

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL, AS SELLER, AND THIRD AND MONTEREY LLC., A CALIFORNIA LIMITED LIABILITY CORPORATION, AS BUYER, FOR THE PURCHASE, SALE AND DEVELOPMENT OF 17270-17280 MONTEREY ROAD AND 1 E. MONTEREY ROAD (APNS 726-13-038, 039, AND 040), MORGAN HILL, CALIFORNIA AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER THE AGREEMENT

WHEREAS, the City of Morgan Hill As Successor Agency to the Morgan Hill Redevelopment Agency (“**Successor Agency**”) owned real property located at the corner of Monterey Road and Third Street, Morgan Hill, California, approximating .42 acres, designated as Assessor Parcel Numbers 726-13-038, -039, -040, (“**Site 4 –Third Street and Monterey Road Property**”); and

WHEREAS, in accordance with the Long Range Property Management Plan (“**LRPMP**”) prepared and approved by the Successor Agency to the former Morgan Hill Redevelopment Agency, and subsequently approved by the Morgan Hill Oversight Board (“**Oversight Board**”) on November 20, 2013, and the State of California, Department of Finance (“**Department**”), on March 21, 2014, in August 2014 the Successor Agency solicited proposals for the sale and development of the Site 1 – Downtown Mall Property; and

WHEREAS, on February 18, 2015, the Successor Agency recommended the sale of the southeast corner of Third Street and Monterey Road ("Site 4") to the City of Morgan Hill for \$525,000; and,

WHEREAS, The City of Morgan Hill Purchased Site 4 from the Successor Agency on June 5, 2015; and

WHEREAS, the City of Morgan Hill and Kenneth Rodrigues and Partners, Inc. and Imwalle Properties, Inc. dba Third and Monterey Associates, LLC, a California corporation (“**Buyer**”) entered into that certain Agreement to Negotiate Exclusively regarding the potential sale of the Site 4 –Third and Monterey Property by City to Buyer and Buyer’s development of a mixed use retail/restaurant project (“**ANE**”). The property is located at 17270-17280 Monterey Road, approximating 18,400 square feet, designated as Assessor Parcel Numbers 726-13-038, 039, 040 (“**Property**”); and

WHEREAS, to implement the ANE, the City desires to sell the Property to Buyer and Buyer desires to acquire the Property from City, for fair market value, on an “As Is with All Faults” basis pursuant to the terms of the Disposition and Development Agreement attached hereto as Exhibit A (“**Agreement**”); and

WHEREAS, the City and Buyer now desire to enter into the Agreement to provide for (1) City's disposition of the Property to Buyer at fair market value of \$525,000 as determined by competitive purchase offer; (2) Buyer’s development of the Property, specifically including a high-quality, statement development including retail, entertainment and restaurant uses; and

WHEREAS, the Property is located within Block 4 of the Morgan Hill Downtown Specific Plan, Central Business District (“**CBD**”), Mixed Use (General Plan) and CBD (Zoning) designation, and the development assumptions for Block 2 as set forth in the DSP provide that “[r]edevelopment of this block should be a landmark for Downtown and that restaurants with outdoor dining areas and specialty shops are encouraged...; and

WHEREAS, the Project contemplated by the Agreement will require application by Developer to City for a Site Development Permit and PD Zoning (“**DSP Permits**”) in accordance with the DSP, and thus the Agreement acknowledges that the Project contemplated therein remains subject to application and approval of the DSP Permits; and

WHEREAS, the Project will further the DSP’s vision to transform the City’s downtown into a pedestrian-oriented urban district of high intensity development, with a mix of office, retail, restaurant, entertainment and service commercial businesses, and thus the execution and performance of this Agreement is in the vital and best interests of the City of Morgan Hill, and the health, safety and welfare of the City’s residents, and is in accord with the provisions of applicable federal, state and local law; and

WHEREAS, the Project is consistent with the DSP and relies on the following analysis under the California Environmental Quality Act of 1970 (set forth in Public Resources Code, section 21000 *et seq.*), together with regulatory guidelines promulgated thereunder (collectively, “CEQA”): Draft Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan, as modified by the Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan (SCH #2008012025), (together, “**FEIR**”) certified by the City Council on November 18, 2009 by Ordinance No. 1956; and

WHEREAS, CEQA Section 21166 and its corresponding CEQA Guidelines Section 15162 provide that once an EIR was been prepared, no subsequent or supplemental EIR shall be required by the lead agency unless: (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) 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 previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those

analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA Guidelines Section 15164(e) provides that a brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in the lead agency's findings on the project, or elsewhere in the record; and

WHEREAS, pursuant to Government Code Section 65402, on March 10, 2015, the City of Morgan Hill Planning Commission determined that the proposed sale of the Property is consistent with the General Plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The City does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

SECTION 2. That the FEIR applies to the proposed Agreement for the Property and the Project required to be implemented pursuant to the terms thereof, and there have been no substantial changes in the proposed Project, or to the circumstances under which the Project will be undertaken, and no new information of substantial importance exists which would require preparation of a subsequent or supplemental EIR.

SECTION 3. That the sales price of \$525,000 as provided in the Agreement represents the fair market value of the Property.

SECTION 4. That the City hereby approves and authorizes the City Manager to execute and enter into the Agreement with Buyer, in the form attached hereto as Exhibit A, together with such further minor conforming, technical or clarifying changes or revisions as may be agreed to and approved by the City Attorney which do not materially increase the obligations of the City there under. Further, the City Manager and City Clerk are authorized and directed to take such further actions and execute such documents on behalf of the City of Morgan Hill as are necessary to carry out the transaction contemplated by the Agreement, including without limitation, one or more deeds, use agreements, easements, option agreements, assignment and assumption agreements and certificates of completion.

SECTION 5. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 2nd DAY OF SEPTEMBER 2015, AT A REGULAR MEETING OF THE CITY OF MORGAN HILL BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

_____, City Clerk

_____, Mayor

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on September 3, 2015.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, CITY CLERK

EXHIBIT A

Disposition and Development Agreement

To be inserted