

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN AGREEMENT FOR SALE OF REAL PROPERTY FROM THE SANTA CLARA VALLEY WATER DISTRICT

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (“City”), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “Downtown Parks Final Design and Land Acquisition” submitted for City Council consideration at its meeting of September 21, 2016, submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

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

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

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the Agreement for Sale of Real Property with the Santa Clara Valley Water District for the purchase of land for use as parks substantially in the form attached hereto as Exhibit A and incorporated herein by this reference (the “Agreement”) is hereby approved.

- b. That the City Manager is hereby delegated authority to and is authorized and directed to further negotiate and execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit A; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed One Hundred and Twenty Six Thousand Dollars (\$126,000).

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 21st day of September, 2016 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Steve Tate, 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.XXXX , adopted by the City Council at the meeting held on September 21, 2016.

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

DATE: _____

Irma Torrez, CITY CLERK

AGREEMENT FOR SALE OF
REAL PROPERTY
FROM THE SANTA CLARA VALLEY WATER DISTRICT
TO THE CITY OF MORGAN HILL

THIS AGREEMENT is made and entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a Special District created by the California Legislature (hereinafter "SELLER") and the CITY OF MORGAN HILL, a municipal corporation of the State of California, (hereinafter "BUYER") upon execution by SELLER (hereinafter "Effective Date").

WITNESSETH:

WHEREAS, SELLER is the owner of that certain real property located in the City of Morgan Hill, County of Santa Clara, State of California, more particularly described in EXHIBIT "A" and depicted in EXHIBIT "B" (hereinafter "PROPERTY") attached hereto and incorporated herein; and

WHEREAS, SELLER desires to sell the PROPERTY to BUYER and BUYER desires to purchase the PROPERTY from SELLER on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of their mutual promises, covenants and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Property to be Conveyed.

Subject to the provisions of this Agreement, SELLER shall transfer and convey to BUYER by Grant Deed in the same form as Exhibit "C", and BUYER shall purchase and take from SELLER, all of SELLER's right, title and interest in and to the PROPERTY.

2. Purchase Price.

BUYER shall pay to SELLER, in consideration of SELLER's conveyance to BUYER of said PROPERTY the sum of ONE HUNDRED TWENTY-SIX THOUSAND DOLLARS (\$126,000.00).

Said sum shall hereinafter be referred to as the "Purchase Price".

3. Tender and Acceptance of Payment.

BUYER shall deposit the Purchase Price with Old Republic Title Company, 224 Airport Parkway, Ste 170, San Jose, CA 95110 (the "Escrow Holder") no later than two (2) business days prior to the "Closing Date", as defined below. By its execution of this AGREEMENT, SELLER accepts the Purchase Price as full compensation for the PROPERTY.

4. Additional Fees and Charges.

BUYER shall be responsible for the full payment of all title insurance, escrow, recording fees, documentary transfer taxes, broker commission and other fees and charges associated with this transaction. BUYER shall indemnify, defend and hold SELLER harmless from and against, and SELLER shall have no liability or responsibility for any such fees, costs, taxes, or expenses.

5. Delivery and Recording of Deed and Real Property Taxes.

No later than thirty (30) days from the Effective Date, SELLER shall deliver, to the office of the Escrow Holder, a Grant Deed executed by SELLER. SELLER and BUYER shall deliver any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The SELLER and BUYER shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this AGREEMENT. The Escrow Holder will close the escrow and

record the Grant Deed on such date (the "Closing Date") as is directed by SELLER in its escrow instructions, but in no event later than fifteen (15) days after delivery of the Grant Deed to the Escrow Holder.

Real property taxes and assessments, if any, shall be payable by BUYER for the period from and after the date of recordation of the Grant Deed.

6. BUYER's Sole Remedy for Failure to Convey.

In the event that SELLER's Grant Deed shall, for any reason, be insufficient to convey fee title to the PROPERTY in condition acceptable to BUYER on or before the Closing Date, as shall be evidenced by Escrow Holder's willingness to issue an Owner's policy of title insurance, in form and content acceptable to BUYER, insuring such title in the name of BUYER in the amount of the Purchase Price, BUYER shall have the right to terminate this AGREEMENT, but shall have no other right of action against SELLER and shall not be entitled to recover any damages from SELLER, and all parties hereby shall return to status quo ante. The close of escrow shall constitute BUYER's waiver of its right to terminate this AGREEMENT pursuant to this Section 6 or other right of action against SELLER in regards to failure to convey fee title or other condition of title.

7. Condition of Title.

SELLER's right, title and interest in and to the PROPERTY shall be delivered by SELLER hereunder subject to all exceptions, encumbrances, liens and restrictions of record and not of record, as of the Closing Date.

8. AS-IS Property Condition/BUYER's Due Diligence.

BUYER agrees that: i) it is purchasing the PROPERTY "as is" and in reliance on BUYER's own investigation, which it has had the opportunity to conduct to its

satisfaction prior to the Effective Date, ii) no representations or warranties of any kind whatsoever, express or implied, have been made by SELLER regarding the PROPERTY or the legal or physical condition thereof, including without limitation any zoning regulations or other governmental requirements, the existence of "Hazardous Substances" (as defined in Section 9, below) or other site conditions, or any other matters affecting the use, value or condition of the PROPERTY, and iii) it shall take the PROPERTY in the condition that it is in at the Closing Date. To the extent that SELLER has provided to BUYER information or reports regarding the PROPERTY, SELLER makes no representations or warranties with respect to the accuracy or completeness thereof.

9. Indemnification and Hold Harmless.

BUYER agrees to protect, defend, indemnify and hold harmless, SELLER, its officers, employees, or agents, from and against all claims, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "Claims") of any kind whatsoever paid, incurred, suffered or asserted, or related to, on or after the close of escrow directly or indirectly arising from or attributable to physical conditions on or BUYER's use of the PROPERTY (including BUYER's use of the PROPERTY before the Effective Date), including without limitation any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the PROPERTY, regardless of whether undertaken due to governmental action. The foregoing hold harmless and indemnification provision and following release provision shall apply to the fullest extent permitted by law, including where such Claim is the result of the act or omission of SELLER, its officers, agents or employees, except to the extent such Claim is the result of the future negligent act or omission or willful misconduct of such parties. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an Agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify,

defend, protect and hold harmless SELLER, its officers, agents or employees for any liability pursuant to such sections. SELLER and BUYER agree that for purposes of this Agreement, the term "Hazardous Substance" shall have the definition set forth in EXHIBIT "D", which is attached to this AGREEMENT and incorporated by reference. BUYER, for itself, its legal representatives and assigns, releases SELLER, its officers, agents or employees from any and all Claims that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of any use, or legal or physical conditions, of the PROPERTY (including, without limitation, uses of or conditions on the Property undertaken or caused by BUYER's prior to the Effective Date).

10. General Release.

BUYER acknowledges that it has read and understood the following statutory language of Civil Code Section 1542:

A general release does not extend to a claim, which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Having been so apprised, to the fullest extent permitted by law, BUYER, elects to assume all risk for claims heretofore or hereafter, known or unknown, arising from the subject of this release, and BUYER knowingly and voluntarily expressly releases the SELLER, its officers, agents or employees from all Claims, unknown or unsuspected, arising out of any use, or legal or physical conditions, of the PROPERTY. The provisions of Sections 4, 6, 8, 9 and 10 shall survive the close of escrow or earlier termination of this AGREEMENT.

11. Binding on Successors.

This AGREEMENT inures to the benefit of and is binding on the parties, their respective heirs, personal representatives, successors and assigns.

12. Merger: Entire Agreement.

This AGREEMENT supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between SELLER and BUYER relating to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby. The terms of this AGREEMENT shall not be modified or amended except by an instrument in writing executed by each of the parties hereto.

13. Notices.

Any notice which is required to be given hereunder, or which either party may desire to give to the other, shall be in writing and may be personally delivered or given by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To the BUYER:

City of Morgan Hill
Community Services Department
Community Services Director
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: Chris Ghione

or to such other place as BUYER may designate by written notice.

To the SELLER: Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686
Attn: Real Estate Services Unit

or to such other place as SELLER may designate by written notice.

14. Miscellaneous.

- a. Whenever the singular number is used in this AGREEMENT and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- b. If there be more than one entity designated in or signatory to this AGREEMENT as BUYER, the obligations hereunder imposed upon BUYER shall be joint and several; and the term BUYER as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- c. Time is and shall be of the essence of each term and provision of this AGREEMENT.
- d. Each and every term, condition, covenant and provision of this AGREEMENT is and shall be deemed to be a material part of the consideration for SELLER's entry into this AGREEMENT, and any breach hereof by BUYER shall be deemed to be a material breach. Each term and provision of this AGREEMENT performable by BUYER shall be construed to be both a covenant and a condition.
- e. This AGREEMENT shall be deemed to have been made in, and be construed in accordance with the laws of the State of California. Venue

for any proceeding to enforce the provisions of this AGREEMENT shall be in the County of Santa Clara.

- f. The headings of the several paragraphs and sections of this AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- g. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either BUYER or SELLER in its respective rights and obligations contained in the valid covenants, conditions and provisions of this AGREEMENT.
- h. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this AGREEMENT as if set forth fully herein. The exhibits to this AGREEMENT are as follows:

Exhibit A - Legal Description of PROPERTY

Exhibit B - Plat of PROPERTY

Exhibit C - Form of Grant Deed

Exhibit D - Hazardous Substances

- i. This AGREEMENT shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.
- j. Days, unless otherwise specified, shall mean calendar days.
- k. The Chief Executive Officer of SELLER and the Director of Community Services of BUYER, or their respective designee, are authorized to execute on behalf of, respectively, the SELLER and BUYER, deeds and all other documents as may be necessary to effectuate this AGREEMENT and the transfer of property rights herein.

WITNESS THE EXECUTION HEREOF on the date of execution by SELLER as written below:

Approved as to form:

"SELLER"

SANTA CLARA VALLEY WATER DISTRICT,
a California Special District

Brian C. Hopper
Sr. Assistant District Counsel

By: _____
Norma Camacho
Interim Chief Executive Officer

Approved as to form:

"BUYER"

CITY OF MORGAN HILL, a municipal
corporation

Donald Larkin
City Attorney

By: _____
Steve Rymer
City Manager

Date of Execution: _____