

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

BETWEEN CITY OF MILPITAS AND MILPITAS UNIFIED SCHOOL DISTRICT

This Second Amendment to Purchase and Sale Agreement, dated August 16, 2016 (the "Effective Date"), is entered by and between the Milpitas Unified School District, a public school district organized and existing under the laws of the State of California ("District") and the City of Milpitas, a municipal corporation of the State of California ("City") (collectively, the "Parties"). All terms capitalized herein shall have the same meaning as in the Purchase Agreement.

1. **Background.**

1.1 District and City entered into a Purchase and Sale Agreement dated October 21, 2014, and amended by the First Amendment to Purchase and Sale Agreement dated October 6, 2015 (as amended, the "Purchase and Sale Agreement").

1.2 Pursuant to the Purchase and Sale Agreement, City is selling to District and District is purchasing from City approximately 6.7 acres of the 10.9 acre City property located on the corner of McCandless Drive and Penitencia Creek East Channel, in the City of Milpitas, County of Santa Clara, as further described in Exhibit B of the Purchase Agreement ("School Property").

1.3 The total purchase price for the School Property was estimated in the original Purchase and Sale Agreement as Twenty Million Seven Hundred Seventy Thousand Dollars. Due to School Property acreage on the parcel map approved by the City coming in at below 6.7 acres, at 6.668 acres, the new purchase price for the School Property shall be Twenty Million Six Hundred Seventy Thousand and Eight Hundred Dollars (\$20,670,800.00).

1.4 District has deposited \$50,000 to Escrow Holder on November 21, 2014 in compliance with Section 1(1) (b) of the Purchase and Sale Agreement.

1.5 District has completed environmental clean-up of contaminated soil on the Property and the City gives a credit to the District against the Purchase Price for verified actual clean-up costs as of Closing.

1.6 The Parties desire to provide Escrow Holder updated information on (i) the amount to be credited to the District for environmental clean-up reimbursement; (ii) the revised process for payment of the Purchase Price mutually agreed to by the Parties; and (iii) to address the new lower acreage of the School Property.

1.7 Under Section 19 of the Purchase and Sale Agreement (Delegation of Authority) and the October ___ and October 21, 2014 resolutions of the governing bodies of both City and District, the City Manager and the District Superintendent or her designee are duly authorized to take all actions and execute all documents necessary to complete the purchase and sale of the School Property.

2. **Payment of Purchase Price.**

2.1 **Purchase Price.** The Purchase Price to be paid by the District to the City for the School Property is Three Million One Hundred Thousand Dollars (\$3,100,000.00) per acre for 6.668 acres, for a total of Twenty Million Six Hundred Seventy Thousand and Eight Hundred Dollars (\$20,670,800.00).

2.2 **Installment Payments.** Instead of the original process contemplated in Section 1(c) of the Purchase Agreement that the balance of the Purchase Price be paid in a lump sum at or before Close of Escrow, the Parties hereby agree that payment of the Purchase Price shall be paid 50% at Closing as a down payment (“Down Payment”) and 50% as established in the Promissory Note, described in Section 2.3 below. The Down Payment shall include District’s deposit of \$50,000.00 into Escrow made on November 21, 2014.

2.3 **Promissory Note.** The District shall sign a promissory note, secured by a deed of trust, to be paid at maturity of 12 months, in the amount of \$10,335,400.00, with 0% interest, in the form of promissory note attached hereto as Exhibit E (“Promissory Note”). At the Close of Escrow, the following credits toward the Purchase Price shall be applied toward prepayment of the Promissory Note:

(a) Full reimbursement for the cost of environmental clean-up to be credited to District provided that supporting documentation, including invoices, contracts, and any other information requested by City verifies the costs incurred by District. Costs shall not be credited for environmental clean-up unless City determines such costs actually incurred by District through supporting documentation. City shall not reimburse District for any costs related to environmental clean-up incurred after the effective date of this Second Amendment to Purchase and Sale Agreement.

(b) Other credits as agreed to by the Parties or as listed in the Purchase and Sale Agreement, if any.

3. **Close of Escrow.** Close of Escrow shall occur on a date mutually agreed to by the Parties on or before October 21, 2016.

4. **Miscellaneous.**

4.1 **Cooperation.** The District and City agree to cooperate in the transfer of ownership of the School Property in a manner that facilitates commencement of construction of the new elementary school in a timely manner.

4.2 **Ratification.** This Amendment shall not be effective unless ratified by the District's governing board and approved by City’s City Council.

4.3 **Modification of this Amendment.** This Amendment shall not be modified except by written instrument executed and approved by the Parties in the same manner as this Amendment.

4.4 **Choice of Law; Venue.** The formation, interpretation and performance of this Amendment shall be governed by the laws of the State of California.

4.5 **Entire Agreement.** This Amendment and the Promissory Note, including the deed of trust, set forth the entire agreement among the Parties with respect to the subject matter herein and supersedes all other oral or written provisions with respect thereto.

4.6 **Authority of Signatories.** Each person signing this Amendment is duly authorized and has legal capacity to execute and deliver this Amendment. Each Party represents and warrants to the other that the execution and delivery of this Amendment is a valid and legal agreement enforceable in accordance with its terms.

4.7 **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

4.8 Escrow Holder. District and City shall deliver a copy of the fully executed Amendment to Escrow Holder prior to the Close of Escrow.

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

DISTRICT

Milpitas Elementary School District

By: _____ Date: _____
Name: Cheryl Jordan
Title: Interim Superintendent

CITY

The City of Milpitas

By: _____ Date: _____
Name: Thomas C. Williams
Title: City Manager

EXHIBIT E – PROMISSORY NOTE

[To be attached]