



**DATE:** March 27, 2018

**CATEGORY:** Public Hearing

**DEPT.:** Public Works

**TITLE:** **Modifications to Grant/Phyllis/Martens Intersection, Project 15-31 – Amend Budget and Award Construction Contract, Approve the Acquisition of Easement Rights from 1549 Grant Road (APN 197-41-069) and Adopt a Resolution of Necessity and Authorize the Initiation of Eminent Domain Proceedings for the Acquisition of Easement Rights from 152 Martens Avenue (APN 197-41-060)**

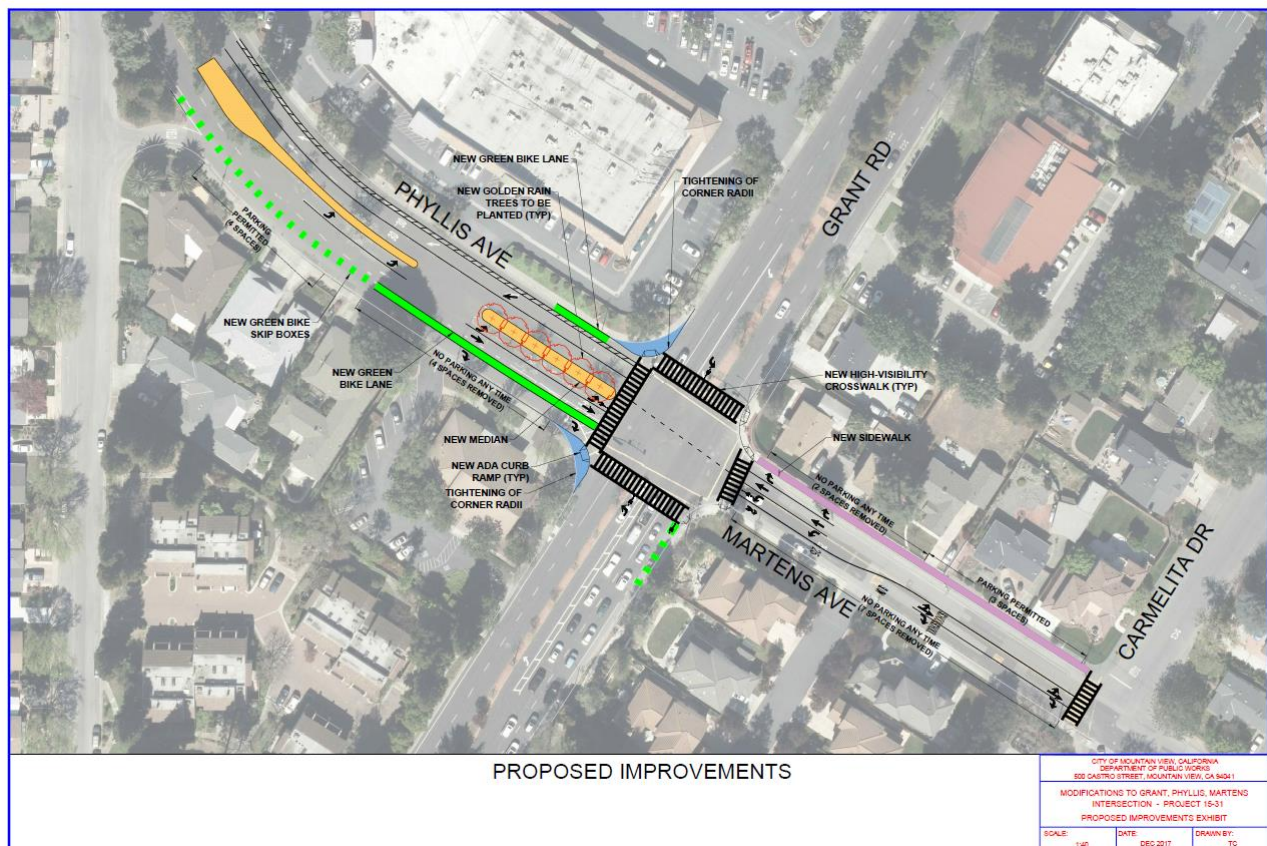
### **RECOMMENDATION**

1. Transfer and appropriate \$1,200,000 from the Construction/Conveyance Tax Fund to Modifications to Grant/Phyllis/Martens Intersection, Project 15-31. (Five votes required)
2. Award the construction contract for Modifications to Grant/Phyllis/Martens Intersection, Project 15-31, to Redgwick Construction Company of Oakland, California, for the low bid price of \$1,332,697 and authorize the City Manager to execute the contract.
3. Approve the acquisition of easement rights from a portion of real property located at 1549 Grant Road (APN 197-41-069) and authorize the City Manager or his designee to execute all documents and take all necessary actions related to the acquisition of the easement rights.
4. Adopt a Resolution of Necessity Determining that the Public Interest and Necessity Require the Acquisition of Certain Easement Rights from a portion of a real property located at 152 Martens Avenue (APN 197-41-060) and Directing the Filing of Eminent Domain Proceedings, to be read in title only, further reading waived (Attachment 2 to the Council report). (Five votes required)

5. Authorize the City Attorney to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to acquire easement rights from 152 Martens Avenue (APN 197-41-060) by eminent domain, if necessary.

## **BACKGROUND**

On January 16, 2018, the City Council approved plans and specifications for the improvements to the Grant Road/Phyllis Avenue/Martens Avenue intersection. The improvements include replacement of the 39-year-old traffic signal, pedestrian improvements, and installation of a sidewalk on Martens Avenue where none currently exists. The pedestrian improvements will facilitate access to Huff School, and the new traffic signal will reduce pedestrian-phase delays on Grant Road.



In the January 16, 2018 staff report, Council was advised that significant additional funds would be required to complete the project, and that staff would return with a funding request along with award of the construction contract.

**ANALYSIS**

On February 22, 2018, three bids were received ranging from \$1,332,697 to \$1,549,384 as shown in the table below. The low bid is from Redgwick Construction Company of Oakland and is 7.6 percent higher than the Engineer’s Estimate of \$1,239,000.

<b>Contactor</b>	<b>Bid</b>
1. Redgwick Construction Company	\$1,332,697
2. O’Grady Paving	\$1,485,965
3. Golden Bay Construction	\$1,549,384

Based on the low bid, the estimated project cost is as follows:

Construction (including contingency)	\$1,332,697
Design	98,280
Project Management (6% of construction)	79,962
City Inspection (8% of construction)	106,616
Right-of-Way Acquisition (including eminent domain)	<u>400,000</u>
Subtotal	\$2,017,555
City Administration (6.5%)	<u>131,141</u>
<b>TOTAL PROJECT COST</b>	<b>\$2,148,700</b> <b>(rounded)</b>
<b>CURRENT BUDGET</b>	<b>\$949,000</b>
<b>BUDGET SHORTFALL</b>	<b>\$1,200,000</b> <b>(rounded)</b>

While higher than the Engineer’s Estimate, staff believes the bids reflect the costs of construction in the current, busy construction market.

If the recommended action is approved, construction is scheduled to start in June and all the civil work to be completed in August, before Huff School starts, with project completion in December 2018.

### Acquisition of Property Rights

Installation of the sidewalk on the north side of Martens Avenue will require the acquisition of 10' wide street easements from 1549 Grant Road (corner of Grant Road and Martens Avenue) and 152 Martens Avenue. The existing condition without sidewalk is shown in Figure 1. As can be seen, the easement is primarily outside of the currently used property area and frequently used by bicyclists and pedestrians. The acquisition areas are shown on the attached plat maps (Attachment 1). As part of the project construction, both the redwood fence on the Martens Avenue frontage of 1549 Grant Road and the white picket fence in front of 152 Martens Avenue will be installed new to match existing fences at the new right-of-way line, which is approximately 2' from the existing location. Part of the driveways for the two properties will also be reconstructed to match the sidewalk grade.



Figure 1 – Existing Condition

In accordance with California law (California Government Code §7267 *et seq.*), the City retained the services of an independent real estate appraiser to estimate the fair market value of the easement rights in the two properties. On February 2, 2018, staff made formal offers of compensation to the two property owners based on the independent

appraiser's estimate of fair market value. The value and offer for the easement for 152 Martens Avenue was \$155,000; the value and offer for the easement for 1549 Grant Road was \$182,500.

The owners of the 1549 Grant Road property have agreed to convey an easement to the City for a price of \$195,000 (6.8% above appraised value) and have executed a formal Purchase and Sale Agreement. Staff recommends approval of the Purchase and Sale Agreement.

As this Council report is written, discussions are ongoing with the owners of 152 Martens Avenue. It appears unlikely that agreement will be reached with the owners of 152 Martens Avenue on a purchase of the easement because of a very significant difference in the opinion of value. Having the ability to use the City's powers of eminent domain is recommended as a contingency measure to ensure the easement rights are acquired in time to do the project as designed and meet the construction schedule.

### Eminent Domain

In order for a public agency in California to initiate eminent domain proceedings, its governing body must adopt a Resolution of Necessity in a public hearing. A two thirds vote is required to adopt a resolution of necessity. California Code of Civil Procedure Section 1245.230 provides that in order to adopt a Resolution of Necessity, the public agency must find:

- The project for which the property, or property rights, to be acquired is necessary.
- The property, or property rights, are necessary for the public project.
- The project is located in such a manner as to offer the greatest public benefit with the least private detriment.
- An offer to purchase the property has been made as required by California Government Code Section 7267.2.

Each of these findings is addressed below:

### Necessity

Acquiring the easement rights is necessary for the street improvements to be constructed.

### Necessary for the Public Project

The easement rights to be acquired through eminent domain are the minimal property rights necessary to construct the street improvements, including a sidewalk, curb, and gutter.

### Public Benefit and Least Private Detriment

Acquiring the easement rights through eminent domain will enable the street improvements to be constructed as part of a City-approved project. The 10' wide easement areas are, for the most part, outside existing fences (the fences would have to be moved in approximately 2' at City expense) and are dirt walkways frequently used by pedestrians. There would be minimal impact on the property owners' quiet use and enjoyment of their property beyond conditions that already exist.

### Offer to Purchase

In compliance with California Government Code Section 7267.2, an independent appraiser estimated the value of the easement rights to be acquired by eminent domain and offers of just compensation were made to both property owners. Staff will continue its efforts to reach agreement with the owners of 152 Martens Avenue while proceeding with the recommended eminent domain action. If a negotiated agreement can be reached with the owners of 152 Martens Avenue within guidance provided by Council, staff will return to Council for approval of the purchase. Pursuing eminent domain is a contingency measure to ensure the project can begin construction this summer while Huff Elementary School is on summer recess. As part of the eminent domain process, the City will file a Complaint in Condemnation with the Superior Court and seek an Order of Possession from the Court to grant the property rights necessary to construct the project. The City would be required to deposit fair market value for the property rights to be acquired and the property owners can withdraw the money without prejudice. In the meantime, negotiations can continue with the property owners. If a satisfactory agreement can be reached with the property owners of 152 Martens Avenue, they would be dismissed from the Complaint in Condemnation and no further

eminent domain action would be required for this project. If agreement on price cannot be achieved, the matter of valuation would eventually proceed to trial for a judgement on fair market value.

### **FISCAL IMPACT**

The project is funded with \$597,000 from the Construction/Conveyance Tax Fund, \$300,000 from Google for pedestrian/bicycle projects, and \$52,400 from El Camino Hospital as mitigation funds for traffic impacts for a total of \$949,400. The total estimated project cost is higher than budgeted for a number of reasons. The first is that in order to make the new sidewalk, curb and gutter grading and drainage function properly it will be necessary to reconstruct the northern half of Martens Avenue between Grant Road and Carmelita. The second is that the cost for right of way is significantly higher than originally budgeted. Finally, construction costs have risen at a faster rate than anticipated when the original project estimate was prepared in 2013.

Staff recommends appropriating an additional \$1,200,000 from the Construction/Conveyance Tax Fund to meet the funding shortfall. The available balance in the Construction/Conveyance Tax Fund is sufficient to fund the additional funding request.

### **ALTERNATIVES**

1. Do not adopt Resolutions of Necessity to initiate condemnation proceedings.
2. Reject bids and direct staff to not proceed with project.
3. Provide other direction.

### **PUBLIC NOTICING**

Agenda posting. A public notice was also published in the *San Jose Post Record* and notices were mailed to the two property owners and all residents within 500' of the project. A copy of the staff report was also provided to the property owners.

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DPD-AA-SF/TS/2/CAM  
930-03-27-18CR-E

Attachments: 1. Plats and Legal Descriptions of the Easement Areas  
2. Resolution of Necessity for 152 Martens Avenue

cc: CTE, STE – Aggarwal, PCE – Macaraeg, RPPA, AAI – Goedicke, F/c