

RESOLUTION NO. 73183

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN EXCHANGE AGREEMENT WITH THE SAN JOSE UNIFIED SCHOOL DISTRICT FOR THE EXCHANGE OF SEVERAL PROPERTY INTERESTS BETWEEN THE CITY AND THE DISTRICT, TOGETHER WITH AN OPTION AGREEMENT, A JOINT USE EXCHANGE AGREEMENT, AND A LEASE AMENDMENT TO THE LEASE WITH THE DISTRICT FOR JOYCE ELLINGTON BRANCH LIBRARY, AND INCLUDING COMPENSATION TO THE DISTRICT IN THE AMOUNT OF \$559,000.**

**RECITALS**

- A.** Pursuant to Education Code Section 17536, et seq., and 35162, DISTRICT is authorized to convey and exchange interests in real property for the use and benefit of the school district.
- B.** Pursuant to Government Code Section 37350 et seq., CITY may purchase, lease, receive, hold and enjoy real property and control and dispose of it for the common benefit.
- C.** DISTRICT desires to acquire certain property rights to the following CITY properties:
  - 1. Through a three year Joint Use Agreement with CITY, DISTRICT has constructed a softball field for use by its students partially on CITY-owned Roosevelt park, and DISTRICT wishes to acquire continuing use approximately of 0.651 acres of such property ("Roosevelt Park Exchange Property") through a joint use agreement with renewable three year terms that may extend beyond the initial three (3) year period prescribed in Charter Section 1700, which both parties acknowledge and agree shall be used solely for educational and related recreational purposes.

2. DISTRICT has constructed a portion of Canoas Elementary School on land known as an abandoned section of CITY-owned Blue Jay Drive, and DISTRICT wishes to acquire a fee interest in approximately 0.533 acres of such property ("Blue Jay Drive Property"); and
3. DISTRICT currently leases property consisting of 3.36 acres from CITY on a portion of APN Nos. 249-64-001 and 249-21-005 (the entire site referred to as the "Watson Park Burn Site" for purposes of an ongoing California Department of Toxic Substances Control ("DTSC") and City investigation of the site) upon which DISTRICT has constructed Empire Gardens School. DISTRICT wishes to be granted an option, exercisable in its sole discretion upon the occurrence of certain future events pertaining to ongoing investigations of the site, to acquire a restricted fee interest in approximately 3.36 acres of such property ("Empire Gardens School Site").

**D.** CITY desires to acquire certain property rights to the following DISTRICT properties:

1. CITY currently leases property consisting of 0.5985 acres from DISTRICT on the DISTRICT-owned Grant School site upon which CITY has constructed its Ellington Branch Library. CITY wishes to reconstruct and expand the Library through acquisition of approximately .3195 acres of additional land from DISTRICT for expansion of the Library. The resulting acreage, including that currently leased, will total approximately 0.918 acres ("Ellington Branch Library Site"). CITY desires to obtain a conditional option exercisable if the District exercises its option to acquire the Empire Gardens School Site to acquire a restricted fee interest in the Grant School Property and an amendment to its existing lease to enable reconstruction of its library on the site; and
2. CITY desires to build its Roosevelt Community Center on a DISTRICT-owned and abandoned section of 20<sup>th</sup> Street. CITY wishes to acquire a fee interest in approximately 0.442 acres of such property ("20<sup>th</sup> Street Property"); and

3. CITY desires to build parking lots adjacent to its Roosevelt Community Center on a portion of the DISTRICT-owned San Jose High School Academy site. CITY wishes to acquire the right to use approximately 0.651 acres of such property ("Roosevelt Parking Lot Property") exclusively for public parking lots available to CITY and DISTRICT uses in accordance with a joint use agreement; and
4. CITY desires to acquire a restricted fee interest in the DISTRICT-owned Rajkovich parcel consisting of approximately 5.16 acres which shall be limited to use as an ecological park as set forth in the original instruments transferring the property to the DISTRICT ("Rajkovich Property"); and
5. CITY desires to acquire from DISTRICT a fee interest in approximately 0.15 acres of property at the DISTRICT-owned San Jose High School Academy site that constitutes a portion of Twenty First Street ("21<sup>st</sup> Street Property") for access to the Roosevelt Parking Lot Property and for ingress and egress thereto, subject to the CITY's covenant to maintain the 21<sup>st</sup> Street Property and the CITY granting the DISTRICT an irrevocable, nonexclusive easement for ingress and egress to the San Jose High School Academy site.

**E.** For the purposes described above, CITY and DISTRICT desire to agree to the exchange in interests in real property as summarized in **Exhibit A** attached hereto.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

**Section 1.** The City Manager is hereby authorized to negotiate and execute the following agreements:

- a. An Exchange Agreement providing for the exchanges of various property interests, with payment to SJUSD as just compensation in an amount not to exceed \$559,000 for transfers to the City; and

- b. As part of the Exchange Agreement, a Joint Use Agreement providing for the joint and public use of a portion of City's Roosevelt Park for a softball field constructed by SJUSD, and of a portion of SJUSD property adjacent to the reconstructed Roosevelt Community Center for joint and public use of a parking lot, and containing 3 year renewable options; and
- c. An Option Agreement providing the conditions under which SJUSD could exercise an option for restricted fee title for the Empire Gardens School Site, and the conditions under which City could exercise the option for restricted fee title to an expanded site for the Ellington Branch Library site; and
- d. An Amendment to Lease for the Ellington Branch Library with the San José Unified School District to expand the site to approximately 0.90 acres, pending the exercise of the option for restricted fee title to the site.

**Section 2.** The Director of Public Works is hereby authorized to execute all other documents necessary to complete the exchanges.

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ADOPTED this 23<sup>rd</sup> day of May, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,\  
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;  
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

**EXHIBIT A TO EXCHANGE AGREEMENT, P. 1**

<b>District Property</b>	<b>Description</b>	<b>Acreeage</b>	<b>Proposed Transaction</b>
<b>Ellington Branch Library Site</b>	Option for transfer to City of restricted fee title to property at Grant Elementary School site and a lease amendment to expand current use from 0.5985 acres to 0.918 acres to allow the reconstruction of Ellington Branch Library	0.918	Grant City an option to receive a restricted fee title to the property conditioned on District exercise of the option for and in exchange for the Empire Gardens School Site
<b>20<sup>th</sup> Street Property</b>	Transfer to City of a portion of vacated 20th Street for the construction of the City's Roosevelt Community Center	0.442	Transfer fee title in exchange for Blue Jay Drive Property
<b>Roosevelt Parking Lot Property</b>	Transfer of a portion of the San Jose High Academy site to the City for the construction of a parking lot	0.651	Joint Use Agreement to exchange for District use of Softball Fields
<b>Rajkovich Property</b>	Transfer of school property originally intended for outdoor classroom uses. Potential use for swap with County for Lester property.	5.16	Transfer fee title to City with limitation of use to public recreational purposes,
<b>21<sup>st</sup> Street Property</b>	Transfer of a portion of Twenty First Street to the City for access to parking lot and ingress and egress thereto	.15	Transfer fee title with an irrevocable easement for District use in exchange for Blue Jay Drive Property
	<b>Total</b>	7.321	

**EXHIBIT A TO EXCHANGE AGREEMENT, P. 2**

<b>City Property</b>	<b>Description</b>	<b>Acreage</b>	<b>Proposed Transaction</b>
<b>Empire Gardens School Site</b>	Option for transfer of restricted fee title to property currently leased from the City adjacent to Watson Park to District for the recently constructed Empire Gardens Elementary School	3.36	Grant District the option to take a restricted fee title to the site, at such time as site investigation and cleanup are complete and DTSC conditions and covenants are known in exchange for an option for the Ellington Branch Library Site.
<b>Blue Jay Drive Property</b>	Transfer of a portion of vacated Blue Jay Drive to District where school site currently exists.	0.533	Transfer fee title in exchange for Twentieth Street Property
<b>Roosevelt Park Exchange Property</b>	Transfer of a portion of Roosevelt Park property to the District for construction of new girls softball fields.	0.52	Joint Use Agreement in exchange for Roosevelt parking lot
	<b>Total</b>	4.413	
*As part of the consideration for the exchange of properties, City shall pay District \$559,000.			