

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AND ADOPTING AN ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT FOR THE MILPITAS TRANSIT AREA SPECIFIC PLAN (SCH NO. 2006032091) FOR MCCANDLESS PARK (PROJECT NO. 5102), WELL UPGRADE, MCCANDLESS WELL (PROJECT NO. 7076), AND PENITENCIA CREEK PEDESTRIAN BRIDGE (PROJECT NO. 2005)

WHEREAS, the City of Milpitas (“City”) served as the lead agency under the California Environmental Quality Act (“CEQA”; Pub. Resources Code, § 21000 et seq.) for the Milpitas Transit Area Specific Plan (“TASP”), which encompasses approximately 437 acres within the City (“TASP Area”); and

WHEREAS, on June 3, 2008, the City Council of the City of Milpitas (“City Council”) approved Resolution No. 7759, thereby certifying the environmental impact report (“EIR”) prepared for the TASP (SCH No. 2006032091); and

WHEREAS, on June 3, 2008, the City Council approved Resolution No. 7760 and thereby adopted the TASP; and

WHEREAS, the 2019-2024 Capital Improvement Program includes Project No. 5102 (McCandless Park), Project No. 7076 (Well Upgrade – McCandless Well), and Project No. 2005 (Pedestrian Bridge) (collectively, the “TASP Implementation Projects”), all of which are proposed for the TASP Area; and

WHEREAS, the TASP Implementation Projects as proposed would be located within an undeveloped 4.77-acre site within the TASP Area (“Project Site”); and

WHEREAS, the proposed McCandless Park would provide for a new four-acre City park directly north of the newly constructed Mabel Mattos elementary school along McCandless Drive; and

WHEREAS, the proposed Well Upgrade – McCandless Well includes the construction of a production water well within a fenced and secured 100-foot by 100-foot area at the southwest corner of the Project Site and would generate water sufficient to accommodate planned growth pursuant to the TASP; and

WHEREAS, the proposed Pedestrian Bridge would add to and enhance the pedestrian network contemplated by the TASP by providing for a pre-fabricated pedestrian bridge over the East Penitencia Channel, midway between the Montague Expressway and McCandless Drive; and

WHEREAS, pursuant to CEQA and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.), the City is the Lead Agency for future actions related to implementation of the TASP, including the TASP Implementation Projects; and

WHEREAS, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has already been certified, the lead agency is prohibited from requiring a subsequent or supplemental EIR or negative declaration unless at least one of the circumstances identified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 are present; and

WHEREAS, pursuant to State CEQA Guidelines section 15164, the City has overseen the preparation of an Addendum to the TASP EIR (the “Addendum”) to evaluate the potential for any new

significant impacts or a substantial increase in the severity of previously identified significant impacts to occur as a result of the TASP Implementation Projects; and

WHEREAS, the Addendum concludes that none of the circumstances described in Public Resources Code section 21166 or State CEQA Guidelines section 15162 have occurred, and that a supplemental or subsequent EIR or negative declaration is thus not required; and

WHEREAS, the City Council has reviewed the Addendum, along with all information in the previously certified TASP EIR, all oral and written testimony submitted to the City in relation to the TASP Implementation Projects, and all other information in the administrative record, prior to taking any action on the TASP Implementation Projects; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred,

NOW, THEREFORE, the City Council of the City of Milpitas does hereby find, determine, resolve, and order as follows:

Section 1. The above recitals are true and correct and incorporated herein by reference.

Section 2. State CEQA Guidelines section 15164 requires lead agencies to prepare an addendum to a previously certified EIR if some changes or additions to a project are necessary, but none of the conditions requiring preparation of a subsequent EIR are present. The City Council has reviewed and considered the previously certified TASP EIR and the Addendum, and the City Council finds that these documents, taken together, contain a complete and accurate reporting of all of the potential environmental impacts associated with the TASP Implementation Projects. The City Council further finds that the Addendum has been completed in compliance with CEQA and the State CEQA Guidelines, and that the Addendum reflects the City Council's independent judgment.

Section 3. Based on the substantial evidence set forth in the record, including but not limited to the certified TASP EIR, the Addendum, and all oral and written testimony submitted to the City in relation to the TASP Implementation Projects, the City Council finds that an addendum is the appropriate document for disclosing the impacts of the TASP Implementation Projects, and that none of the conditions identified in Public Resources Code section 21166 and State CEQA Guidelines section 15162 requiring subsequent environmental review have occurred, because:

(a) The TASP Implementation Projects do not constitute a substantial change to the TASP that would require major revisions of the TASP EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

(b) There is not a substantial change with respect to the circumstances under which the TASP Implementation Projects will be constructed that would require major revisions of the TASP EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects.

(c) The City has not been presented with new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the TASP EIR was certified, that shows any of the following:

(i) The TASP and TASP Implementation Projects would have one or more significant effects not discussed in the TASP EIR;

(ii) Significant effects previously examined would be substantially more severe than shown in the TASP EIR;

(iii) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the City declines to adopt such measures; or

(iv) Mitigation measures or alternatives considerably different from those analyzed in the TASP EIR would substantially reduce one or more significant effects on the environment, but the City declines to adopt such measures or alternatives.

Section 4. The City Council hereby approves and adopts the Addendum, attached hereto as **Exhibit A.**

Section 5. The TASP EIR, the Addendum, and all other documents and materials that constitute the record of proceedings upon which these findings have been based are on file and available for public review at 455 East Calaveras Boulevard, Milpitas, CA 95035.

PASSED AND ADOPTED by the City Council of the City of Milpitas this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney