

RESOLUTION NO. 2023-164

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY, A SETTLEMENT AGREEMENT AND FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT TO SETTLE LITIGATION OVER A PROJECT AT MUNICIPAL PARKING LOT 1

WHEREAS, the City of Escondido (“City”) owns Municipal Parking Lot 1 located at 137 Valley Parkway, Escondido, California, 92025, and having San Diego County Assessor’s Parcel Number 229-421-26 (“Property”); and

WHEREAS, on December 10, 2018, the City and Touchstone MF Fund I, LLC, a Delaware limited liability company (“Touchstone”) (collectively the “Parties”), executed an Agreement of Purchase and Sale and Joint Escrow Instructions (“2018 PSA”) relating to the Property; and

WHEREAS, the City processed a development application for a residential project at the Property submitted by Touchstone; and

WHEREAS, on October 9, 2019, the City Council of the City considered the project at a public hearing and denied the project; and

WHEREAS, on June 2, 2020, Touchstone filed a Complaint against City entitled *Touchstone MF Fund I, LLC v. City of Escondido, et al.*, in the Superior Court of the State of California, County of San Diego, Case No. 37-2020-00020856-CU-BC-NC, alleging Breach of Contract and Declaratory Relief in relation to the 2018 PSA. On July 22, 2020, City filed a Cross-Complaint against Touchstone alleging Breach of Contract and Declaratory Relief (collectively referred to as the “Lawsuit”); and

WHEREAS, the Parties to the Lawsuit have litigated the matter and have a common interest in resolving their disputes and avoiding further litigation. Without admitting any liability, wrongdoing or fault concerning the matters alleged by the Parties in the Lawsuit, the Parties wish to settle their disputes fully and completely as between them and believe that a Settlement Agreement and First Amendment to Purchase and Sale Agreement is in their mutual best interests; and

WHEREAS, the Settlement Agreement in a form as attached to this Resolution as Exhibit "A" shall resolve all disputes in the litigation between the Parties and is in the best interests of the City; and

WHEREAS, the First Amendment to Purchase and Sale Agreement between the Parties in a form as attached to this Resolution as Exhibit "B" shall further the interests of the City in the settlement of the Lawsuit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true and are incorporated herein.
2. That the City Council authorizes the City Manager to execute the Settlement Agreement attached hereto as Exhibit "A," the First Amendment to Purchase and Sale Agreement attached hereto as Exhibit "B," in such final forms as may be approved by the City Attorney and consistent with the purpose and intent of this Resolution, and such other escrow and transactional documents necessary to effect the purpose of this settlement and property sale.
3. That the City admits no liability, wrongdoing, or fault with the actions taken in this Resolution, alleged in the Lawsuit and execution of Exhibits "A" and "B."

4. The City commits to no further future actions with respect to the disposition or development of the Property other than as explicitly provided for in Exhibits "A" and "B."