

**FRANKLIN-MCKINLEY SCHOOL DISTRICT**

**Resolution No. 2021-12**

**Resolution of Intention to Accept a Donation of Property and Construct a School on the Property in the Communication Hill Community**

**WHEREAS**, the Franklin-McKinley School District ("District") desires to acquire certain vacant real property located in the Communications Hill Specific Plan area in the City of San Jose ("City"), County of Santa Clara, State of California, which property will be developed into a school (the "Project"); and

**WHEREAS**, the Project is on a proposed 5.7-acre school site that will be located at the northwest corner of the future intersection of Llano de los Robles Avenue and Lina Street, bounded on the north by Communications Hill Boulevard, on the east by Lina Street, on the south by Main Street, and on the west by a community park, (the "Property"); and

**WHEREAS**, the Property is currently owned by MTA Properties LP, a California limited partnership ("Owner"); and

**WHEREAS**, subject to a donation agreement with the District to be negotiated, Owner will donate the Property to the District in its "AS IS" condition; and

**WHEREAS**, KB Home South Bay, Inc., a California corporation, is developing properties in the Communications Hill Specific Plan area ("Developer"); and

**WHEREAS**, subject to a mitigation agreement with the District to be negotiated, Developer will remediate the Property at no cost to the District and in lieu of the statutory school impact fees described below; and

**WHEREAS**, Education Code section 17620 et seq. and Government Code section 65995 et seq. allow a school district to impose developer impact fees or other requirements to mitigate school-related impacts resulting from residential and non-residential development, such as the Communications Hill Specific Plan area; and

**WHEREAS**, Section 41032 of the California Education Code authorizes the governing board of a school district to accept, on behalf of the district, gifts and donations that are made to the district for the benefit of any school administered by the district, and donations may be made subject to conditions or restrictions that the district's governing board may prescribe; and

**WHEREAS**, Board Policy 3290 provides in relevant part that, before accepting any donation, the District's Board of Education ("Board") shall consider whether the donation: (1) has a purpose consistent with the District's vision and philosophy; (2) begins a program which the Board would be unable to continue when the donated funds are exhausted; (3) entails undesirable or excessive costs; or (4) implies endorsement of any business or product or unduly commercialize or politicize the school environment; and

**WHEREAS**, under Board Policy 3290, the Board shall carefully evaluate any conditions or restrictions imposed by the donor in light of District philosophy and operations, and if the District will be unable to fully satisfy the donor's conditions; and

**WHEREAS,** acceptance of said donation will be subject to a Donation Agreement(s) to be entered into between the District and Owner and a mitigation agreement entered into between the District and Developer; and

**WHEREAS,** District desires to give notice of its intent to construct the Project on the Property after the required approvals by the appropriate public agencies and in compliance with statutory requirements, including, but not limited to, the California Environmental Quality Act, in exchange for the consideration and subject to the terms and conditions agreed upon between the parties.

**NOW THEREFORE, BE IT RESOLVED,** that the Franklin-McKinley School District Board of Education hereby resolves, determines, and finds the following:

**Section 1.** The foregoing recitals are true and correct.

**Section 2.** The District declares its intent to construct a school on the Property pursuant to terms and conditions as agreed upon by the parties.

**Section 3.** That the District's Superintendent and designees are hereby authorized to take all actions and execute all documents in furtherance of the donation, including negotiation and execution of the separate donation agreement and District's acceptance of the donation, and otherwise to carry out, give effect to, and comply with the terms and intent of this Resolution.

**PASSED AND ADOPTED** by the Board of Education of the Franklin-McKinley School District, this \_\_\_\_\_ day of April, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Maimona Afzal Berta  
President, Board of Education of the  
Franklin-McKinley School District

Attested to:

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Kerry Rosado  
Clerk, Board of Education of the  
Franklin-McKinley School District