget for July to December 2013.

Moved by Mr. McInerney and seconded by Mr. Williams, to accept the revised budget as submitted. The resolution was approved unanimously.

B. Approve Successor Agency's Administrative Budget for January to June 2014 (FY13-14B)

Ms. Gore presented the staff report.

After a lengthy discussion between the Oversight Board, City Staff, and Legal Counsel, regarding the Successor Agency's proposed budget and how City staff tracks its time spent on Successor Agency business, it was moved by Ms. Karlen and seconded by Mr. Gomez, to approve the Administrative Budget. The resolution was approved by the following vote:

Ayes: Mendizabal, Grilli, Gomez, Karlen

Noes: McInerney, Williams

Abstain: Knopf

C. Approve Recognized Obligation Payment Schedule for January to June 2014 (ROPS 13-14B)

Ms. Gore presented the staff report on the proposed ROPS schedule for January 1 to June 30, 2014, explaining that several items that had been previously disallowed by the Oversight Board and the Department of Finance had been included on the proposed ROPS, and recommending revisions to the ROPS.

Moved by Mr. Knopf and seconded by Mr. Williams, to approve an amended ROPS schedule for January to June 2014 (ROPS 13-14B). Line items 3, 4, 6, 7, 8 and 10, were amended to replace the sums included in columns I and P with zeros, consistent with objections raised by Santa Clara County's Auditor-Controller. The resolution was approved by the following vote:

Ayes: Mendizabal, Grilli, Knopf, McInerney, Williams

Noes: Karlen, Gomez

D. Consider Resolution Extending Oversight Boards' MOU with the County of Santa Clara for Continued Administrative Support Services.

Moved by Mr. McInerney and seconded by Mr. Knopf, to approve proposed Amendment No. 1, extending the MOU with the County of Santa Clara. The resolution was approved by the following vote:

Ayes: Mendizabal, Grilli, Karlen, Knopf, McInerney, Williams

Absent: Gomez

E. Consider Resolution extending Oversight Board's Contract with Miller & Owen for Legal Services.

Moved by Mr. McInerney and seconded by Mr. Knopf, to approve proposed Amendment No. 3, extending the contract with Miller & Owen. The resolution was approved by the following vote:

Ayes: Mendizabal, Grilli, Karlen, Knopf, McInerney, Williams

Absent: Gomez

VII. AGENDA ITEMS FOR NEXT MEETING

The Board requested that the following items be included on the next agenda:

The continued Workshop Regarding the Disposition and Conveyance of Specified Governmental Use Building and Public Improvements to the City of Milpitas for Continued Governmental Use, Operation, and Maintenance.

The proposed amendment to the Standstill Agreement.

VIII. SET NEXT MEETING DATE

The next meeting will be Thursday, November 7, 2013, at 4:00 p.m.

ADJOURNMENT

Moved by Mr. Murdter and seconded by Mr. Knopf the meeting was adjourned at 6:28 p.m. which passed unanimously.

*Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary*

Approved on February 20, 2014:

Michael Mendizabal
Oversight Board Chair

Barbara Crump
Oversight Board Secretary

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: February 20, 2014

ITEM V.A: CONTINUED WORKSHOP REGARDING THE DISPOSITION AND CONVEYANCE OF SPECIFIED GOVERNMENTAL USE BUILDINGS AND PUBLIC IMPROVEMENTS TO THE CITY OF MILPITAS, AND CONSIDER DIRECTING SUCCESSOR AGENCY STAFF AND OVERSIGHT BOARD COUNSEL TO PROVIDE ADDITIONAL INFORMATION

RECOMMENDED ACTION(S):

Hear a presentation by Oversight Board Member Bruce Knopf, and determine whether the Board wants to direct Successor Agency staff and Oversight Board Counsel to respond to the questions raised in Member Knopf's memo or any other questions regarding the transfer of property to the City as governmental use buildings and public improvements.

BACKGROUND:

The Dissolution Law provides that an Oversight Board shall direct a Successor Agency to dispose of all assets and properties of the former Redevelopment Agency ("RDA"). In directing this disposition, the Oversight Board may direct the Successor Agency to "transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset." (Health & Safety Code, § 34181(a).)

Based on this provision, the Successor Agency has requested that the Oversight Board transfer certain governmental use buildings and public improvements (specified in Exhibits A and B to the attached draft resolutions) to the City of Milpitas for governmental use, operation, and maintenance.

At several prior meetings of the Oversight Board (specifically February 25, 2013, May 13, 2013, and September 12, 2013) the Board has held a workshop to discuss the Successor Agency's request. Staff has again attached the staff reports and two draft resolutions prepared by the Successor Agency, for your review. These are the same staff reports and draft resolutions that were provided at your previous three meetings.

Also attached is the September 5, 2013, report from Oversight Board Member Bruce Knopf regarding the Successor Agency's proposed transfer. This is the same report provided as part of your packet for the September 12, 2013, meeting. The memo raises certain questions, and recommends that the Oversight Board direct Successor Agency staff and Oversight Board Counsel to respond to those questions prior to transferring any property to the City.

At the September 12, 2013, meeting, the Oversight Board expressed its frustration that the Successor Agency had not provided the additional information requested on each property proposed for transfer, including information on the history of the original acquisition of the properties by the RDA and whether any agreements exist regarding the use of each property or required payments related to the properties.

Due to the length of the discussion related to this and other items at the September 12, 2013, meeting, the Board continued this item prior to hearing Oversight Board member Knopf's presentation. The Board directed staff to bring the item back at the next meeting to allow the Board ample time to determine which questions, if any, it would like Counsel to research related to the properties proposed for transfer.

DISCUSSION:

As requested at the September 12, 2013, meeting, this item has been included on the agenda to allow the Oversight Board to hear Member Knopf's presentation, and to allow the Oversight Board to direct Successor Agency staff and/or Oversight Board Counsel to respond to the questions raised in Member Knopf's memo or any other questions the Board may have regarding the transfer of property to the City as governmental use buildings and public improvements.

It is Oversight Board counsel's understanding that, as of the date this report was distributed, the additional information requested by the Oversight Board still has not been provided.

ATTACHMENT(S):

Successor Agency Staff Reports and Resolutions
Report by Oversight Board Member Knopf

Prepared by: Jennifer Gore
Oversight Board Legal Counsel



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3050, FAX: 408-586-3056, www.ci.milpitas.ca.gov

Date: February 20, 2013

To: Oversight Board
From: Michael Ogaz, Milpitas City Attorney
Subject: Transfer of City Use properties and projects

Recommended Action

Direct Successor Agency staff to prepare resolutions approving disposition to the City of Milpitas of all City public works and properties funded by the former Redevelopment Agency and used for municipal governmental purposes. Draft copies of proposed resolutions accompany this report.

Background

The former Milpitas Redevelopment Agency funded construction of many public facilities used and operated by the City of Milpitas. Some of this construction occurred on City-owned property, with funding from the Redevelopment Agency; for example, the Redevelopment Agency funded a street resurfacing project in 2009. For other public facilities, such as the Milpitas Sports Center, the Redevelopment Agency purchased property and contracted for construction of the improvements, with the City assuming ownership and financial responsibility for operations and maintenance after completion. In total there exist three categories of properties or projects constructed or used for governmental purposes. Health and Safety Code Section §34181 provides that ownership of assets and properties of the former RDA used for governmental purposes may be transferred to the appropriate public jurisdiction upon approval by the Oversight Board. The properties and projects listed are all used for governmental purposes and should be transferred back to the City. As noted, they fall into three categories. The **first** are real property parcels owned by the City but which are listed on the DDR as property which, if not used for governmental purposes, should be controlled and disposed of by the Successor Agency. The **second** are real property parcels currently owned by the Successor Agency and subject to disposition as authorized by the Oversight Board. The **third** category is for public works projects funded with RDA money but constituting improvements for governmental purposes.

Category One. In March 2011, the Redevelopment Agency conveyed real property to the City. As summarized below, each of these sites was, and is, a City facility used for governmental purposes for which the Redevelopment Agency provided funding in accordance with the Community Redevelopment Law (the "CRL"):

APN	Location	Description
022-02-012	1265 N. Milpitas Blvd.	Public Works HQ
022-02-047	1271-1275 N. Milpitas Blvd.	Police Department HQ, Public Works Yard
086-02-061	775 Barber Lane	Fire Station #4
086-10-025	540 S. Abel Street	Cracolice Building used by City Recreation Department
029-17-004 to 029-17-013, 029-17-015	1325 E. Calaveras Blvd.	Milpitas Sports Center
028-24-025	86 N. Main Street	Open Space used for library construction
028-34-001 to 028-34-094	230 N. Main Street	Vacant property slated for public park per Park Master Plan

In January 2012, the Redevelopment Agency also conveyed to the City a City parking garage at 93 N. Main Street (APN 022-08-003) that serves primarily the County Health Center but is generally available for public parking use.

The former Redevelopment Agency had funded improvements at all of these sites, as well as improvements at other sites that the Agency had never owned. In March 2011, the Agency and City made bookkeeping journal entries reflecting the City's ultimate ownership of some, but not all, of these improvements.

The State Controller and the County of Santa Clara have directed the Successor Agency to permit the Oversight Board to review disposition of these properties to the City. Accordingly, the Successor Agency and City now ask the Oversight Board to ratify the conveyances from the Redevelopment Agency to the City that have already occurred.

Category Two. In addition to the ratification disposition requested above, the City seeks authorization to convey real properties owned and controlled by the Successor Agency to the City as properties used for governmental purposes.

When the former Redevelopment Agency dissolved, it held title to four parcels that are City facilities:

APN	Location	Description
028-24-044	160 N. Main Street	Library and Garage
086-11-008	777 S. Main Street	Fire Station #1
026-13-033	45 Midwick Drive	Fire Station #3
028-12-023	40 N. Milpitas Blvd.	City Hall, Senior Center

Category Three. Approve conveyance by the Successor Agency to the City of all remaining public improvements that are used for governmental purposes. These are public works projects, such as street paving and other maintenance of public facilities which are not real property but enhancements to City owned/controlled properties. The City seeks confirmation that these projects were constructed and used for a governmental purpose and Oversight Board direction to the Successor Agency to transfer these assets to the City. See the accompanying resolution for a list of these public works improvements and projects.

Analysis

The CRL permitted redevelopment agencies such as the former Milpitas Redevelopment Agency to pay the cost of acquiring real property for public works, as well as the cost of developing public works and urban infrastructure, to implement the agency's redevelopment plans (Health & Safety Code §33445.) The CRL did not, however, allow redevelopment agencies to own and operate these public works for the long term. Instead, the CRL contemplated either that redevelopment agencies simply would provide funding to other public agencies for such infrastructure development, or that they would acquire property and develop public improvements and then transfer ownership of the completed public facilities to the agencies for which the redevelopment agency had developed the public facilities. Disposition of these City public facilities, including real property and improvements, to the City thus completes the process required by the CRL for redevelopment-funded public works. This is consistent with the exception allowing transfer to the relevant public agency of assets used for "governmental purposes", found in Health and Safety Code §34181, instead of disposing of those assets.

Fiscal Impact

None. The City, not the Successor Agency, already bears all costs of operating and maintaining these facilities.

If the Oversight Board denies the City request to transfer these properties and project assets to the City, thus requiring the Successor Agency to retain any of these properties or assets, then operation and maintenance costs would fall to the Successor Agency, to be funded through the Redevelopment Property Tax Trust Fund. If the transfers to the City are approved, then operation and maintenance costs will be born by the City.

Recommendation

Adopt two resolutions ratifying the March 2011 and January 2012 dispositions of public works from the Redevelopment Agency to the City, and authorizing the Successor Agency to complete this process by conveying to the City all remaining public works and properties funded by the former Redevelopment Agency.

RESOLUTION 2013-__

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS RATIFYING THE DISPOSITION AND CONVEYANCE OF SPECIFIED GOVERNMENTAL USE BUILDINGS AND PUBLIC IMPROVEMENTS PREVIOUSLY CONVEYED TO THE CITY OF MILPITAS AND DIRECTING AND APPROVING THE TRANSFER OF SPECIFIED GOVERNMENTAL USE BUILDINGS AND PUBLIC IMPROVEMENTS TO THE CITY OF MILPITAS FOR CONTINUED GOVERNMENTAL USE, OPERATION, AND MAINTENANCE

WHEREAS, the California Legislature enacted ABx1 26 (“ABx1 26”), effective June 28, 2011, to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), including the Redevelopment Agency of the City of Milpitas (the “Former Redevelopment Agency”); and

WHEREAS, pursuant to Health and Safety Code Section 34173, the City Council of the City declared that the City would act as successor agency (the “Successor Agency”) to the Former Redevelopment Agency effective February 1, 2012, the date the Former Redevelopment Agency was dissolved pursuant to ABx1 26; and

WHEREAS, pursuant to AB 1484 (together with ABx1 26, the “Redevelopment Dissolution Statutes”), enacted June 27, 2012, to amend various provisions of ABx1 26, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, the Redevelopment Dissolution Statutes provide for the appointment of an oversight board (the “Oversight Board”) with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181; and

WHEREAS, prior to its dissolution the Former Redevelopment Agency exercised that authority granted to it under Health and Safety Code Section 33445 to pay all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement that is publicly owned; and

WHEREAS, the Former Redevelopment Agency transferred the properties the publicly owned, operated, and maintained buildings and public improvements listed in the attached Exhibit A, incorporated herein by this reference, to the City on March 7, 2011, which shall herein after be collectively referred to as the “Transferred Public Improvements”; and

WHEREAS, pursuant to Health and Safety Code Section 34175(b), the Former Redevelopment Agency owned, operated, and maintained buildings and public improvements listed in the attached Exhibit B, incorporated herein by this reference, which shall herein after be collectively referred to as the “Retained Public Improvements” were retained by the Successor Agency on February 1, 2012 when the Former Redevelopment Agency as dissolved; and

WHEREAS, Health and Safety Code Section 34191.3 and Health and Safety Code Section 34181(a) authorize the Oversight Board to direct and approve disposition by the

Successor Agency to the appropriate public jurisdiction of Former Redevelopment Agency governmental purpose properties constructed and used for, among others, roads, school buildings, parks and open space, police and fire stations, libraries, and local agency administrative buildings; and

WHEREAS, Health and Safety Code Section 34177(e) further authorizes the Oversight Board to direct the transfer of ownership of assets and properties used for governmental purposes pursuant to Health and Safety Code Section 34181(a) and directs that that such disposal occur expeditiously and in a manner aimed at maximizing value; and

WHEREAS, the buildings and public improvements that are the subject of this Resolution were constructed and used for a governmental purpose, such as [**describe public improvements**] (collectively, the “Governmental Use Purposes” are generally located in the City of Milpitas within its Redevelopment Project Areas; and

WHEREAS, upon dissolution of the Former Redevelopment Agency, on February 1, 2012, the ownership of the Retained Public Improvements transferred to the Successor Agency pursuant to Health and Safety Code Section 34175(b), and the Successor Agency is now responsible for the disposition of the Retained Public Improvements in accordance with the procedures and requirements of the Redevelopment Dissolution Statutes; and

WHEREAS, the City, as the public jurisdiction generally responsible for the ownership, operation and maintenance of municipal public facilities in the City of Milpitas, is the appropriate public jurisdiction for the ultimate disposition of the Transferred Public Improvements and the Retained Public Improvements; and

WHEREAS, ratification of the disposition of the Transferred Public Improvements to the City for continued use, operation and maintenance for Governmental Use Purposes is consistent with the City’s General Plan, the Downtown Specific Plan, the Redevelopment Plans for the Project Areas, and other applicable City codes and policies in that these local laws and plans call for continued public use and maintenance of these facilities and public improvements;

WHEREAS, the approval and disposition of the Retained Public Improvements to the City for continued use, operation and maintenance for Governmental Use Purposes is consistent with the City’s General Plan, the Downtown Specific Plan, the Redevelopment Plan for the Project Area, and other applicable City codes and policies in that these local laws and plans call for continued public use and maintenance of these facilities and public improvements; and

WHEREAS, to ratify the disposition of the Transferred Public Improvements by the Former Redevelopment Agency and to facilitate the disposition of the Retained Public Improvements by the Successor Agency to the City; for continued use, operation and maintenance for Governmental Use Purposes, the Successor Agency staff has prepared a Public Property Disposition, Use, Operation and Maintenance Agreement (the “Agreement”), a copy of which is on file with the Oversight Board Secretary; and

WHEREAS, public notice of the proposed actions set forth in this Resolution was published in the Successor Agency's newspaper of general circulation on February ___, 2013 in compliance with the requirement of Health and Safety Code Section 34181(f); and

WHEREAS, the ratification of the disposition of the Transferred Public Improvement and disposition of the Retained Public Improvements, and their continued use, operation, and maintenance by the City for Governmental Use Purposes pursuant to the Agreement is exempt from the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines ("CEQA") pursuant to State CEQA Guidelines Section 15301 (as an action resulting in continuation of an existing facility); and

WHEREAS, the accompanying staff report provides supporting information upon which the action set forth in this Resolution is based.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby finds, resolves, and determines that the foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

BE IT FURTHER RESOLVED that pursuant to Health and Safety Code Sections 34191.3, 34177(e), and 34181(a), the Oversight Board hereby ratifies the disposition of the Transferred Public Improvements to the City in consideration for the City's continued use, operation, and maintenance of the Transferred Public Improvements for Governmental Use Purposes, as provided in the Agreement.

BE IT FURTHER RESOLVED that pursuant to Health and Safety Code Sections 34191.3, 34177(e) and 34181(a), the Oversight Board hereby directs the Successor Agency to dispose of the Retained Public Improvements to the City in consideration for the City's continued use, operation, and maintenance of the Retained Public Improvements for Governmental Use Purposes, as provided in the Agreement.

BE IT FURTHER RESOLVED that, to implement the above direction, the Oversight Board hereby approves the Agreement and authorizes the Successor Agency Executive Director or the Executive Director's designee to execute the Agreement on behalf of the Successor Agency, substantially in the form on file with the Oversight Board Secretary, and to take any action and execute any documents, in consultation with the Milpitas City Attorney, acting in the capacity of counsel to the Successor Agency, as may be necessary to: (1) implement the ratification of the disposition of the Transferred Public Improvements pursuant to the terms approved in this Resolution; and (2) to implement the disposition of the Retained Public Improvements pursuant to the terms of this Resolution.

BE IT FURTHER RESOLVED that the Successor Agency is hereby directed to notify the California Department of Finance of the actions set forth in this Resolution in accordance with Health and Safety Code Section 34181(f).

BE IT FURTHER RESOLVED that this Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h) and Section 34181(f).

The above and foregoing Resolution was duly and regularly passed and adopted at a meeting by the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Milpitas at a regular meeting thereof held on _____, 2013, by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

Chairperson

ATTEST:

Oversight Board Secretary

EXHIBIT A
Transferred Public Improvements

Asset Description	Project #	Book Value
Bldg & Improv-Community Center	n/a	\$ 825,590
Bldg & Improv-City Library	n/a	950,195
Bldg & Improv-Police & Public Works	n/a	4,441,845
Bldg & Improv-Corporate Yard	n/a	1,082,335
Bldg & Improv-Milpitas Sport Center	n/a	2,506,828
Bldg & Improv-Tower & Training Facility	n/a	328,063
Bldg & Improv-Fire Station #4	n/a	148,164
Bldg & Improv-Civic Center	CP8026	29,696,480
Bldg & Improv-Milpitas Sports Center	CP8053	4,416,813
Bldg & Improv-Police Dept-Public Works	CP8066	698,196
Bldg & Improv-ADA Fire Stations	CP8067	14,350
Bldg & Improv-Haz Material Remediation-City of Milpitas	CP8074	295,963
Bldg & Improv-Fire Station Replacement	CP8089	3,806,255
Bldg & Improv-Telecommunications Infrastructure	CP8093	3,203,374
Bldg & Improv-Storm Water Pump Improvement	CP8106	100,843
Bldg & Improv-Senior Center Renovation	CP8134	640,143
Bldg & Improv-Gateway Improv Tasman Drive	CP8146	329,543
Bldg & Improv-MSA Master Plan Imprv Phase 1	CP8149	1,146,160
Bldg & Improv-Refinish City Garage Floor	CP8150	23,610
Bldg & Improv-Interim Senior Center Project	CP8151	580,150
Bldg & Improv-Sports Center Large Gym Improv	CP8160	841,874
Bldg & Improv-Sports Center Underwater Pool	CP8163	90,418
Bldg & Improv-Public Works Security	CP8173	92,390
Bldg & Improv-Interim Senior Ctr Re-roofing	CP8178	79,853
Bldg & Improv-Sports Center Swimming Pool	CP8180	220,363
Bldg & Improv-Corporation Yard Canopies	CP8183	610,213
Bldg & Improv-Library Arts	CP8189	165,639
Land Improv-New Corporation Yard	CP8010	91,151
Land Improv-Milpitas Sport Center-East Parking Lot	CP8017/8042	469,465
Land Improv-Milpitas Sport Center-Pool Deck Drains	CP8054/8078	17,203
Land Improv-Civic Ctr Pond & Filtration System	CP8071	8,336
Land Improv-Public Works/Corp Yard Parking Lot	CP8083	243,689
Land Improv-Community Center Tot Lot	CP8088	43,188
Land Improv-Softball Scoreboards-Gill Pk	CP8097	33
Land Improv-Corp Yard Non-point Modifications	CP8099	220,122
Land Improv-MSA Sport Field Modifications	CP8101	10,162
Land Improv-Senior Center Entrance Modifications	CP8104	86,777
Land Improv-Civic Center Walkway Repair	CP8119	23,104
Land Improv-MSA Phases 11 & 12	CP8128	1,434
Land Improv-Range Improvements	CP8136	63,929
Land Improv-Gateway Identification	CP8137	117,421
Land Improv-City Gateway Identification(New)	CP8137B	18,245
Land Improv-City Hall Pond Improvements	CP8141	1,103,092
Land Improv-City Hall Parking/Circulation	CP8143	625,944
Mach & Equip-Emergency Operation Center Equip	CP8036	249,907
Mach & Equip-New Finance System	CP8107	2,631,679
Mach & Equip-Network Hardware & Software	CP8108E1	22,370
Mach & Equip-Desktop Technology	CP8109	2,229,224
Mach & Equip-New Permits System	CP8110	58,112
Mach & Equip-Computer Aided Draft	CP8112	2,537,250
Mach & Equip-Police Records Management	CP8113E	10,930
Mach & Equip-Police & Fire CAD System	CP8115E	138
Mach & Equip-Information Management System	CP8131	660,920
Mach & Equip-Berryessa Pump Station Improvements	CP8138	1,198,612
Mach & Equip-Oakcreek Pump Station	CP8140	229,594
Mach & Equip-Evidence Freezer	CP8159	90,554
CIP-Calaveras/Abel Dual Left Turn Lanes	CP8155	129,060
CIP-Street Resurfacing Project 2009	CP8194	2,233,972
Total		<u>\$ 72,761,271</u>

EXHIBIT B
Retained Public Improvements

Asset Description	Project #	Book Value
CIP-Community Center Renovation	CP8102	\$ 445,736
CIP-Radio Replacement Plan	CP8125	1,075,073
CIP-Misc City Bldg Improvements	CP8135	953,163
CIP-Midtown Improvements	CP8154	2,385,545
CIP-Midtown Parking Garage	CP8161	12,095,507
CIP-Library Design	CP8162	36,950,597
CIP-Main Street Improvement	CP8165	7,283,814
CIP-N. Main Street EIR Mitigations	CP8169	623,650
CIP-Range Lead Containment System	CP8174	159,533
CIP-Senior Center	CP8176	10,644,675
CIP-City Building Improvement	CP8182	390,962
CIP-Storm Pump Station Improvement	CP8188	220,564
CIP-Carlo Street Ramp Project	CP8195	602,812
CIP-Soundwall Renovation	CP8196	212,014
CIP-Civic Center Site Improvement	CP8197	440,095
CIP-Department of Energy Grant Program	CP8198	806,460
CIP-Street Light Pole Improvement	CP8199	18,491
CIP-City Hall AV Equipment	CP9001	6,786
CIP-KP Infrastructure	CP-KB Dev	538,003
CIP-KP Infrastructure	CP-KB Dev	716
CIP-KP Infrastructure	CP-KB Dev	2,679,063
Total		\$ 78,533,256

RESOLUTION 2013-__

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS RATIFYING THE DISPOSITION AND CONVEYANCE OF SPECIFIED GOVERNMENTAL USE PROPERTIES PREVIOUSLY CONVEYED TO THE CITY OF MILPITAS AND DIRECTING AND APPROVING THE TRANSFER OF SPECIFIED GOVERNMENTAL USE PROPERTIES TO THE CITY OF MILPITAS FOR CONTINUED GOVERNMENTAL USE, OPERATION, AND MAINTENANCE

WHEREAS, the California Legislature enacted ABx1 26 (“ABx1 26”), effective June 28, 2011, to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), including the Redevelopment Agency of the City of Milpitas (the “Former Redevelopment Agency”); and

WHEREAS, pursuant to Health and Safety Code Section 34173, the City Council of the City declared that the City would act as successor agency (the “Successor Agency”) to the Former Redevelopment Agency effective February 1, 2012, the date the Former Redevelopment Agency was dissolved pursuant to ABx1 26; and

WHEREAS, pursuant to AB 1484 (together with ABx1 26, the “Redevelopment Dissolution Statutes”), enacted June 27, 2012, to amend various provisions of ABx1 26, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, the Redevelopment Dissolution Statutes provide for the appointment of an oversight board (the “Oversight Board”) with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181; and

WHEREAS, the Former Redevelopment Agency transferred the properties listed below to the City on March 7, 2011, which shall herein after be collectively referred to as the “Transferred Governmental Use Parcels”:

1. Property located in the City of Milpitas identified as Assessor’s Parcel No. 022-02-047, a publicly owned, operated, and maintained area dedicated for use as a police station (the “Police Station Parcel”);
2. Property located in the City of Milpitas identified as Assessor’s Parcel No. 086-02-061, a publicly owned, operated, and maintained area dedicated for use as a fire station (the “Fire Station #4 Parcel”);
3. Property located in the City of Milpitas identified as Assessor’s Parcel No. 022-08-003, a publicly owned, operated, and maintained area dedicated for use as a public parking garage (the “Health Center Parking Garage Parcel”);
4. Property located in the City of Milpitas identified as Assessor’s Parcel Nos. 029-17-004 through Parcel No. 029-17-013 and Parcel No. 029-17-015, a publicly

owned, operated, and maintained area dedicated for use as a sports and recreational complex (collectively, the “Sports Center Complex Parcels”);

5. Property located in the City of Milpitas identified as Assessor’s Parcel No. 086-10-025, a publicly owned, operated, and maintained area dedicated for use as an educational facility (the “Charter School Parcel”);
6. Property located in the City of Milpitas identified as Assessor’s Parcel No. 022-02-012, a publicly owned, operated, and maintained area dedicated for use by the City’s Department of Public Works (the “Public Works Parcel”);
7. Property located in the City of Milpitas identified as Assessor’s Parcel Nos. 028-34-001 through Assessor’s Parcel No. 028-34-094, a publicly owned, operated, and maintained area dedicated for use as open space (the “Open Space Parcel”);
8. Property located in the City of Milpitas identified as Assessor’s Parcel No. 028-24-025, a publicly owned, operated, and maintained area dedicated for use as a public library and parking garage (the “Library Parcel”); and

WHEREAS, pursuant to Health and Safety Code Section 34175(b), the Former Redevelopment Agency properties listed below, which shall herein after be collectively referred to as the “Retained Governmental Use Parcels,” were retained by the Successor Agency on February 1, 2012:

1. Property located in the City of Milpitas identified as Assessor’s Parcel No. 028-24-044, a publicly owned, operated, and maintained area dedicated for use as a public library and parking garage (the “Library Parcel”);
2. Property located in the City of Milpitas identified as Assessor’s Parcel No. 086-11-008, a publicly owned, operated, and maintained area dedicated for use as a fire station (the “Fire Station #1 Parcel”);
3. Property located in the City of Milpitas identified as Assessor’s Parcel No. 026-13-033, a publicly owned, operated, and maintained area dedicated for use as a fire station (the “Fire Station #3 Parcel”);
4. Property located in the City of Milpitas identified as Assessor’s Parcel No. 028-12-023, a publicly owned, operated, and maintained area dedicated for use as a city administrative building and community center (the “City Hall Community Center Parcel”); and

WHEREAS, Health and Safety Code Section 34191.3 and Health and Safety Code Section 34181(a) authorize the Oversight Board to direct and approve disposition by the Successor Agency to the appropriate public jurisdiction of Former Redevelopment Agency governmental purpose properties constructed and used for, among others, roads, school buildings, parks and open space, police and fire stations, libraries, and local agency administrative buildings; and

WHEREAS, Health and Safety Code Section 34177(e) further authorizes the Oversight Board to direct the transfer of ownership of assets and properties used for governmental purposes pursuant to Health and Safety Code Section 34181(a) and directs that that such disposal occur expeditiously and in a manner aimed at maximizing value; and

WHEREAS, the properties that are the subject of this Resolution were constructed and used for a governmental purpose, such as school buildings, parks and open space, police and fire stations, libraries, and administrative buildings (collectively, the “Governmental Use Purposes” are generally located in the City of Milpitas within its Redevelopment Project Areas; and

WHEREAS, upon dissolution of the Former Redevelopment Agency, on February 1, 2012, the ownership of the Retained Governmental Use Properties transferred to the Successor Agency pursuant to Health and Safety Code Section 34175(b), and the Successor Agency is now responsible for the disposition of the Property in accordance with the procedures and requirements of the Redevelopment Dissolution Statutes; and

WHEREAS, the City, as the public jurisdiction generally responsible for the ownership, operation and maintenance of municipal public facilities in the City of Milpitas, is the appropriate public jurisdiction for the ultimate disposition of the Transferred Governmental Use Parcels and the Retained Government Use Parcels; and

WHEREAS, ratification of the disposition of the Transferred Governmental Use Parcels to the City for continued use, operation and maintenance for Governmental Use Purposes is consistent with the City’s General Plan, the Downtown Specific Plan, the Redevelopment Plans for the Project Areas, and other applicable City codes and policies in that these local laws and plans call for continued public use and maintenance of these public administrative, recreational, educational, and health service facilities;

WHEREAS, the approval and disposition of the Retained Governmental Use Parcels to the City for continued use, operation and maintenance for Governmental Use Purposes is consistent with the City’s General Plan, the Downtown Specific Plan, the Redevelopment Plan for the Project Area, and other applicable City codes and policies in that these local laws and plans call for continued public use and maintenance of these public administrative, recreational, educational, and health service facilities; and

WHEREAS, to ratify the disposition of the Transferred Governmental Use Parcels by the Former Redevelopment Agency and to facilitate the disposition of the Retained Governmental Use Parcels by the Successor Agency to the City; for continued use, operation and maintenance for Governmental Use Purposes, the Successor Agency staff has prepared a Public Property Disposition, Use, Operation and Maintenance Agreement (the “Agreement”), a copy of which is on file with the Oversight Board Secretary; and

WHEREAS, public notice of the proposed actions set forth in this Resolution was published in the Successor Agency’s newspaper of general circulation on February __, 2013 in compliance with the requirement of Health and Safety Code Section 34181(f); and

WHEREAS, the ratification of the disposition of the Transferred Governmental Use Parcels and disposition of the Retained Governmental Use Parcels, and their continued use, operation, and maintenance by the City for Governmental Use Purposes pursuant to the Agreement is exempt from the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines (“CEQA”) pursuant to State CEQA Guidelines Section 15301 (as an action resulting in continuation of an existing facility) and Section 15325(f) (as a transfer to preserve open space or lands for park purposes); and

WHEREAS, the accompanying staff report provides supporting information upon which the action set forth in this Resolution is based.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby finds, resolves, and determines that the foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

BE IT FURTHER RESOLVED that pursuant to Health and Safety Code Sections 34191.3, 34177(e), and 34181(a), the Oversight Board hereby ratifies the disposition of the Transferred Government Use Parcels to the City in consideration for the City’s continued use, operation, and maintenance of the Transferred Government Use Parcels for Governmental Use Purposes, as provided in the Agreement.

BE IT FURTHER RESOLVED that pursuant to Health and Safety Code Sections 34191.3, 34177(e) and 34181(a), the Oversight Board hereby directs the Successor Agency to dispose of the Retained Government Use Parcels to the City in consideration for the City’s continued use, operation, and maintenance of the Retained Government Use Parcels for Governmental Use Purposes, as provided in the Agreement.

BE IT FURTHER RESOLVED that, to implement the above direction, the Oversight Board hereby approves the Agreement and authorizes the Successor Agency Executive Director or the Executive Director’s designee to execute the Agreement on behalf of the Successor Agency, substantially in the form on file with the Oversight Board Secretary, and to take any action and execute any documents, in consultation with the Milpitas City Attorney, acting in the capacity of counsel to the Successor Agency, as may be necessary to: (1) implement the ratification of the disposition of the Transferred Governmental Use Parcels pursuant to the terms approved in this Resolution; and (2) to implement the disposition of the Retained Governmental Use Parcels pursuant to the terms of this Resolution.

BE IT FURTHER RESOLVED that the Successor Agency is hereby directed to notify the California Department of Finance of the actions set forth in this Resolution in accordance with Health and Safety Code Section 34181(f).

BE IT FURTHER RESOLVED that this Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h) and Section 34181(f).

The above and foregoing Resolution was duly and regularly passed and adopted at a meeting by the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Milpitas at a regular meeting thereof held on _____, 2013, by the following vote:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSTAIN:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:

Chairperson

ATTEST: _____
Oversight Board Secretary

Date: September 5, 2013
To: Chair Mendizabal and Members of the Milpitas Oversight Board
From: Bruce Knopf, Member of the Milpitas Oversight Board
Subject: **Successor Agency Request for Ratification of Transfer of Certain Properties to the City as "Government Use" and 2004 Milpitas City-RDA Loan and Purchase and Sale/Leaseback Agreements**

Recommended Action:

1. View video of Joint RDA/City Council meeting of September 7, 2004, at which the RDA / City Council approved the City's purchase of and RDA loan for the subject properties; and
2. Continue discussion of properties currently held by the City including: three fire stations, a police station, a portion of the Civic Center complex, and what is now the County library and parking garage to such time as the Successor Agency receives a Finding of Completion; and
3. Direct Successor Agency staff to provide answers to Questions 1 and 2, below, and direct Oversight Board Counsel to report to the Oversight Board on responses to Questions 3 and 4 below regarding the rescission of the RDA Loan/Promissory Note and Purchase and Sale and Leaseback Agreements, or other available remedies to recover funds on behalf of the taxing entities.

Background

On May 24, 2013, the City requested that the Oversight Board consider approving/ratifying the transfer of certain properties from the Successor Agency to the City as "government use" assets under Health and Safety Code section 34181(a). These assets include three fire stations, a police station, a portion of the Civic Center complex, and what is now the County library and parking garage. As described below, these six properties were the subject of a 2004 "loan" between the City and RDA.

Discussion

RDA Loan/Promissory Note

On September 7, 2004, the City of Milpitas (City) and the former Redevelopment Agency (RDA) entered into a sale and lease back agreement. The purchase is reflected in a Purchase and Sale Agreement (Agreement), by which the RDA purchased eight properties from the City for a purchase price of \$29,300,000. The properties included the Milpitas Police Station; Fire Stations 1, 3, and 4; and a portion of the Civic Center (Exhibit A). Under the terms of the sale, the RDA executed a Promissory Note under which the principal balance due the City accrues interest at a fixed rate of ten percent (10%) annually and has a maturity date, where the total unpaid balance comes due after forty years (September 7, 2044). This has been referred to in previous documents as the "City / RDA Loan." Under the terms of the Note, the City has the right to demand payment at any time and in any amount. Apparently the intent was to allow the City to

call for payment at any time that such payment might be needed to meet City budget requirements.

The City's leaseback and continued use of the facilities was reflected in an RDA/City Lease Agreement that allows the City to rent the facilities at no cost and only pay for certain obligations such as cost of utilities, maintenance, and insurance. Unless an earlier termination was agreed upon by the City and RDA, the Lease would expire in ninety-nine (99) years or the expiration date of the Redevelopment Plan.

The City and RDA subsequently amended the Purchase and Sale Agreement (Exhibit B) on August 21, 2007 after information surfaced that the RDA had previously paid for all or a part of the value of the land and the cost of the construction of improvements on four of the properties. The purchase price was accordingly reduced from \$29,300,000 to \$20,455,191, to reflect the credit for previous expenditures by the RDA on these improvements.

As of January 17, 2012, the RDA had paid the City \$14,800,000 under this Note (See 2012 Comprehensive Annual Financial Report), on that date, at a joint meeting of the RDA, the City Housing Authority, and the City Council, the RDA transferred all of these assets back to the City.

Question 1 (directed to City/Successor Agency): Ignoring for the moment that the transfer of such properties was prohibited by the State dissolution law six months earlier (Health and Safety Code section 34163, adopted June 28, 2011), why did the City accept the transfer of properties on January 17, 2012 without cancelling the RDA loan and returning the Promissory Note?

Question 2 (directed to City/Successor Agency): Two weeks later, on January 31, 2012, after having transferred the properties back to the City, the RDA made a payment of \$3,600,000 to the City. Why did the City accept the payment on property already returned, and why did the RDA continue to make payments on properties it no longer owned?

ROPs Payment

At the Oversight Board meeting of April 10, 2012, the Successor Agency, without revealing that the properties had already been transferred back to the City, asked the Oversight Board to approve the \$3.6 million payment on ROPS I (line item 2). Ignorant of the facts, the Oversight Board approved use of tax increment for payment to the City.

Question 3(directed to Oversight Board Counsel): What steps are available to the Oversight Board, if any, to remedy this expenditure?

Request for Oversight Board Approval/Ratification of transfer of properties as "Government Use"

A review of the record of the original RDA purchase transaction from the City raises the fundamental question as to why the RDA purchased these properties from the City. The RDA had already spent funds to improve these City owned facilities, and there was no need to

purchase the properties in order to make the improvements. The record would seem to suggest that the only reason was to create debt on the RDA books and to position the City to have access that it otherwise would not have had to tax increment (Exhibit C). While redevelopment agencies typically took steps to finance legitimate activities in ways that created debt on their books, redevelopment law would have required the Milpitas RDA to have had a qualifying redevelopment purpose to support acquisition of property. However, nowhere in the record has Milpitas RDA demonstrated that these acquisitions were necessary to implement a qualified redevelopment activity, to address and eradicate conditions of blight or otherwise meet eligible redevelopment purposes.

The apparent justification on the record was that "...it's not unusual for the city to sell properties to the RDA to be able to use a proceed [sic] to help fund a city budget" (Exhibit D).

Rescission of RDA Loan/Purchase and Sale and Leaseback Agreement

The RDA's transfer of the properties to the City without the City's cancellation of the Loan and Promissory Note, and the RDA/Successor Agency's subsequent payment to the City of \$3.6 Million have deprived the taxing entities of tax increment revenue that otherwise would, and should, have been distributed to them. An appropriate remedy would be for the Successor Agency and the City to "unwind" (that is rescind) the RDA-City Loan and the Purchase and Sale Agreement. The effect would be to restore both parties to their original rights and condition: the City would hold ownership of the properties and the City would return the \$14.8 million and \$3.6 million payments to the Successor Agency.

Question 4 (directed to Oversight Board Counsel): Can the Oversight Board direct the Successor Agency to "unwind" (that is rescind) the RDA-City Loan and the Purchase and Sale Agreement? If not, what other legal remedies may be available to the Oversight Board to restore City ownership of the properties and the return of the \$14.8 million and \$3.6 million payments to the Successor Agency?

Summary

The Oversight Board has already once on this matter taken action without having all of the necessary information. Until such time as these questions are completely addressed, it is premature for the Oversight Board to consider any potential action regarding transfer of properties under "governmental use provisions." All discussion and action regarding these properties should be continued until the above questions are satisfactorily addressed and the Successor Agency obtains its Finding of Completion.

Exhibits

- A. List of properties from 2004 Agreement
- B. 2007 Amended Agreement
- C. Transcript from September 7, 2004, City Council Meeting
- D. Transcript from March 15, 2011, City Council Meeting

Exhibit A

PROPERTY; ALLOCATION OF PURCHASE PRICE

1. 163 North Main Street APN 022-08-041	\$2,000,000
2. North Main Street (South Side) APN 022-08-042	\$2,020,000
3. 160 North Main (Old Senior Center) APN 028-24-019	\$2,640,000
4. 1275 N. Milpitas (Police Station) APN 022-02-047	\$8,500,000
5. 457 E. Calaveras Blvd. (Portion of Civic Center Property excluding City Hall) APN 028-12-11	\$5,940,000
6. 777 S. Main Street (Fire Station 1) APN 086-11-008	\$6,240,000
7. 45 Midwick (Fire Station 3) APN 026-13-033	\$890,000
8. 775 Barber (Fire Station 4) APN 086-02-061	\$1,070,000
TOTAL	\$29,300,000

RESOLUTION NO. 7694

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING AND AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT
TO THE AGREEMENT OF PURCHASE AND SALE BETWEEN THE CITY OF
MILPITAS AND THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS
AND APPROVING AND AUTHORIZING AN AMENDED AND RESTATED
PROMISSORY NOTE**

WHEREAS, the redevelopment plan for the Milpitas Redevelopment Project Area No. 1 (“**Project Area**”) was adopted by the City Council of the City by Ordinance No. 192 on September 21, 1976 (as thereafter amended, the “**Redevelopment Plan**”); and

WHEREAS, pursuant to Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the “**CRL**”), Redevelopment Agency of the City of Milpitas (“**Agency**”) has responsibility to carry out the Redevelopment Plan for the Project Area; and

WHEREAS, on September 7, 2004 the City of Milpitas (“**City**”) and the Agency entered into an Agreement of Purchase and Sale (“**Agreement**”) whereby the Agency purchased eight parcels of land (“**Property**”) from the City; and

WHEREAS, Agency gave City a promissory note for the purchase price of the Property in the principal amount of Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) (“**Loan**”); and

WHEREAS, Agency and City have subsequently discovered that the Agency provided prior assistance to the City to purchase a portion of the Property in accordance with the CRL; and

WHEREAS, Agency and City now wish to amend the Agreement (“**Amendment**”) to reduce the purchase price of the Property from Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) to Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191) (“**Amended Purchase Price**”); and

WHEREAS, Agency and City now wish to enter into an amended and restated promissory note (“**Promissory Note**”) to evidence the Amended Purchase Price and to clarify the repayment terms of Agency; and

WHEREAS, the Amendment will be of benefit to the residents of the Project Area and the City and is consistent with, and shall facilitate the implementation of the Redevelopment Plan.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS
DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Finds that the execution of the Amendment substantially in the form presented to the Agency Governing Board and on file with the City Clerk will further the implementation of the Redevelopment Plan and is in the best interests of the Agency and the City.

Section 2. Approves the Amendment and the Promissory Note, and authorizes the City Manager to execute the Amendment substantially in the form on file with the City Clerk, with such modifications as the City Manager may approve with the advice of the City Attorney.

PASSED AND ADOPTED this 21ST day of August 2007, by the following vote:

AYES: (4) Mayor Esteves, and Councilmembers Giordano, Gomez and Polanski

NOES: (0) None

ABSENT: (1) Vice Mayor Livengood

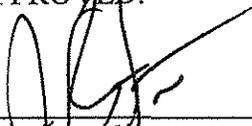
ABSTAIN: (0) None

ATTEST:



Mary Lavelle, City Clerk

APPROVED:



Jose S. Esteves, Mayor

APPROVED AS TO FORM:



Steven T. Mattas, City Attorney

**FIRST AMENDMENT TO
AGREEMENT OF PURCHASE AND SALE**

This First Amendment to Agreement of Purchase and Sale (this "**Amendment**") amending that certain Agreement of Purchase and Sale ("**Agreement**") dated September 7, 2004 by and between the City of Milpitas ("**City**") and the Redevelopment Agency of the City of Milpitas ("**Agency**") is made as of dated August 21, 2007 ("**Amendment Date**") by and between the City and the Agency. City and Agency are collectively referred to herein as the "**Parties.**" Capitalized terms shall have the meaning set forth in the Agreement.

RECITALS

A. The redevelopment plan for the Milpitas Redevelopment Project Area No. 1 ("**Project Area**") was adopted by the City Council of the City by Ordinance No. 192 on September 21, 1976 (as thereafter amended, the "**Redevelopment Plan**").

B. Pursuant to Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the "**CRL**"), Agency has responsibility to carry out the Redevelopment Plan for the Project Area.

C. Section 33445 of the CRL authorizes redevelopment agencies to pay all or a part of the value of the land for and the cost of the installation and construction of any building, facility structure or other improvement that will be publicly owned, either inside or outside the project area.

D. City and Agency entered into the Agreement for the acquisition by Agency of eight parcels of real property located in the Project Area and more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**").

E. Pursuant to the Agreement, Agency purchased the Property from City for Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) ("**Purchase Price**") based on an independent appraisal of the Property.

F. City and Agency subsequently determined that, pursuant to the CRL, Agency financially assisted in the property acquisition and or construction of improvements on four of the parcels comprising the Property.

G. City and Agency wish to reduce the Purchase Price to Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191) ("**Amended Purchase Price**") to reflect the prior Agency assistance.

H. City and Agency wish to enter into an amended and restated promissory note to evidence the Amended Purchase Price and to clarify repayment terms of the Agency.

I. This Amendment will be of benefit to the residents of the Project Area and the City and is consistent with, and shall facilitate the implementation of the Redevelopment Plan.

NOW THEREFORE, City and Agency hereby agree to amend the Agreement as follows:

Section 2. Purchase Price is hereby replaced in its entirety as follows:

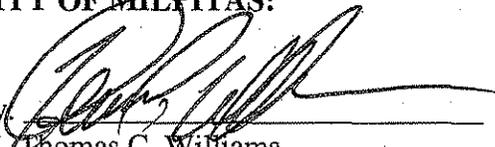
The amended purchase price for the Property ("**Amended Purchase Price**") shall be Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191). The Amended Purchase Price shall be allocated among the parcels that comprise the Property as set forth in Exhibit A of the Amendment.

Section 3. Payment of Purchase Price is hereby replaced in its entirety as follows:

Agency shall pay the Amended Purchase Price to City pursuant to an amended and restated promissory note (the "**Amended and Restated Promissory Note**") substantially in the form attached to the Amendment as Exhibit B. The obligation of Agency to make payments pursuant to the Amended and Restated Promissory Note shall be subordinate to all indebtedness of Agency existing as of the Effective Date or subsequently incurred with the approval of City.

IN WITNESS WHEREOF, City and Agency have executed this Amendment as of the Amendment Date.

CITY OF MILPITAS:

By: 

Thomas C. Williams
Its: City Manager

MILPITAS REDEVELOPMENT
AGENCY:

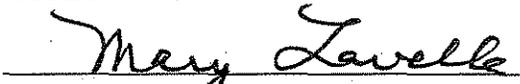
By: 

Thomas C. Williams
Its: Executive Director

ATTEST:


Mary Lavelle, City Clerk

ATTEST:


Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

 for Steven Mattas
Steven T. Mattas, City Attorney

APPROVED AS TO FORM:

 for Steven Mattas
Steven T. Mattas, Agency Counsel

Exhibit A

**PROPERTY
ALLOCATION OF AMENDED PURCHASE PRICE**

<u>APN No.</u>	<u>Property</u>	<u>2004 Appraised Value</u>	<u>Amended Purchase Price</u>
1) 022-08-041	163 N. Main Street	\$2,000,000	\$ 862,592
2) 022-08-042	South of Devries House	2,020,000	1,250,552
3) 028-24-019	160 N. Main (Old Senior Center)	2,640,000	2,640,000
4) 028-04-047	1275 N. Milpitas (Police Station)	8,500,000	2,375,104
5) 028-12-011	455 E. Calaveras Blvd. (excluding City Hall)	5,940,000	5,940,000
6) 086-11-008	777 S. Main Street (Fire Station 1)	6,240,000	6,240,000
7) 026-13-033	45 Midwick (Fire Station 3)	890,000	890,000
8) 086-02-061	775 Barber Lane (Fire Station 4)	<u>1,070,000</u>	<u>256,943</u>
		<u>\$29,300,000</u>	<u>\$20,455,191</u>

Exhibit B

AMENDED AND RESTATED PROMISSORY NOTE

FOR VALUE RECEIVED, the Redevelopment Agency of the City of Milpitas, a public agency ("**Maker**"), promises to pay to the City of Milpitas, a municipal corporation ("**Holder**"), in lawful money of the United States of America, the principal sum of Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191) ("**Loan**"), or so much thereof as may be outstanding from time to time hereunder pursuant to the Amended Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Agreement of Purchase and Sale, dated as of September 7, 2004 and amended by a First Amendment Dated August 21, 2007, by and between Maker and Holder (together, the "**Amended Agreement**"), and is subject to the terms and conditions of the Amended Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Amended and Restated Promissory Note (this "**Note**") without definition shall have the meanings ascribed to such terms in the Amended Agreement.

1. TERMS OF LOAN

1.1. Term. The term of the Loan is forty (40) years from the Effective Date (September 7, 2044, the "**Maturity Date**").

1.2. Interest Rate. The outstanding principal balance of the Loan shall accrue interest at the fixed rate of ten percent (10%) simple interest per year. Interest shall not compound from year to year, and the maximum amount of interest to be paid by Maker to Holder under this Note shall not exceed Eighty-one Million Eight Hundred Twenty Thousand Seven Hundred Sixty Four Dollars (\$81,820,764).

1.3. Repayment of the Loan. Principal and accrued interest, or any portion thereof from time to time outstanding under this Note, shall be payable on demand within thirty (30) days after demand is made by Holder to Maker, or if no demand is made, on the Maturity Date.

1.4. Manner of Payment. All payments of principal and interest on this Note shall be made by certified or bank cashier's check payable to Holder at 455 E. Calaveras Boulevard, Milpitas, CA 95035-5479 or at such other place as Holder shall designate to Maker in writing, or by wire transfer of immediately available funds to an account designated by Holder in writing, or in Holder's discretion, by ledger and book entry transfers.

1.5. Prepayment of Loan. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Any partial prepayments shall be applied first to accrued but unpaid interest and then to principal.

2. DEFAULTS

2.1. Events of Default. The occurrence of any one or more of the following events with respect to the Maker shall constitute an event of default hereunder ("**Event of Default**"):

(a) If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Holder notifies maker thereof in writing.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

2.2. Notice by Maker. Maker shall notify Holder in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.3. Remedies. Upon the occurrence of an Event of Default hereunder (unless the Event of Default has been cured by Maker or waived by Holder), Holder may, at its option, (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Holder in connection with Holder's exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys' fees.

3. MISCELLANEOUS

3.1. Waiver. The rights and remedies of Holder under this Note shall be cumulative and not alternative. No waiver by Holder of any right or remedy under this Note shall be effective unless in a writing signed by Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Holder will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right of Holder arising out of this Note can be discharged by Holder, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Holder; (b) no waiver that may be given by Holder will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Maker will be deemed to be a

waiver of any obligation of Maker or of the right of Holder to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2. Notices. Any notice required or permitted to be shall be given in accordance with Section 10 of the Amended Agreement.

3.3. Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4. Governing Law. This Note will be governed by the laws of the State of California without regard to conflicts of laws principles.

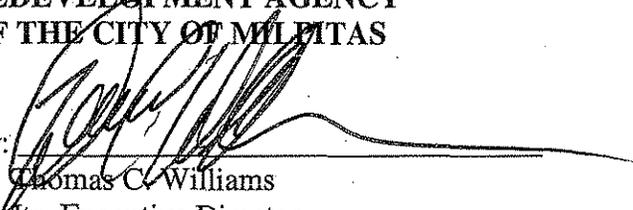
3.5. Parties In Interest. This Note shall bind Maker and its successors and assigns and shall accrue to the benefit of Holder and its successors and assigns.

3.6. Section Headings, Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first stated above.

MAKER

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: 

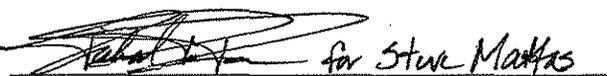
Thomas C. Williams

Its: Executive Director

ATTEST


Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:


Steven T. Mattas, Agency Counsel

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement"), dated as of this 7th day of SEPTEMBER, 2004 ("Effective Date"), is entered into by and between the City of Milpitas ("City"), a municipal corporation, and the Redevelopment Agency of the City of Milpitas ("Agency"), a public body organized under California Health and Safety Code Section 33000 et seq. ("Community Redevelopment Law"): City and Agency are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, by Resolution No. 192, adopted in 1976, the Agency established the Milpitas Redevelopment Project Area No. 1 ("Project Area") located within the City, and adopted a redevelopment plan for the Project Area (as thereafter amended, the "Redevelopment Plan");

WHEREAS, the City owns certain real property consisting of eight parcels located in the Project Area and more particularly described in Exhibit A attached hereto and incorporated herein (the "Property");

WHEREAS, the City desires to sell to Agency, and Agency desires to purchase from City, the Property, pursuant to the terms and conditions set forth herein;

WHEREAS, City and Agency staff have evaluated comparable properties, and have determined through appraisals that the fair market value of the Property is equal to the Purchase Price specified herein;

WHEREAS, the City Planning Commission has determined that the disposition of the Property is consistent with the General Plan;

WHEREAS, the acquisition of the Property pursuant to the terms hereof will be of benefit to the residents of the Project Area and the City and is consistent with, and shall facilitate the implementation of the Redevelopment Plan; and

WHEREAS, the Agency and the City Council of the City of Milpitas ("City Council") have each adopted the findings required by California Health and Safety Code Section 33445.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Purchase. City shall sell to Agency, and Agency shall purchase from City, the Property in accordance with the terms, covenants and conditions set forth herein.

2. Purchase Price. The purchase price for the Property (“**Purchase Price**”) shall be Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000). The Purchase Price shall be allocated among the parcels that comprise the Property as set forth in Exhibit A.

3. Payment of Purchase Price. Agency shall pay the Purchase Price to City pursuant to a promissory note (the “**Note**”) substantially in the form attached hereto as Exhibit C. The Note shall provide that Agency shall make an initial payment to City in an amount equal to Six Million One Hundred Thousand (\$6,100,000) (the “**Initial Payment**”) on or before June 30, 2005, with the balance of the Purchase Price to be payable upon demand by City; provided however, the obligation of Agency to make payments pursuant to the Note shall be subordinate to all indebtedness of Agency existing as of the Effective Date or subsequently incurred with the approval of City.

4. Conveyance of Title; Closing. Conveyance of the Property shall be accomplished by the execution, delivery, and recordation of one or more Grant Deeds substantially in the form attached hereto as Exhibit B. Unless this Agreement is terminated pursuant to the terms hereof or extended by mutual written consent of the Parties, the closing date for conveyance of the Property (“**Closing Date**”) shall be a date mutually agreeable to the Parties. On the Closing Date: (i) the Agency shall make a payment to City in the amount of the Initial Payment; (ii) the Agency shall execute and deliver the Note to City; (iii) the City shall execute and deliver the Grant Deed(s) to Agency; (iv) the Agency shall execute a Certificate of Acceptance for each Grant Deed, and (v) the Agency shall cause the Grant Deed(s) to be recorded in the official records of Santa Clara County, California. Possession of the Property shall be delivered to Agency on the Closing Date; provided however, if mutually agreed upon by the Parties, the Parties may convey the parcels that comprise the Property in one or more conveyances on separate dates.

5. Prorations. Property taxes or payments in lieu of taxes (if any are applicable to the Property) shall be prorated as of the Closing Date based upon the most recent tax bill available, including any such payments which may accrue or property taxes which may be assessed after the Closing Date but which pertain to the period prior to the transfer of title to the Property to Agency, regardless of when or to whom notice thereof is delivered. Any bond or assessment that constitutes a lien on the Property as of the Closing Date shall be assumed by Agency. Rents payable under any leases existing prior to the Closing Date, and any utility and sewer service charges shall be prorated as of the Closing Date.

6. AS-IS Sale. Agency acknowledges and agrees that: (i) prior to the Closing Date in Agency’s discretion, Agency shall inspect the Property and examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition of the Property; (ii) by purchasing the Property, Agency shall be deemed to have approved of all such characteristics and conditions; (iii) the Property is to be purchased, conveyed to, and accepted by Agency in its present condition, “AS IS”, “WHERE IS” AND WITH ALL FAULTS, and no patent or latent defect or deficiency in the condition of the Property whether or not known or discovered, shall affect the rights of either City or Agency hereunder, nor shall the Purchase Price be reduced as a consequence thereof.

7. City's Covenants. City covenants that from the Effective Date and through the Closing Date, City: (i) shall not permit any liens, encumbrances, or easements to be placed on the Property without the consent of Agency; (ii) shall not enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Agency or the Property after the Closing Date without the prior written consent of Agency; (iii) shall not permit any act of waste or act that would tend to diminish the value of the Property for any reason, except that caused by ordinary wear and tear; and (iv) shall maintain the Property in its condition as of the Effective Date, ordinary wear and tear excepted, and shall manage the Property substantially in accordance with City's established practices.

8. Damage and Destruction. In the event of any damage or other loss to the Property, or any portion thereof, caused by fire, flood or other casualty prior to the Closing Date in an amount not exceeding \$50,000, Agency shall not be entitled to terminate this Agreement, but shall be obligated to purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that City shall: (i) assign and transfer to Agency all of City's rights under any insurance policy covering the damage or loss, and all claims for monies payable from City's insurer(s) in connection with the damage or loss, and (ii) pay to Agency on the Closing Date the amount of City's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the Property or any portion thereof prior to the Closing Date in an amount in excess of \$50,000, Agency may elect either to terminate this Agreement upon written notice to City, or to consummate the purchase of the Property, in which case City shall (i) assign and transfer to Agency all of City's rights under any insurance policy covering the damage or loss, and all claims for monies payable from City's insurer(s) in connection with the damage or loss, and (ii) pay to Agency on the Closing Date the amount of City's deductible under the insurance policy or policies covering the damage or loss. If Agency elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Agency shall be returned to Agency, and all rights and obligations hereunder shall terminate.

9. Condemnation. If prior to Close of Escrow, a material portion of the Property is taken by eminent domain (or an action of eminent domain has been commenced against all or any portion of the Property) (excluding for purposes of this Section, the exercise of any eminent domain powers by the Agency), upon City's receipt of notice thereof City shall promptly notify Agency of such fact, and Agency shall have the option to terminate this Agreement upon notice to City given not later than ten (10) days after Agency's receipt of City's notice. If Agency elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Agency shall be returned to Agency, and all rights and obligations hereunder shall terminate.

If Agency does not exercise such option to terminate this Agreement, City shall assign to Agency on the Closing Date, and Agency shall be entitled to negotiate for, receive, and keep, all awards, and rights to receive future awards, for such taking by eminent domain, and the transaction contemplated by this Agreement shall be consummated pursuant to the terms hereof, without any reduction of the Purchase Price.

10. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective

addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

To City: City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035-5479
Attention: City Manager

To Agency: Milpitas Redevelopment Agency
455 E. Calaveras Boulevard
Milpitas, CA 95035-5479
Attention: Executive Director

11. No Brokers. Each Party hereby represents and warrants to the other Party that it has retained no broker or other party to whom a commission or finder's fee is due with respect to the transactions contemplated hereby. Each Party shall defend, indemnify and hold the other Party harmless from and against all claims, expenses, costs, or arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

12. Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

13. Entire Agreement. This Agreement, together with Exhibits A through C, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements with respect thereto.

14. No Merger. The obligations stated herein that are intended to operate after the Closing shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled as provided herein.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

16. Interpretation; Captions. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

17. Exhibits. Exhibits A through C attached hereto are incorporated herein by this reference and made a part of this Agreement.

18. No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by Agency or City of any of the provisions of this Agreement.

19. Amendments. This Agreement may be modified or amended only by an instrument in writing executed by both Agency and City.

20. Assignment Prohibited. This Agreement and the rights conferred hereunder may not be assigned by operation of law or otherwise absent the express written consent of the Parties.

21. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which taken together shall constitute one agreement.

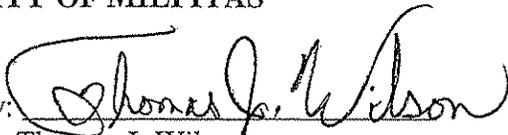
22. Further Assurances. City and Agency each agree to undertake such other actions as may reasonably be necessary to carry out the intent of this Agreement, including without limitation, the execution and/or recordation of any additional documents, which may be required to effectuate the transactions, contemplated hereby.

23. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

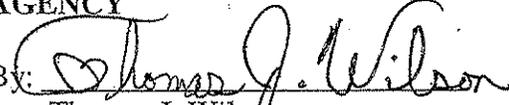
24. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Agency or City shall be personally liable in the event of any default or breach hereunder by either Party.

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

CITY OF MILPITAS

By: 
Thomas J. Wilson
Its: City Manager

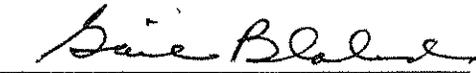
**MILPITAS REDEVELOPMENT
AGENCY**

By: 
Thomas J. Wilson
Its: Executive Director

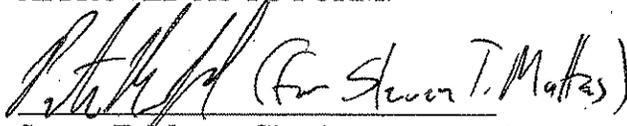
ATTEST:


Gail Blalock, City Clerk

ATTEST:


Gail Blalock, Agency Secretary

APPROVED AS TO FORM:

 (For Steven T. Mattas)
Steven T. Mattas, City Attorney

APPROVED AS TO FORM:

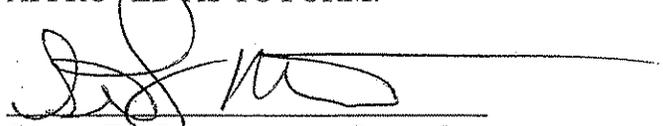

Steven T. Mattas, Agency Counsel

Exhibit A

PROPERTY; ALLOCATION OF PURCHASE PRICE

1. 163 North Main Street APN 022-08-041	\$2,000,000
2. North Main Street (South Side) APN 022-08-042	\$2,020,000
3. 160 North Main (Old Senior Center) APN 028-24-019	\$2,640,000
4. 1275 N. Milpitas (Police Station) APN 022-02-047	\$8,500,000
5. 457 E. Calaveras Blvd. (Portion of Civic Center Property excluding City Hall) APN 028-12-11	\$5,940,000
6. 777 S. Main Street (Fire Station 1) APN 086-11-008	\$6,240,000
7. 45 Midwick (Fire Station 3) APN 026-13-033	\$890,000
8. 775 Barber (Fire Station 4) APN 086-02-061	\$1,070,000
TOTAL	\$29,300,000

Exhibit B

FORM OF GRANT DEED

(Attach form of Grant Deed with Certificate of Acceptance.)

Recording Requested by and When Recorded Mail to:

Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035

Attention: Office of the City Clerk
EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, the City of Milpitas, a municipal corporation (“Grantor”) hereby grants to the Redevelopment Agency of the City of Milpitas, a public agency (“Grantee”) all that real property located in the City of Milpitas, County of Santa Clara, State of California described in Exhibit A attached hereto and incorporated herein.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of _____, 20__.

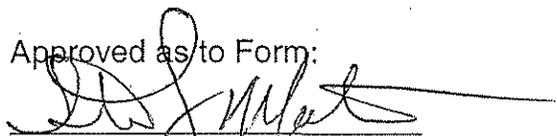
GRANTOR:

CITY OF MILPITAS

By: _____

Its: _____

Attest: _____
Gail Blalock, City Clerk

Approved as to Form:


City Attorney

))

Exhibit A

PROPERTY

(Attach legal description.)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 20__, from the City of Milpitas, a municipal corporation to the Redevelopment Agency of the City of Milpitas, a public agency ("Agency"), is hereby accepted on behalf of the Agency by its Executive Director pursuant to authority conferred by Resolution No. _____, adopted by the Agency on _____, 20__, and that the Agency consents to recordation of the Grant Deed by its duly authorized officer.

Dated _____, 20__

By: _____
Executive Director

Print Name: Thomas J. Wilson

ATTEST:

By: _____
Gail Blalock, Agency Secretary

APPROVED AS TO FORM:

By:  _____
Steven T. Mattas, Agency Counsel

ACKNOWLEDGMENT

State of California)
) ss.
County of Santa Clara)

On _____ before me, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

Exhibit C

FORM OF PROMISSORY NOTE

(Attach form of Promissory Note.)

PROMISSORY NOTE

\$29,300,000

9/7, 2004

FOR VALUE RECEIVED, the Redevelopment Agency of the City of Milpitas, a public agency ("Maker"), promises to pay to the City of Milpitas, a municipal corporation ("Holder"), in lawful money of the United States of America, the principal sum of Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000), together with interest in arrears on the unpaid principal balance at an annual rate equal to the lesser of ten percent (10%) or the maximum rate allowed by law, in the manner provided below. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Agreement of Purchase and Sale, dated as of 9/7, 2004 by and between Maker and Holder (the "Agreement"), and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the meanings ascribed to such terms in the Agreement.

1. PAYMENTS

1.1. PRINCIPAL AND INTEREST. An initial payment of principal in the amount of Six Million One Hundred Thousand Dollars (\$6,100,000) shall be payable on or before June 30, 2005. The remaining principal balance of this Note together with all accrued interest shall be due and payable in one lump sum on such date as Holder may designate in writing to Maker; provided however, the obligation of Maker to make payments pursuant to this Note shall be subordinate to all indebtedness of Maker existing on the date hereof or subsequently incurred with the approval of Holder.

1.2. MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made by certified or bank cashier's check payable to Holder at 455 E. Calaveras Boulevard, Milpitas, CA 95035-5479 or at such other place as Holder shall designate to Maker in writing, or by wire transfer of immediately available funds to an account designated by Holder in writing, or in Holder's discretion, by ledger and book entry transfers.

1.3. PREPAYMENT. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Any partial prepayments shall be applied first to accrued but unpaid interest and then to principal.

2. DEFAULTS

2.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events with respect to the Maker shall constitute an event of default hereunder ("**Event of Default**"):

(a) If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Holder notifies maker thereof in writing.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

2.2. NOTICE BY MAKER. Maker shall notify Holder in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.3. REMEDIES. Upon the occurrence of an Event of Default hereunder (unless the Event of Default has been cured by Maker or waived by Holder), Holder may, at its option, (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Holder in connection with Holder's exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys' fees.

3. MISCELLANEOUS

3.1. WAIVER. The rights and remedies of Holder under this Note shall be cumulative and not alternative. No waiver by Holder of any right or remedy under this Note shall be effective unless in a writing signed by Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Holder will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right of Holder arising out of this Note can be discharged by Holder, in whole or in part, by a waiver or renunciation of the claim or right

unless in a writing, signed by Holder; (b) no waiver that may be given by Holder will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Holder to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2. NOTICES. Any notice required or permitted to be shall be given in accordance with Section 10 of the Agreement.

3.3. SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4. GOVERNING LAW. This Note will be governed by the laws of the State of California without regard to conflicts of laws principles.

3.5. PARTIES IN INTEREST. This Note shall bind Maker and its successors and assigns and shall accrue to the benefit of Holder and its successors and assigns.

3.6. SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first stated above.

MAKER

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: _____
Its: Executive Director

ATTEST:

Gail Blalock, Agency Secretary

APPROVED AS TO FORM:



Steven T. Mattas, Agency Counsel

Principal Amount 20,455,191.00
 Annual Interest Rate 10%
 Annual Payment

	Payment	Prinicipal	Prin Balance	Interest	Interest Bal	Total Bal
9/4/2004			20,455,191.00			20,455,191.00
6/30/2005			20,455,191.00	1,675,644.41	1,675,644.41	22,130,835.41
6/30/2006			20,455,191.00	2,045,519.10	3,721,163.51	24,176,354.51
6/30/2007			20,455,191.00	2,045,519.10	5,787,970.00	26,243,161.00
6/30/2008	2,100,000.00	-	20,455,191.00	2,045,519.10	5,733,489.10	26,188,680.10
6/30/2009	2,700,000.00	-	20,455,191.00	2,045,519.10	5,079,008.20	25,534,199.20
6/30/2010	4,400,000.00	-	20,455,191.00	2,045,519.10	2,724,527.30	23,179,718.30
6/30/2011	2,000,000.00	-	20,455,191.00	2,045,519.10	2,770,046.40	23,225,237.40
1/31/2012	24,418,456.88	20,455,191.00	(0.00)	1,193,219.48	-	(0.00)
1/30/2013		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2014		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2015		0.00	(0.00)	(0.00)	-	(0.00)
1/31/2016		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2017		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2018		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2019		0.00	(0.00)	(0.00)	-	(0.00)
1/31/2020		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2021		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2022		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2023		0.00	(0.00)	(0.00)	-	(0.00)
1/31/2024		0.00	(0.00)	(0.00)	-	(0.00)
1/30/2025		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2026		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2027		0.00	(0.01)	(0.00)	-	(0.01)
1/31/2028		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2029		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2030		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2031		0.00	(0.01)	(0.00)	-	(0.01)
1/31/2032		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2033		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2034		0.00	(0.01)	(0.00)	-	(0.01)
1/30/2035		0.00	(0.01)	(0.00)	-	(0.01)
1/31/2036		0.00	(0.02)	(0.00)	-	(0.02)
1/30/2037		0.00	(0.02)	(0.00)	-	(0.02)
1/30/2038		0.00	(0.02)	(0.00)	-	(0.02)
1/30/2039		0.00	(0.02)	(0.00)	-	(0.02)
1/31/2040		0.00	(0.02)	(0.00)	-	(0.02)
1/30/2041		0.00	(0.02)	(0.00)	-	(0.02)
1/30/2042		0.00	(0.03)	(0.00)	-	(0.03)
1/30/2043		0.00	(0.03)	(0.00)	-	(0.03)
1/31/2044		0.00	(0.03)	(0.00)	-	(0.03)
9/7/2044		0.00	(0.03)	(0.00)	-	(0.03)
Total	35,618,456.88	20,455,191.03		15,141,978.46		

**Milpitas City Council Meeting
of September 7, 2004. RA8**

OF SEPTEMBER 7, 2004. RA8

[START MILPITAS 2004 WMV]

COUNCIL MEMBER PATRICIA DIXON: So, with that Mr. Mayor, I'd like to move approval of the execution of the memorandum of understanding between the Redevelopment Agency, the City of Milpitas and the County of Santa Clara for the development of a health center on property identified as APN 022-08-042, vacant lands southerly of the DuVries/Smith site.

COUNCIL MEMBER ALTHEA POLANSKI: Second.

MAYOR JOE ESTEVES: Okay. All in favor [crosstalk] Aye. Any opposed? Okay, motion carried. 30, thank you. [crosstalk] We have a great project, thank you. RA8, Mr. Wilson.

MR. TOM WILSON: Yes, thank you, Mr. Mayor. And I'm going to join Mr. King at the podium and we can, I believe, invite Council Member Livengood back.

MAYOR ESTEVES: Okay. Thank you.

MR. WILSON: Mr. Mayor and Members of Council, this item refers to our Redevelopment Agency and frankly is the last major piece that we set out to do about two years ago. In

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restructuring the entire Redevelopment Agency and bringing its finances into conformance with contemporary practices of redevelopment law. And also to maximize the values that redevelopment can provide to our community not only from the economic redevelopment perspective but also to the resource and the assistance to the City. We have a short presentation but I wanted to just kind of remind you of the history of how we came to this particular place. As recently as April you authorized us to engage staff to evaluate a series of properties that are presently held by the City of Milpitas. We asked to have appraisals of those. A standard feature of a contemporary and active Redevelopment Agency is that they own public facilities. And they own them in order to maximize the financial values and to receive a tax increment. You have to have a series of debt and in order to justify tax increment flowing into the agency. And one of the common ways that that is incurred is to own property in which you have a responsibility for paying debt.

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1 And so we did receive your approval and we have
2 reviewed and appraised a series of properties
3 which we are proposing to ask you to transfer
4 from City ownership to the agency creating a
5 value in the City that the agency can, over
6 time, compensate the City for. With that, I'd
7 like to ask Blair to take you through the very
8 brief slide that we have before you. And then
9 come back and answer any questions you might
10 have upon this property transfer.
11

12 MR. BLAIR KING: The manager has covered
13 basically the most of the first bullet point
14 other than we are proposing that eight
15 properties that are owned by the City be sold to
16 the Redevelopment Agency. The total market
17 value as determined by the appraisal is \$29.3
18 million. The terms of the purchase is a
19 promissory note with initial payment of \$6.1
20 million that would be due prior to June 3rd, of
21 2005. Now, in other words, within this fiscal
22 year. The remainder would be on a note that
23 would ride and accrue interest. As the Manager
24 again pointed out, so that is typical practice

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1 with Redevelopment Agencies consistent with the
2 terms of health and safety code section 336-75
3 which describes the means that we actually
4 obtain our funds. Six of the properties will be
5 leased back to the City with no rent obligations
6 unless by mutual consent, mutual consent between
7 the agency and the City. Since the Council
8 services both bodies the mutual consent should
9 be easy to obtain. The finer point that we just
10 want to point out is that redevelopment law, we
11 site the code section for you and in the amended
12 redevelopment plan there are two sections,
13 contemplated this type of provision and allows
14 for the purchase and the lease of property.
15 This technically is a required public hearing
16 both of the Redevelopment Agency and the City
17 Council and has been properly noticed.

18 MR. WILSON: At this point, Mr. Mayor and
19 Council, if, unless you have some questions, we
20 perfectly interested in addressing those, we
21 would ask that you open this item up to public
22 comment as it is a public hearing and needs to
23 have public comment opportunity and then, of
24

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MILPITAS CITY COUNCIL MEETING

OF SEPTEMBER 7, 2004. RA8

course, we'd be available for any follow up after public comment.

MAYOR ESTEVES: Any clarifying question from City Council? Member Livengood.

COUNCIL MEMBER LIVENGOOD: Yes, let me just make sure I understand this. We have according to this listing, City property, like, the Police Station, the Fire Stations and they are currently owned by who?

MR. KING: City of Milpitas.

COUNCIL MEMBER LIVENGOOD: Okay. And they're all in Redevelopment Agency areas?

MR. KING: Yes.

COUNCIL MEMBER LIVENGOOD: And what you're saying is that the City has bought and paid for these already? So, we own these free and clear? Okay. So, we own a piece of property free and clear and we are going to sell that piece of property to the Redevelopment Agency? And as a result of that sale the RDA will pay us money?

MR. KING: Correct.

COUNCIL MEMBER LIVENGOOD: And the reason for this is?

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MILPITAS CITY COUNCIL MEETING
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MR. KING: Three reasons, one, for the money. Two--

COUNCIL MEMBER LIVENGOOD: [interposing] For the show.

MR. KING: --yeah, I [laughter] I was thinking that but I wasn't [laughter]. The second reason [crosstalk] [laughter] really was trying to resist it. The second reason is for the annual statement of indebtedness, which is a business practice of Redevelopment Agencies and just to review it very briefly. The amount of tax increment that actually is collected is held by the assessor, it's held in trust for the Agency. The Agency has to make a claim for that money. The law says there has to be a debt obligation to make a claim. Typically, most Redevelopment Agencies take everything that they have an obligation for and make that claim which exceeds the annual tax increment. The practice in the past from Milpitas is that it has gone at the exact dollar. That is not, that is a practice that is atypical of most redevelopment agencies in this State. So, we're suggesting

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that our Management practices change in that way. The third reason is that typically if you're going to spend redevelopment money, the Redevelopment Agency controls the property. All the projects or all the properties listed are still contemplated to have money spent on them, everything from the Police Station, which we are currently spending redevelopment money on the Dispatch Center to Fire Station. The Fire Stations that we're putting redevelopment money into continually, the Community Center and the like. So, those are the three reasons.

COUNCIL MEMBER LIVENGOOD: Okay. And is this, in a nutshell, is this like, almost like a, I mean, it sounds like some type of a, best way to describe it would be, like, a refinance. I mean, if you had a house with a lot of equity in it.

MR. KING: Yes.

COUNCIL MEMBER LIVENGOOD: Right? And you could just say, okay, yeah, exactly. And so the, we're creating some debt here but we're doing it, at the same time we're creating equity

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1 on the other side?

2 MR. KING: Exactly.

3 COUNCIL MEMBER LIVENGOOD: Is that a fair?
4
5 Okay.

6 MR. KING: Allows you to move, use money
7 that you have in one hand and use the other.

8 COUNCIL MEMBER LIVENGOOD: All right, I
9 understand now. Thank you.

10 MR. WILSON: What is really unique about
11 Milpitas Redevelopment Agency is it has never
12 operated this way. and therefore, we've
13 minimized our access to tax increment as opposed
14 to maximizing it. And this is a step toward
15 maximizing that. And our projections, as you're
16 aware, are such that if we maximize the access
17 to our tax increment we may be able to bring
18 into the community over \$2 billion over the life
19 of the Agency and invest that in our community.
20 Otherwise, we're limited about what we do invest
21 by based upon what we become engaged with. And
22 so this is actually a small step forward to try
23 to maximize the access to a tax increment.

24 MAYOR ESTEVES: Okay. So, you mentioned

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about investing. Do I understand that any money received now by the City from RDA can be used in more purposes than from a RDA money?

MR. WILSON: Yes.

MAYOR ESTEVES: Like what? [crosstalk]

MR. WILSON: Well, for example--

MAYOR ESTEVES: [interposing] I know, -- money, it's only for -- buildings, it's not about -- . So, City money paid by the Redevelopment. So--

MR. WILSON: [interposing] Any receipts that you receive from RDA or from any other revenue to the General Fund give you the authority to budget in this, disperse those dollars with regard to the authorities that you have as a General Law City. So, you can spend it on anything, in essence, that you have the authority to expend general tax revenues from. So, it broadens--

MAYOR ESTEVES: [interposing] So, like -- refund money?

MR. WILSON: --broadens the authority. You can, for example, the Redevelopment Agency

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cannot spend money to operate the facilities or to maintain them. You can build a street but you can't sweep it, you can't plant the tree. You can plant the trees but you can't water them and maintain them. The General Fund, of course, can do all those things.

MAYOR ESTEVES: And we use, for example, now to support, like, one day operation in the library when it was going to close?

MR. KING: Well, you could if you needed too.

MAYOR ESTEVES: It's jumping into, you know?

MR. WILSON: You could if you needed too. We have other suggestions - - the resources there.

MAYOR ESTEVES: [crosstalk] Yeah, of course, yeah.

MR. WILSON: But anyhow--

MAYOR ESTEVES: [interposing] Just an example. Just an example.

MR. WILSON: Example. And any General Fund use from washing the windows to paying salaries.

MAYOR ESTEVES: Since we are transferring

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1 this money to the RDA and it becomes now a loan,
2 okay? Are we, do we have some kind of an
3 expenses in terms of interest? Do we lose money
4 because of interest costs?
5

6 MR. WILSON: No, no.

7 MAYOR ESTEVES: No?

8 MR. WILSON: What you're going to retire
9 this debt that is being created with is existing
10 and/or ongoing tax increment receipts. So,
11 we'll be asking the County to give us more of
12 our earned tax increment to meet the commitments
13 that this debt creates. So, we're not going to
14 be reducing interest in some place by dispensing
15 the money out of RDA in the future. You will
16 receive it and have it operate in the General
17 Fund and you'll also bring more money into the
18 RDA because you have a debt that you can ask to
19 be compensated for with tax increment.

20 MAYOR ESTEVES: Well, actually the City will
21 earn some additional--

22 MR. WILSON: [interposing] They will earn.

23 MAYOR ESTEVES: --to this cost.

24 MR. WILSON: Sure, the City will earn

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something just as--

MAYOR ESTEVES: [interposing] - - costs.

MR. WILSON: --they receive it, yeah.

MAYOR ESTEVES: Right? From the, from
selling our assets to RDA by a loan. So, in
addition to the cost of--

MR. WILSON: [interposing] It will receive
interest.

MAYOR ESTEVES: --we'll be receiving some
interest revenue?

MR. WILSON: Yes. This is, this debt will
be like a mortgage. I think Council Member
Livengood characterized it as a refinance. So,
it will be an interest not to exceed ten percent
applied to the debt that the Agency will pay us
over time.

MAYOR ESTEVES: Not refinance because we are
talking about two entities here.

MR. WILSON: I understand this.

MAYOR ESTEVES: Bad, that's a bad example.
I mean, description.

MR. WILSON: Now, there is, there are two
entities, that's correct. There is a Board, a

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1 similar Board that controls both entities,
2 you're right.

3
4 MAYOR ESTEVES: Two separate agencies.

5 MR. WILSON: Correct.

6 MAYOR ESTEVES: Okay, I think we have some
7 clearer understanding. Any more question from
8 City Council? Okay, with that I want to open
9 for public hearing. Anybody from the audience
10 would like to speak about this agenda item. I'm
11 opening it for public hearing.

12 COUNCIL MEMBER POLANSKI: Seeing none, move
13 to close the public hearing?

14 COUNCIL MEMBER LIVENGOOD: Second.

15 MAYOR ESTEVES: All in favor? [crosstalk]
16 Aye. Okay, the public hearing is closed. Now,
17 any more discussion or question?

18 MR. WILSON: If there are no more questions
19 or discussion we would ask that you seek,
20 present a motion that would handle items number
21 two, three, four and five in the backup
22 materials and vote. So, it would be adopt
23 resolution of Redevelopment Agency authorizing
24 the use of tax increment revenues for the

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acquisition of land and public improvements.
Adopt a resolution of the City Council
authorizing the sale of the property and the use
of tax increment revenues of the acquisition of
land and public improvements. Number four,
adopt a resolution of the Redevelopment Agency
authorizing the lease of Agency property to the
City of Milpitas. And the final item is to
adopt resolution of the City Council authorizing
the lease of Agency property by the City of
Milpitas.

COUNCIL MEMBER POLANSKI: So moved.

[laughter] I was going to say, City Manager,
thank you. [laughter] Thank you. Thank you.

MAYOR ESTEVES: Any second?

COUCNIL MEMBER DIXON: Second.

MAYOR ESTEVES: Any more discussion? One
last question just to, you know? So, how much
loss amount would City be receiving here in
addition to its General Fund? How much are we
looking here?

MR. WILSON: For this fiscal year, Mayor,
the agreements provide that by the end of June

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30 there would be a transfer not to exceed \$6.1 million. And that would be, in essence, the first payment or the down payment on this transaction.

COUNCIL MEMBER POLANSKI: Before we vote. The \$23.2 million paid upon demand, who decides when we demand that?

MR. WILSON: You do.

COUNCIL MEMBER POLANSKI: That's what I thought.

MR. WILSON: Wearing whichever hats you would like to [laughter].

COUNCIL MEMBER POLANSKI: Okay, that was my one question, okay, sorry.

MAYOR ESTEVES: Okay, there's a motion and it's been seconded.

COUNCIL MEMBER POLANSKI: Maybe we should vote?

MAYOR ESTEVES: So, let's vote on the computer here because this is a milestone, also

- - -

MR. WILSON: It is a milestone.

MAYOR ESTEVES: Especially on our financial

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structure of the City. So, well, that's why I'm glad to have this as an agenda item. So, let's vote. [background noise] Okay, great. 4-0, thank you.

MR. WILSON: Thank you, Mayor. I would also like to just take this opportunity to thank Blair King. Blair has done a tremendous amount of the day to day technical work that has brought us a whole series of transactions. And I'd also like to thank the Council. We set forth two years ago in essence, on quite an avenue to do a couple of simple things we thought. And they were, in concept, simple. It's grown into acquiring property. It's grown into one of the most significant acquisitions of land that the City has probably ever made other than an annexation. And we have finally gotten ourselves, with this action, into the most contemporary and effective way of using our Redevelopment Agency. You all have taken a great deal of faith in us and we appreciate that. We hope we've explained most of these clearly. Occasionally we got involved in some

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1 probable complex issues that weren't as
2 straightforward as we had hoped to be but we
3 appreciate the Council's hard work and it does
4 place, as the Mayor indicated, the City and its
5 Redevelopment Agency in very fine financial
6 shape. The bottom line is your Redevelopment
7 Agency now is probably one of the top three in
8 size and capacity in the State of California.
9 And that's an incredible effort done at a time
10 when the State's economics have been very
11 difficult, as you know. So, we look to be
12 seeing about \$2.4 billion dollars over the life
13 of the agency come to the community and its
14 Redevelopment Agency and that will make Milpitas
15 probably one of the most special cities in the
16 Bay Area over the length of it. So, it's
17 expenditure and investment. So, we want to
18 thank you for this journey and this effort. And
19 we still have some more surprises coming, I'm
20 certain, as far as ideas and things but this one
21 really does bring a very large closure to this
22 first effort and we appreciate it.

24 MAYOR ESTEVES: Again, I'm very pleased, I'm

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very thankful because we kept telling everybody that this term is not only working for its present term but we are working forward for the benefit of the many, many future terms to come. If you look at all the accomplishments and changes financially, capital expenditure project and so on. It's not really just for the present but even for the future, many future years to come. So, thank you.

[END MILPITAS2004 WMV]

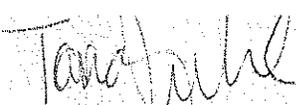
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C E R T I F I C A T E

I, Tara Juhl certify that the foregoing transcript of Milpitas2004.wmv was prepared using standard electronic transcription equipment and is a true and accurate record.

Signature: 

Date 5/6/13

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**Milpitas City Council Meeting of March 15,
2011**

[START RECORDING]

MS. EMMA KARLEN: So we also, in this budget, one of the potential strategies, of course, what we currently are negotiating with employees to come up with some concession, potential reorganization, outsourcing, or combination of any of the above to at least conservatively achieve \$4 million cost reduction. The other is review, or suspension of the non-core services. Also included in one other strategy is once again utilize the RDA loan payment. We do have about \$5.4 million PERS stabilization set aside for the contingency of, in case your PERS rate has gone up significantly. So what staff proposed here is potential where we can use \$1.2 million of the PERS stabilization to help balance the budget. So that's how we come up with the solution for the 12.1. Now of course at this point everything is still in flux. We don't, other than, we are - - \$1.1 million dollar from the service and supplies. The rest of them, you know, we still could be a combination of any the above.

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1
2 MR. JOSE ESTEVES: Question. RDA loan
3 payment. I know we have been doing this before.

4 MS. KARLEN: Yes.

5 MR. ESTEVES: And sometimes we don't even
6 use the whole amount. But now that RDA is being
7 scrutinize, and it looks like we are doing some
8 strategy to in fact use RDA money to balance our
9 budget, is that not an abuse of RDA?

10 MS. KARLEN: Well first of all--

11 [Crosstalk]

12 MR. ESTEVES: Let them answer first and
13 then...

14 MR. TOM WILLIAMS: Mr. Mayor, it's dependent
15 on the governor's budget. The governor's budget
16 to possibly eliminate redevelopment does not
17 include an elimination of redevelopment
18 obligations that are under contract. And so we
19 have a contract between the city and the
20 redevelopment agency for this remaining \$22
21 million loan repayment. So our understanding
22 and legal analysis is that contracts that are
23 already made by the redevelopment agency will
24 not be touched with the governor's proposal--

25 MR. ESTEVES: [Interposing] Oh, yeah, yeah.

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1 I understand. It's legal, it's contracted, and
2 everything else. But the truth of the matter is
3 it's still an RDA, it was still, it was an RDA
4 money. And now we are using it to balance the
5 budget, as we have used before. So if we get
6 audited, for example, I know it's contracted, -
7 -, and everything. Could it be a finding of
8 abuse, of use of the RDA concept?
9

10 MS. KARLEN: Well first of all--

11 MR. ESTEVES: [Interposing] -- my question.

12 MS. KARLEN: Well, I mean I think the city
13 manager answered your question, but we were
14 subject to audit by -- general auditor. I
15 mean, when they reviewed the contract agreements
16 and the way that we can, the RDA can enter that,
17 I don't feel that this is a abuse of the RDA. I
18 mean, in fact it is a legitimate, it's not
19 unusual for the city to sell properties to the
20 RDA to be able to use a proceed to help fund a
21 city budget.

22 MR. ESTEVES: Because everybody knows that
23 RDA is supposed to improve a place, a blighted
24 place.

25 MS. KARLEN: And I do think that RDA have

1 improved a lot of places--

2 MR. ESTEVES: [Interposing] Blighted place.

3 MS. KARLEN: --in the city.

4 MR. ESTEVES: Balancing a budget is way far
5 from improving a place. So it could be, but
6 it's not too direct. It's just a question that
7 we have to think about, okay? And I want to go
8 to the next speaker, because that's my question,
9 that you know, that I want to think about myself
10 too.

11 MR. WILLIAMS: Mr. Mayor--

12 MR. ESTEVES: [Interposing] Yeah?

13 MR. WILLIAMS: In balancing this budget and
14 the strategy that we have before us because we
15 are in negotiations with three unions, and we're
16 in negotiations for side letters with unions
17 that have existing contracts, that's why we
18 don't, we're still with the unions we're
19 negotiating, not changing our position to get
20 approximately 1.2 million from one union. But
21 at another union, it's significantly less.
22 There's only four people in that particular
23 union, and so the equivalent savings for that
24 union is less than \$200,000. So this is

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1
2 dependent, and we're very conservative, in
3 trying to present a budget strategy that if one
4 of the unions with a current contract, we can't
5 get them to agree, we need to have some
6 flexibility built within this budget. Certainly
7 the loan repayment for the redevelopment agency,
8 or even the use of the reserves, would come down
9 if we're successful in achieving our ultimate
10 objective. But again, it's very difficult. I
11 don't want to go into a lot of detail, because
12 we are at the table with the various unions.

13 MR. ESTEVES: What I'm saying is because of
14 the concept of RDA, I would consider it to be a
15 last resort, you know. So that's where I would
16 be coming from. Council Member Polanski.

17 MS. ALTHEA POLANSKI: Thank you, Mayor
18 Esteves. I think actually the city manager
19 answered my question. I was going to ask about
20 the PERS rate stabilization reserve, and
21 reducing it down. And I think I agree with the
22 mayor that five and six on here, the demand for
23 the RDA loan payment and the PERS rate, I would
24 definitely want them to be a last resort, based
25 on what Emma said earlier about the PERS

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1
2 contribution that we're needing to make. It's
3 going to be quite high. And it appeared over
4 several years, that it was going to be that, so
5 I'd be very cautious about that, as we move
6 forward.

7 MR. ESTEVES: Vice Mayor McHugh?

8 MR. PETE McHUGH: Thank you, Mr. Mayor. I
9 just wanted to address the RDA loan payment.
10 And that as I understand it, and I have been
11 troubled by this, but I have gone over it. This
12 is a legitimate accounts receivable. We
13 provided the funding, with a contract to support
14 it, to a redevelopment agency so that they could
15 buy properties. The only thing that's slightly
16 unique is that we can call upon that as we feel
17 appropriate. So I think this is completely
18 defensible as part of government finances. And
19 it might be appropriate to have a city attorney
20 opine on that subject.

21 MR. MICHAEL OGAZ: Mr. Vice Mayor, if you
22 recall, actually you might not have been in
23 office at the time. I have opined on this in
24 the past, and indicated that we found no
25 irregularities, and do believe that the loan to

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1
2 the agency was, is completely legitimate. And
3 we believe it will withstand the effects of the
4 governor's budget proposals. And so frankly,
5 in terms of that though, payment of RDA at this
6 point in time actually would get the hands, that
7 money, away from the grasp, potentially of the
8 governor. And so in one perspective, less money
9 in the hands of the RDA is, could be to the
10 advantage of--

11 MR. MCHUGH: [Interposing] --. The only
12 other thing is as our finance director pointed
13 out, our external auditors found no problems
14 with this at all, this transaction. So I just
15 want to try to reassure you. Thank you.

16 MR. ESTEVES: Well, I think I wasn't clear.
17 I wasn't questioning the legitimacy, because I
18 know it's contracted. It's legal. We have done
19 it before. I'm very clear about that. I'm
20 questioning about the potential abuse of the RDA
21 use. That's my point. Okay? I saw Council
22 Member Armando Gomez, but he went out, so let's
23 proceed, okay?

24 [END RECORDING]

C E R T I F I C A T E

I, Anne Edelman certify that the foregoing transcript of city_council_audio.mp3 was prepared using standard electronic transcription equipment and is a true and accurate record.

Signature: 

Date July 19, 2013

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OVERSIGHT BOARD STAFF REPORT

MEETING DATE: February 20, 2014

ITEM VI.A: APPROVE THE SUCCESSOR AGENCY'S FY 14-15A ADMINISTRATIVE BUDGET FOR THE PERIOD OF JULY 1 TO DECEMBER 31, 2014

RECOMMENDED ACTION(S):

Approve the propose Administrative Budget for July 1, 2014, to December 31, 2014, which does not exceed the Administrative Cost Allowance allowed under the Dissolution Law.

BACKGROUND:

The Dissolution Law requires that a Successor Agency prepare a proposed administrative budget and submit it to the oversight board for its approval. The proposed administrative budget must include all of the following:

1. Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period.
2. Proposed sources of payment for the costs identified in item one (1) above.
3. Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

In addition, the Successor Agency is required to provide the County Auditor-Controller with administrative cost estimates, from its approved administrative budget that are to be paid from property tax revenues deposited into the Redevelopment Property Tax Trust Fund (RPTTF), for each six-month fiscal period covered by a Recognized Obligation Payment Schedule (ROPS).

The Dissolution Act provides for an "administrative cost allowance" to provide funds for successor agencies to wind down the affairs and administer the debt repayments of the former redevelopment agency. The "administrative cost allowance" is defined as "up to 3 percent of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year thereafter; provided, however, that the amount shall not be less than two hundred fifty thousand dollars (\$250,000), unless the oversight board reduces this amount, for any fiscal year or such lesser amount as agreed to by the successor agency. However, the allowance shall exclude, and shall not apply to, any administrative costs that can be paid from bond proceeds or from sources other than property tax. Administrative cost allowances shall exclude any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition. Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and shall not constitute administrative costs."

DISCUSSION:

The Successor Agency staff has prepared the attached Administrative budget of \$171, 739. This amount is less than the 3% administrative cap, and is less than the Administrative budget for the same period in 2013, which was \$292,633.

The proposed budget includes \$3,000 for the Oversight Board's administrative expenses, and \$20,000 for the Oversight Board's legal expenses.

In addition to the proposed Administrative budget, attached is a memo from Board Member Mike McInerney for the Oversight Board's consideration. The memo requests that Successor Agency staff

provide information to the Oversight Board regarding the roles certain functional areas of the City's organization play in the administration of the Successor Agency by August 15, 2014.

Should the Oversight Board determine that it wants the Successor Agency to provide the information requested by Board Member McInerney, the resolution should be revised to add the following language in a new final paragraph:

BE IT FURTHER RESOLVED that the Oversight Board directs Successor Agency staff to provide off-agenda responses to the questions raised in the memo from Board Member McInerney, dated February 12, 2014, regarding the Successor Agency's administrative functions, no later than August 15, 2014.

ATTACHMENT(S):

Proposed Administrative Budget and Breakdown of Successor Agency staff costs
Memo from Board Member McInerney
Resolution

Prepared by: Jennifer Gore
Oversight Board Legal Counsel

**City of Milpitas Successor Agency
ROPS 14-15A Administration Budget
July 2014 to December 2014**

<u>Payee</u>	<u>Description</u>	<u>Proposed Amount</u>
City of Milpitas	Successor Agency Adm Costs - staff	\$ 76,739
ABAG PLAN	Property Insurance	47,000
Various vendors	Copier lease, printing, storage, office equip	6,250
Maze & Assoc.	Audit Costs	8,000
US Bank	Adm. Fee for debt services	1,200
Wells Fargo Bank	Bank fee for checking account	1,050
ACS	Arbitrage Calculation	3,000
Willdan Financial	Bond Continued disclosure	1,000
Ctiy of Milpitas	PG&E Utility Costs	2,500
Ctiy of Milpitas	ABAG Power Utility Costs	500
Ctiy of Milpitas	Water Utility Costs	1,500
County of Santa Clara	Oversight Board clerk	3,000
Miller & Owen	Oversight Board Attorney	<u>20,000</u>
	Total	<u><u>\$ 171,739</u></u>

**Successor Agency Administrative Costs - Staff
July 2014 to December 2014 (ROPS 14-15A)**

Position	Job Duties related to Successor Agency	FY14-15 Salaries & Benefits	PCT	6 months July 2014 to Dec 2014
City Manager	Management of Agency Wind Down	341,982	5%	8,550
Executive Secretary	Provide office support to City Manager	137,940	2%	1,379
City Clerk	Posting of Successor Agency & Oversight Board agenda	187,656	1%	938
HR Director	Agency wind down - Management of layoffs	250,098	2%	2,501
HR Senior Analyst	Assistance to HR Director in performing her duties	159,128	1%	796
Systems Administrator	Posting of Successor Agency & Oversight Board agenda online	167,006	1%	835
City Attorney	Legal Advice in wind down of Agency affairs	296,284	10%	14,814
Executive Secretary - legal	Assistance to City Attorney in performing his duties	135,316	2%	1,353
Finance Director	ROPS, oversight board, successor agency financial transactions wind down, dealing with DOF & SCO	278,434	15%	20,883
Financial Analyst	Provide analytical support to Finance Director	140,274	5%	3,507
Accounting Technician	Perform banking and Investment functions	114,160	2%	1,142
Finance Manager	Assist in ROPS, oversight board, accounting, and dealing with DOF & SCO	200,570	10%	10,029
Accountant	Perform accounting functions	135,582	10%	6,779
Fiscal Assistant	Provide clerical support to Fin Director & Manager	107,790	3%	1,617
Fiscal Assistant	Perform Accounts Payable functions	107,790	2%	1,078
Fiscal Assistant	Revenue collection	107,790	1%	539
	Total			<u><u>76,739</u></u>

MEMORANDUM

TO: Oversight Board to the Milpitas Redevelopment Agency's Successor Agency
FROM: Mike McInerney, Board Member *MSM*
RE: **REFERRAL ON ADMINISTRATION OF SUCCESSOR AGENCY**
DATE: February 12, 2014

RECOMMENDATION

Refer to the Successor Agency Administration an off-agenda report to the Oversight Board by August 15, 2014 that provides the requested information regarding components of the Successor Agency's administration performed by certain functional areas of the City organization as outlined in Attachment A.

DISCUSSION

I wish to understand better what role(s) certain functional areas of the City organization play in the administration of the Successor Agency. My request covers the functional areas of human resources, risk management, property management, governing board support and financial management. I have outlined the questions I have in Attachment A.

Since I see no necessity for a separate Board agenda item on the response to this referral, I am requesting an off-agenda report back. To give City staff ample time to complete this referral, I am proposing a due date of August 15, 2014. I chose this date to make this information available to me and the rest of the Board about one month prior to the Board considering ROPS 14-15B.

REFERRAL RELATED TO ADMINISTRATION OF SUCCESSOR AGENCY

This attachment states the information requests regarding the role(s) certain functional areas of the City organization perform in the administration of the Successor Agency.

A. Governing Board Support

1. What are the tasks or steps the City Clerk's Office perform in preparing agendas, agenda packets, meeting minutes and approved resolutions for posting on the City's website and outside City Hall?
2. Has the City Clerk's office received any public records requests related to the Successor Agency since January 1, 2013? If so, how many requests in each six-month ROPS period? What tasks were involved in responding to each request?
3. What are the tasks or steps involved in the Form 700 Statement of Interest process? How many individuals involved with the Successor Agency must file annual statements independent of City filing requirements?

B. Human Resources (HR)

In May 2012 the City Council approved the layoff of 54.4 positions. On January 31, 2014, the Milpitas Post quoted the City Attorney as saying that to date the City had called back ten individuals.

1. Which positions by job classification did the former Milpitas Redevelopment Agency (RDA) employ?
2. Which of these positions did the City lay off in May 2012 and how many in each position job classification?
3. What former Milpitas RDA positions does the Successor Agency currently employ rather than the City of Milpitas?
4. What are the major tasks involved in managing re-employment lists?

C. Property Management

1. What City departments are involved in the managing of the Successor Agency's properties?

REFFERAL RELATED TO ADMINISTRATION OF SUCCESSOR AGENCY

2. What specific ongoing tasks are involved in managing these properties?
3. What are the specific properties that these City departments manage on behalf of the Successor Agency?

D. Risk Management

1. What specific properties does the ABAG property insurance cover?
2. What is the basis for the calculation of the percentage of that premium that is attributed to the Successor Agency?

E. Financial Management

1. What are the major tasks or steps in making payments to third-party vendors such as the 2003 Tax Allocation Bond or the arbitrage calculation? What is the typical frequency, e.g. monthly, in making these payments?
2. What are the major tasks or steps in having the Successor Agency “pay” for its share of City-wide costs, such as utilities? What is the typical frequency in making these payments?
3. What are the major tasks or steps involved in preparing the two financial statements (Statement of Fiduciary Net Position and Statement of Changes in Fiduciary Net Position) related to the Successor Agency in the annual CAFR? Are there any additional regular financial reports to external agencies?

RESOLUTION NO. _____

**RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF
THE FORMER MILPITAS REDEVELOPMENT AGENCY
APPROVING AN ADMINISTRATIVE BUDGET FOR THE PERIOD OF JULY 1 TO
DECEMBER 31, 2014**

WHEREAS, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the "Dissolution Law"); and

WHEREAS, the Dissolution law provides for the payment of the administrative costs of the Successor Agency to the Former Milpitas Redevelopment Agency ("Successor Agency"), subject to the approval of the Oversight Board of the Successor Agency ("Oversight Board"); and

WHEREAS, the Successor Agency prepared and submitted an administrative budget for the period of July 1 to December 31, 2014, in accordance with State law; and

WHEREAS, the administrative budget prepared by the Successor Agency was considered by the Oversight Board;

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board has considered the full record before it, which includes but is not limited to the staff report, testimony by staff and the public, and other materials and evidence provided to it.

BE IT FURTHER RESOLVED that the Oversight Board adopts the Administrative Budget, in substantially the same form as attached hereto, including separate line items for services from the Oversight Board clerk and legal counsel, representing the Board's intent that amounts unspent for these line items during the FY 14-15A period will be deducted from the administrative cost allowance for the same period.

PASSED AND ADOPTED this 20th day of February, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Michael Mendizabal
Oversight Board Chair

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: February 20, 2014

ITEM VI.B: ALLOCATE FUNDS ON ROPS 14-15A FOR APPRAISAL SERVICES

RECOMMENDED ACTION(S):

Hear a presentation by Oversight Board Member Bruce Knopf, and consider: (1) including a line item for appraisal services on ROPS 14-15A (Item VI.C); and (2) forming an ad hoc committee of the Oversight Board to solicit the services of an independent appraiser.

DISCUSSION:

Attached is a memo from Oversight Board Member, Bruce Knopf, suggesting that the Oversight Board include a line item for appraisal services on ROPS 14-15A to allow for the appraisal of the properties formerly held by the Redevelopment Agency. In addition, Member Knopf has suggested that the Board create an ad hoc committee to solicit the services of an independent appraiser.

By including a line item for appraisals on ROPS 14-15A, the Oversight Board will ensure that sufficient real property tax trust funds are available to pay for appraisal services during the coming ROPS period, and will avoid additional delays in the dissolution process.

ATTACHMENT(S):

Memo from Board Member Knopf
Resolution

Prepared by: Jennifer Gore
Oversight Board Legal Counsel

Date: February 10, 2014
To: Chair Mendizabal and Members of the Milpitas Oversight Board
From: Bruce Knopf, Member, Milpitas Oversight Board
Subject: **Allocate \$40,000 on ROPS 14-15A for Services of an Independent Appraiser**

Recommended Actions

1. Add a new line item to ROPS 14-15A for \$40,000 for potential use of an independent appraiser to prepare appraisal reports for properties owned by the former Milpitas Redevelopment Agency.
2. Form a subcommittee of the Oversight Board, to begin work after July 1, 2014, to solicit services of an independent appraiser and report back to the Board with recommendations for the Board's approval to engage an appraiser(s).

Discussion

Health and Safety Code (H&SC) section 34191.3 stipulates that if the Department of Finance has not approved a long-range property management plan (LRPMP) for the Milpitas Successor Agency by January 1, 2015, then the H&SC section 34177(e) takes effect and provides that the Successor Agency shall dispose of assets and properties as directed by the Oversight Board as expeditiously as possible and in a manner aimed at maximizing value. While some properties previously identified by the Milpitas Successor Agency may be ultimately transferred to a public jurisdiction, other properties would undoubtedly remain for disposal.

Even if the Successor Agency were to receive a Finding of Completion in time to submit an LRPMP to the Department of Finance before the January 1, 2015 deadline, appraisals would still provide essential information for the Board. As in all of its activities, the Oversight Board's analysis and decision on these matters is conducted consistent with its fiduciary responsibilities.

Oversight Board Authority

Under H&SC section 34179(p), for matters within the purview of the Oversight Board, including ROPS approval, the Oversight Board's decision supersedes those made by the Successor Agency.

Background

Pursuant to the Dissolution Law, transfers of assets, including real property, from the former Milpitas Redevelopment Agency to other parties after January 1, 2011, are to be reviewed by the State Controller. On August 28, 2012, the Controller completed this review and issued an Order to the City of Milpitas directing return of certain properties to the Successor Agency. If the Successor Agency were successful in obtaining a Finding of Completion, H&SC section 34191.5(b) requires the Agency to submit a LRPMP to the Oversight Board and Department of Finance (DOF). Under the LRPMP, properties would be developed, used or sold with approval

by the Oversight Board and DOF. All sale proceeds and other revenue generated by the properties must be distributed to all taxing entities within the County.

Fiscal/Resource Impact

There would be a fiscal impact of \$40,000 for ROPS 14-15A (July 1, 2014 through December 31, 2014). Any unspent amount will be adjusted by the County Auditor-Controller in the following ROPS period.

RESOLUTION NO. _____

**RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF
THE FORMER MILPITAS REDEVELOPMENT AGENCY
APPROVING THE ADDITION OF A LINE ITEM TO THE RECOGNIZED
OBLIGATION SCHEDULE FOR JULY 1 TO DECEMBER 31, 2014 (ROPS 14-15A)**

WHEREAS, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the "Dissolution Law"); and

WHEREAS, the Dissolution Law requires the Successor Agency to a former redevelopment agency to submit to the Oversight Board for its approval, no later than March 3, 2014, a Recognized Obligation Payment Schedule covering the period July 1, 2014 to December 31, 2014 (ROPS 14-15A); and

WHEREAS, only expenditures included on the approved ROPS 14-15A will be available for expenditure during the ROPS 14-15A period; and

WHEREAS, the Successor Agency is obligated to expeditiously dispose of the assets and properties of the former redevelopment agency("RDA"), as directed by the Oversight Board, and in a manner aimed at maximizing value; and

WHEREAS, to satisfy the Oversight Board's fiduciary duties, and to avoid additional delays in the expeditious disposition of the properties of the former RDA, appraisals of the properties will be required to determine their value.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board has considered the full record before it, which includes but is not limited to the staff report, testimony by staff and the public, and other materials and evidence provided to it.

BE IT FURTHER RESOLVED that the Oversight Board will revise ROPS 14-15A to include a new \$40,000 line item for property appraisal services. In the event that these funds are not expended, they will be distributed to the taxing entities.

PASSED AND ADOPTED this 20th day of February, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Michael Mendizabal
Oversight Board Chair

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: February 20, 2014

ITEM VI.C: APPROVE THE SUCCESSOR AGENCY'S RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JULY 1 TO DECEMBER 31, 2014 (FY 14-15A)

RECOMMENDED ACTION(S):

Approve a Recognized Obligation Payment Schedule for the period of July 1, 2014, to December 31, 2014, as required under the "Dissolution Law" (ABx1 26, as revised by Court order and AB 1484), and direct Successor Agency staff to take all actions required under law, including but not limited to, forwarding the approved ROPS to the County Auditor-Controller, California Department of Finance, and the California State Controller's Office.

BACKGROUND:

The Dissolution Law requires that an oversight board approve the Recognized Obligation Payment Schedule (ROPS) prepared by the successor agency before it can be submitted to the County Auditor-Controller, California Department of Finance (DOF) and the State Controller's Office. A ROPS lists all of the enforceable obligations of the former Redevelopment Agency and only those payments listed on the ROPS may be made by the Successor Agency.

The Successor Agency only receives a distribution of property tax funding (deposited into a Redevelopment Property Tax Trust Fund [RPTTF]) equal to the amount needed to make the payments listed on the ROPS.

DISCUSSION:

The attached ROPS 14-15A has been prepared by the Successor Agency staff for the Oversight Board's consideration. The obligations included on the ROPS 14-15A are consistent with prior actions of the Oversight Board, and do not include new obligation or obligations previously determined to be unenforceable or otherwise inappropriate for inclusion on the ROPS. Obligations that have been previously denied or retired by the Oversight Board have been color coded by DOF in a pale red.

Should the Oversight Board decide to include a line item on the ROPS for appraisal services, as proposed in Item VI.B, the Successor Agency must revise the ROPS to include that item prior to submission to DOF, and the final two paragraphs of the resolution approving the ROPS should be revised as follows:

BE IT FURTHER RESOLVED that the Oversight Board approves ROPS 14-15A ~~in substantially the same form as attached hereto~~ as revised by the Oversight Board to include a new line item 11, to provide for property appraisals to avoid further delays to the dissolution process.

BE IT FURTHER RESOLVED that the Oversight Board directs Successor Agency staff to forward the approved ROPS, as revised by the Oversight Board, to the Santa Clara County Auditor-Controller, the California Department of Finance, and the California State Controller's Office for certification and approval.

The deadline for submitting the Oversight Board approved ROPS 14-15A is March 3, 2014.

ATTACHMENT(S):
ROPS Workbook
Resolution

Prepared by: Jennifer Gore
Oversight Board Legal Counsel

Recognized Obligation Payment Schedule (ROPS 14-15A) - Summary

Filed for the July 1, 2014 through December 31, 2014 Period

Name of Successor Agency: Milpitas
Name of County: Santa Clara

Current Period Requested Funding for Outstanding Debt or Obligation	Six-Month Total
Enforceable Obligations Funded with Non-Redevelopment Property Tax Trust Fund (RPTTF) Funding	
A Sources (B+C+D):	\$ -
B Bond Proceeds Funding (ROPS Detail)	-
C Reserve Balance Funding (ROPS Detail)	-
D Other Funding (ROPS Detail)	-
E Enforceable Obligations Funded with RPTTF Funding (F+G):	\$ 10,075,543
F Non-Administrative Costs (ROPS Detail)	9,903,804
G Administrative Costs (ROPS Detail)	171,739
H Current Period Enforceable Obligations (A+E):	\$ 10,075,543

Successor Agency Self-Reported Prior Period Adjustment to Current Period RPTTF Requested Funding	
I Enforceable Obligations funded with RPTTF (E):	10,075,543
J Less Prior Period Adjustment (Report of Prior Period Adjustments Column S)	(78,670)
K Adjusted Current Period RPTTF Requested Funding (I-J)	\$ 9,996,873

County Auditor Controller Reported Prior Period Adjustment to Current Period RPTTF Requested Funding	
L Enforceable Obligations funded with RPTTF (E):	10,075,543
M Less Prior Period Adjustment (Report of Prior Period Adjustments Column AA)	-
N Adjusted Current Period RPTTF Requested Funding (L-M)	10,075,543

Certification of Oversight Board Chairman:
Pursuant to Section 34177(m) of the Health and Safety code, I
hereby certify that the above is a true and accurate Recognized
Obligation Payment Schedule for the above named agency.

Name	Title
/s/	2/4/2014
Signature	Date

Recognized Obligation Payment Schedule (ROPS) 14-15A - Report of Cash Balances

(Report Amounts in Whole Dollars)

Pursuant to Health and Safety Code section 34177(l), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation.

A	B	C	D	E	F	G	H	I
		Fund Sources						
		Bond Proceeds		Reserve Balance		Other	RPTTF	
	Cash Balance Information by ROPS Period	Bonds Issued on or before 12/31/10	Bonds Issued on or after 01/01/11	Prior ROPS period balances and DDR balances retained	Prior ROPS RPTTF distributed as reserve for next bond payment	Rent, Grants, Interest, Etc.	Non-Admin and Admin	Comments
ROPS 13-14A Actuals (07/01/13 - 12/31/13)								
1	Beginning Available Cash Balance (Actual 07/01/13) Note that for the RPTTF, 1 + 2 should tie to columns J and O in the Report of Prior Period Adjustments (PPAs)			67,382		134,321	203,967	Cash was adjusted (increased) by \$134,321 due to market value adjustment at 6/30/13
2	Revenue/Income (Actual 12/31/13) Note that the RPTTF amounts should tie to the ROPS 13-14A distribution from the County Auditor-Controller during June 2013					4	9,863,695	
3	Expenditures for ROPS 13-14A Enforceable Obligations (Actual 12/31/13) Note that for the RPTTF, 3 + 4 should tie to columns L and Q in the Report of PPAs						9,988,992	
4	Retention of Available Cash Balance (Actual 12/31/13) Note that the RPTTF amount should only include the retention of reserves for debt service approved in ROPS 13-14A							
5	ROPS 13-14A RPTTF Prior Period Adjustment Note that the RPTTF amount should tie to column S in the Report of PPAs.			No entry required			78,670	
6	Ending Actual Available Cash Balance C to G = (1 + 2 - 3 - 4), H = (1 + 2 - 3 - 4 - 5)	\$ -	\$ -	\$ 67,382	\$ -	\$ 134,325	\$ -	
ROPS 13-14B Estimate (01/01/14 - 06/30/14)								
7	Beginning Available Cash Balance (Actual 01/01/14) (C, D, E, G = 4 + 6, F = H4 + F4 + F6, and H = 5 + 6)	\$ -	\$ -	\$ 67,382	\$ -	\$ 134,325	\$ 78,670	
8	Revenue/Income (Estimate 06/30/14) Note that the RPTTF amounts should tie to the ROPS 13-14B distribution from the County Auditor-Controller during January 2014						9,253,054	
9	Expenditures for 13-14B Enforceable Obligations (Estimate 06/30/14)						9,253,130	
10	Retention of Available Cash Balance (Estimate 06/30/14) Note that the RPTTF amounts may include the retention of reserves for debt service approved in ROPS 13-14B							
11	Ending Estimated Available Cash Balance (7 + 8 - 9 - 10)	\$ -	\$ -	\$ 67,382	\$ -	\$ 134,325	\$ 78,594	

Recognized Obligation Payment Schedule (ROPS) 14-15A - Report of Prior Period Adjustments
 Reported for the ROPS 13-14A (July 1, 2013 through December 31, 2013) Period Pursuant to Health and Safety Code (HSC) section 34186 (a)
 (Report Amounts in Whole Dollars)

ROPS 13-14A Successor Agency (SA) Self-reported Prior Period Adjustments (PPA): Pursuant to HSC Section 34186 (a), SAs are required to report the differences between their actual available funding and their actual expenditures for the ROPS 13-14A (July through December 2013) period. The amount of Redevelopment Property Tax Trust Fund (RPTTF) approved for the ROPS 14-15A (July through December 2014) period will be offset by the SA's self-reported ROPS 13-14A prior period adjustment. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by SAs are subject to audit by the county auditor-controller (CAC) and the State Controller.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	
Item #	Project Name / Debt Obligation	Non-RPTTF Expenditures						RPTTF Expenditures											Net SA Non-Admin and Admin PPA (Amount Used to Offset ROPS 14-15A Requested RPTTF)
		Bond Proceeds		Reserve Balance		Other Funds		Non-Admin					Admin						
		Authorized	Actual	Authorized	Actual	Authorized	Actual	Authorized	Available RPTTF (ROPS 13-14A distributed + all other available as of 07/1/13)	Net Lesser of Authorized / Available	Actual	Difference (If K is less than L, the difference is zero)	Authorized	Available RPTTF (ROPS 13-14A distributed + all other available as of 07/1/13)	Net Lesser of Authorized / Available	Actual	Difference (If total actual exceeds total authorized, the total difference is zero)		
		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,774,429	\$ 9,774,429	\$ 9,774,429	\$ 9,754,429	\$ 20,000	\$ 293,233	\$ 293,233	\$ 293,233	\$ 234,563	\$ 58,670	\$ 78,670	
										\$ -	\$ -	\$ -					\$ -		
										\$ -	\$ -	\$ -					\$ -		
										\$ -	\$ -	\$ -					\$ -		

RESOLUTION NO. __

**RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF
THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING A
RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JULY 1
TO DECEMBER 31, 2014 (FY 14-15A)**

WHEREAS, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the "Dissolution Law"); and

WHEREAS, the Dissolution Law requires the Successor Agency to a former redevelopment agency to submit to the Oversight Board for its approval, no later than March 3, 2014, a Recognized Obligation Payment Schedule covering the period July 1, 2014 to December 31, 2014 (ROPS 14-15A); and

WHEREAS, in accordance with AB 1484, the Successor Agency to the former Milpitas Redevelopment Agency ("Successor Agency") prepared and submitted ROPS 14-15A to the County Administrative Officer, the County Auditor-Controller, and the Department of Finance at the same time the Successor Agency submitted the ROPS to the Oversight Board of the Successor Agency ("Oversight Board") for its consideration and approval; and

WHEREAS, the ROPS 14-15A has been considered by the Oversight Board at a public meeting.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board has considered the full record before it, which includes but is not limited to the staff report, testimony by staff and the public, and other materials and evidence provided to it.

BE IT FURTHER RESOLVED that the Oversight Board approves ROPS 14-15A in substantially the same form as attached hereto.

BE IT FURTHER RESOLVED that the Oversight Board directs Successor Agency staff to forward the approved ROPS to the Santa Clara County Auditor-Controller, the California Department of Finance, and the California State Controller's Office for certification and approval.

PASSED AND ADOPTED this 20th day of February, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Michael Mendizabal
Oversight Board Chair