

RESOLUTION NO. 25

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY DIRECTING THE SUCCESSOR AGENCY TO CONSIDER THE FIRST AMENDMENT TO THE STANDSTILL AGREEMENT AND TO PRESENT IT TO THE CITY AND MEDC

WHEREAS, the California 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 ("Dissolution Law"); and

WHEREAS, the Oversight Board has a fiduciary duty to the taxing entities that receive property tax money previously distributed to the Redevelopment Agency and desires to promote their interests, including those of the Milpitas Unified School District ("MUSD"); and

WHEREAS, student enrollment in the MUSD has grown by 5% between the 2007-08 and the 2012-13 school years, and is projected to continue growing; and

WHEREAS, the Milpitas Transit Area Specific Plan ("Plan"), adopted in June 2008 and amended in December 2011 by the Milpitas City Council, provides for the development of a 437-acre area of the City ("Transit Area"); and

WHEREAS, the Plan provides for the construction of approximately 4,109 housing units within the boundaries of the MUSD, and projects that an additional 688 K-8 students would enroll in the MUSD as a result; and

WHEREAS, the Plan also projects that an additional 414 students will enroll in the MUSD from a nearby planning area; and

WHEREAS, the Plan explains that this enrollment growth, combined with the existing distribution and capacities of MUSD schools, creates a need for a new K-6 or K-8 school for the MUSD, which would ideally be located in the Transit Area; and

WHEREAS, the Plan explains that there is only one location within the Transit Area that potentially meets the requirements imposed by the California Department of Education for school sites; and

WHEREAS, the Plan designates the parcels in that location, identified by Assessor's Parcel Numbers 86-41-016, 86-41-017, and 86-41-018 (collectively, the "McCandless Property"), as a school; and

WHEREAS, on February 15, 2011, Mission West Properties, LLC ("Mission West") agreed to sell the McCandless Property to the former Redevelopment Agency for the price of \$21.78 million, with a down payment of \$3 million, four additional annual payments of \$3 million and a final payment of the unpaid portion ("Purchase Agreement"); and

WHEREAS, on March 7, 2011, the former Redevelopment Agency assigned its rights and obligations under the Purchase Agreement to the Milpitas Economic Development Corporation

("MEDC"); and

WHEREAS, on January 9, 2012, Mission West conveyed the McCandless Property to the MEDC; and

WHEREAS, on March 28, 2013, the MUSD offered to purchase the McCandless Property from the MEDC for \$21.78 million; and

WHEREAS, there is pending litigation between the MEDC, the Successor Agency, the Milpitas Housing Authority ("MHA") and the City on one side and the California Department of Finance, the State Controller's Office, County Office of Education and the County of Santa Clara on the other, regarding asset transfers made from the Milpitas Redevelopment Agency ("MRDA") prior to dissolution (Case Nos. 34-2013-80001436 and 34-2013-80001508 in Superior Court of California, County of Sacramento); and

WHEREAS, the McCandless Property is among the real property and cash assets listed in the February 25, 2013 "Standstill Agreement" requested and approved by the Oversight Board, and entered into by the Successor Agency, the City, and the MEDC; and

WHEREAS, the Standstill Agreement prohibits the MEDC from transferring, encumbering, selling, or conveying the McCandless Property; and

WHEREAS, each additional year of delay in opening a new school on the McCandless Property costs the MUSD an estimated \$1.25 million or more in construction costs; and

WHEREAS, none of the parties to the aforementioned litigation would be prejudiced if the MUSD paid the MEDC the amount of money paid to Mission West under the Purchase Agreement, and in exchange assumed the MEDC's position as the owner of the McCandless Property;

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board directs the Successor Agency, within 14 days of the passage and adoption of this resolution, to provide the draft First Amendment to the Standstill Agreement ("First Amendment") considered at this meeting and attached hereto as **Exhibit A**, to the MEDC and the City for their consideration.

BE IT FURTHER RESOLVED that if the MEDC, the Successor Agency, and the City agree to the First Amendment no later than November 1, 2013, then the Oversight Board directs the Successor Agency to present the First Amendment to the Oversight Board for review and approval, and, if the Oversight Board so directs, to execute the First Amendment as well.

PASSED AND ADOPTED this 12th day of September, 2013 by the following vote:

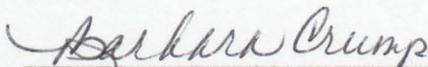
AYES: (7) Mendizabal, Grilli, Gomez, Karlen, Knopf, McInerney, Williams

NOES:

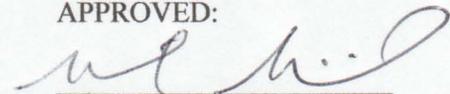
ABSENT:

ABSTAIN:

ATTEST:


Barbara Crump, Oversight Board Secretary

APPROVED:


Mike Mendizabal, Chair

Resolution No. 25

00557-00104/488191.4

EXHIBIT A
FIRST AMENDMENT TO STANDSTILL AGREEMENT

Resolution No. 25

00557-00104/488191.4

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

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

RECITALS

A. The Milpitas Unified School District ("**MUSD**") enrollment has grown by 5% between the 2007-08 and the 2012-13 school years, and is projected to continue growing, with the increase in enrollment concentrated near the middle and south of the City ("**Transit Area**"), where over 4,000 housing units have been approved for development in the next few years.

B. The projected enrollment growth, combined with the existing distribution and capacities of MUSD schools, creates a need for a new K-6 or K-8 school, ideally located in the Transit Area, which is currently served only by Pearl Zanker Elementary School, already at or near enrollment capacity.

C. The quality of MUSD schools is crucial to the well-being of the City, its families, children and all local taxing entities.

D. The City's Milpitas Transit Area Specific Plan (adopted June 2008 and amended December 2011) designated properties with APN Nos. 86-41-016, -017 and -018 (collectively, "**McCandless Property**") as the site for a new elementary school.

E. The approximately 10.9 acre McCandless Property site is an ideal location for an elementary school, since it lies within walking distance of the areas of highest population growth in the City.

F. The McCandless Property is currently owned by the MEDC under a March 7, 2011 assignment of the "Agreement for Purchase and Sale and Joint Escrow Instruction for Real Property, APNs: 86-41-016, 017, and -018," dated February 15, 2011, between Mission West Properties, LLC ("**Mission West**") as the seller and the Milpitas Redevelopment Agency ("**MRDA**") as the buyer for a total price of Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000) ("**Purchase Agreement**").

G. The Purchase Agreement calls for: (1) an initial payment of Three Million Dollars (\$3,000,000); (2) annual payments of Three Million Dollars (\$3,000,000) on the anniversary of the effective date for four years; and (3) payment of the unpaid portion on the fifth anniversary of the effective date.

H. On January 9, 2012, Mission West conveyed the McCandless Property to the MEDC in exchange for the initial Three Million Dollar (\$3,000,000) payment and a Promissory Note for the remainder Eighteen Million Seven Hundred Eighty Thousand Dollars (\$18,780,000).

I. Currently there is litigation between the City, the MEDC, the Milpitas Housing Authority ("**MHA**") and the Successor Agency on one side and the California Department of Finance, the State Controller's Office, the County of Santa Clara and the County Office of Education on the other, which involves property and assets (Case Nos. 34-2013-80001436 and 34-2013-80001508 in Superior Court of California, County of Sacramento.) ("**Milpitas Litigation**").

J. The McCandless Property is among the real property and cash assets listed in the February 25, 2013 "Standstill Agreement" requested and approved by the Oversight Board, and entered into by the Successor Agency, the City, and the MEDC. The Standstill Agreement prohibits the MEDC from transferring, encumbering, selling, or conveying the McCandless Property

K. MUSD wishes to acquire title to the McCandless Property as soon as possible to meet the pressing needs of projected enrollment figures and commence the lengthy process required for due diligence, state approvals and construction of an elementary school on the site.

L. MUSD offered to purchase the McCandless Property for Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000).

M. The City has explicitly stated its desire for the McCandless Property to be used for an elementary school.

N. MUSD is willing to reimburse MEDC for any sums already paid toward the purchase of the McCandless Property, and to assume the remaining obligations under the Promissory Note as long as MUSD's total obligations do not exceed Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000).

O. The parties to the Standstill Agreement wish to amend it to allow the sale of the McCandless Property to MUSD.

P. The Oversight Board agrees that an amendment to the Standstill Agreement is appropriate under these circumstances.

Q. This First Amendment will not prejudice the litigation positions adopted by any of parties.

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

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

2. Section 4 of the Standstill Agreement is amended to add new Section 4(d) as follows:

Notwithstanding anything to the contrary, the MEDC and Milpitas Unified School District ("MUSD") shall enter into an assumption and assignment of the "Agreement for Purchase and Sale and Joint Escrow Instruction for Real Property, APNs: 86-41-016, 017, and - 018," dated February 15, 2011 ("Purchase Agreement"). Pursuant to this assumption and assignment, MUSD shall assume the MEDC's rights and obligations under the Purchase Agreement. As consideration for such assumption and assignment, any cash already paid to Mission West Properties LLC shall be paid by the MUSD to the MEDC.

3. Section 4 of the Standstill Agreement is further amended to add a new Section 4(e) as follows:

Section 4(d) is not intended to harm the positions of any taxing entities affected by the Milpitas Litigation, including the City. If the City made payments under the Purchase Agreement, the City is entitled to be reimbursed. In order to determine the appropriate amount of reimbursement, the City shall present proof sufficient to the Oversight Board through an independent auditor or a procedure agreed upon by the Oversight Board and the City. If the City presents such proof, the Oversight Board shall promptly approve reimbursement to the City by amendment to the Standstill Agreement. In order to protect the interests of all taxing entities affected by the Milpitas Litigation, other than reimbursement to the City as described in the foregoing, the restrictions of the Standstill Agreement apply and the MEDC shall treat funds from MUSD as Working Capital.

[Remainder of page intentionally left blank]

[Signature page follows]

**SIGNATURE PAGE FOR FIRST AMENDMENT TO
STANDSTILL AGREEMENT**

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

SUCCESSOR AGENCY TO THE MILPITAS REDEVELOPMENT AGENCY

By: _____
Name:
Title:

CITY OF MILPITAS

By: _____
Name:
Title:

MILPITAS ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name:
Title:

AS REQUESTED AND APPROVED BY:

MILPITAS REDEVELOPMENT AGENCY OVERSIGHT BOARD

By: _____
Name:
Title: