

Agenda Item Details

Meeting	Apr 13, 2021 - REMOTE Board Meeting - 7:00 p.m.
Category	5. INFORMATION, DISCUSSION AND/OR ACTION ITEMS
Subject	5.03 Resolution No. 2021-12 - Intention to Accept a Donation of Property and Construct a School on the Property in the Communication Hill Community
Access	Public
Type	Action
Fiscal Impact	Yes
Dollar Amount	50,000,000.00
Budgeted	Yes
Budget Source	Bond Funds
Recommended Action	It is recommended by Staff that the Board approve Resolution 2021-12 publicly committing FMUSD's intent to accept a donation of property and construct a school on donated property located on Communication Hill.

Public Content**AGENDA ITEM NO. 5.03**

SUBMITTED BY: Jason E. Vann / Superintendent Juan Cruz

COMMENTS: Franklin-McKinley School District has been in discussions with landowner Rob Bettencourt and developer KB Homes on constructing a school on donated property located on Communication Hill. This Resolution presented to the Board will allow staff to take the next steps required for the district to negotiate the acceptance of the donated property in order to build a school on Communication Hill. These steps include finalizing an agreement between the three parties that ultimately delivers to FMUSD a property that can be accepted by the District and will allow the District to construct a school. Other steps include, but are not limited to, the completing of a California Environmental Quality Act study, Environmental Impact Report, mitigation services performed by KB Homes in lieu of statutory school impact fees, coordination with the DTSC (Department of Toxic Substance Control), gather stakeholder (community, staff, Board of Education, Community Based Organizations, etc.) input on the design of the school, approval of the school design with the Department of State Architects, seeking California Department of Education approval to utilize the site for FMUSD instruction, completing the bid process and starting the construction of the school. All of these steps are crucial to ensuring FMUSD can build and occupy a new school on Communication Hill that meets the needs of the community and does not expose the District to avoidable litigation.

This process may have many unforeseen hurdles (i.e. the location of the PG&E power lines) but FMUSD staff are excited and eager to start the construction as soon as possible.

LCAP PRIORITY AREA: CONDITIONS OF LEARNING - Basic Services

FINANCIAL IMPACT: This will most likely be a multi-phased project consisting of a few grade levels at a time, but District staff recommend the Board commit \$50 million to this project out of the Measure R funds to ensure a substantial portion of the TK - 8 site could be built on this property.

RECOMMENDATION: It is recommended that the Board of Education approve Resolution 2021-12 publicly committing FMSD's **intent to accept** a donation of property and construct a school on donated property located on Communication Hill.

ATTACHMENTS: Resolution No. 2021-12 Intention to Accept a Donation of Property and Construct a School on the Property in the Communication Hill Community.

Resolution 2021-12 - Intent to Construct School on Donated Property (Communication Hill).pdf (43 KB)

Communication Hill Letter to FMSD.pdf (41 KB)

Administrative Content

"Preparing All Children As Global Learners"

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:

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

Attested to:

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

May 27, 2020

Chuck Reed
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Via Email: Juan.Cruz@fmsd.org

Juan Cruz
Superintendent
Franklin-McKinley School District
645 Wool Creek Drive
San Jose, CA 95112

Dear Superintendent Cruz,

I am sending this letter on behalf of MTA Properties regarding the District's interest in building a school on Communications Hill. Having a school as part of the development of Communications Hill has been an issue for MTA for decades. We were happy to hear from KB Home South Bay and Jason Vann that the District has decided to move forward to build a school.

Before MTA and KB Homes can start investing a great deal of time and effort in the work necessary to deliver a site to the District, both need a more formal affirmation of the District's intentions. Please provide MTA and KB with a letter confirming the District's commitment to the project with the following information:

1. Verification that the Board of Trustees has authorized the staff to proceed with the project in the form of a Board Resolution or official minutes of action taken by the Board.
2. Verification that the Board of Trustees has allocated the funding to pay for the cost of constructing a school on the site and the source of those funds.
3. The time frames in which the District expects to start and complete construction.

Juan Cruz
May 27, 2020
Page 2

MTA and KB are excited about the prospect of having a school as part of the Communications Hill community. We know that our parents and other residents are enthusiastic as well. We look forward to working with you to make the school a success.

Sincerely,

HOPKINS & CARLEY

A Law Corporation

A handwritten signature in cursive script that reads "Chuck Reed".

Chuck Reed

CRR/lc

cc Rob Bettencourt
Peter Lezak
Jerry Strangis