

CONSULTANT AGREEMENT

Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys), a California limited liability company ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until July 15, 2017 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to provide Below Market Rate Housing Services on City premises provided by the City of Morgan Hill at 17555 Peak Avenue as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$500,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed \$500,000 dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance

available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.2. **Endorsements.** CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. **General Liability.**

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 7.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender,

marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Nyanda and Associates
409 Tenant Station, Suite 395
Morgan Hill, CA 95037
ATTN: Julius Nyanda
408-684-8712

Address of CITY is as follows:

Steve Rymer, City Manager	with a copy to:
c/o Leslie Little, ACM	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its

subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

17. Time of Essence. Time is of the essence in the performance of this Agreement.

18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

20. Defense and Indemnification.

20.1. Defense and Indemnification. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

20.2. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of

CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

//

//

//

26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Wilson

Print Name

Steve Rymer

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Julius Nyanda, Chief Executive Officer,
Nyanda and Associates, LLC, A California
Limited Liability Company d/b/a HouseKeys

Interim City Attorney

By: Julius Nyanda

Gary M. Baum

Print Name

Title: CEO

Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

Date: _____

Date: 05/10/16

By:

Title: _____
Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: _____

**EXHIBIT A
SCOPE OF SERVICES**

See attachment titled Nyanda and Associates EXHIBITS A, Scope of services incorporated herein by this reference and is attached hereto.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

See attachment titled Nyanda and Associates EXHIBITS B, Schedule of compensation rates incorporated herein by this reference and is attached hereto.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

See attachment titled Nyanda and Associates EXHIBITS C, Schedule of Performance incorporated herein by this reference and is attached hereto.



Community and Economic Development Consulting

EXHIBIT A

Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys SCOPE OF SERVICES

The Scope of Work details the roles and responsibilities of the City and Consultant. The Schedule starts from the date the contract is signed by both parties.

A. Consultant will continue BMR Program Administration from July 15, 2016 through July 15, 2018.
B. Consultant will administer the Below Market Rate program and assure Below Market Rate (BMR) Deed Restrictions are recorded and followed by all parties as applicable for each property.
C. Consultant will host BMR program onsite at the City of Morgan Hill offices.
D. Consultant will regularly update BMR guidelines and program materials on the City's website and HouseKeys website, in conjunction with direction from the City Council, City Manager and Staff's direction to reflect polices and procedures approved by the City Council, the guidelines will include the Consultant's administrative process for BMR Administration including, but not limited to: applications, program pamphlets, resale calculations, buyer selection process, sale and resale of units, refinancing requests, collection of City fees and other applicable fees, and default monitoring/resolution process. Consultant's objective will be to work alongside City Staff to incorporate "learnings" from the City's 40 year old BMR Program into a go-forward plan focused on best practices, cost recovery, and sustainability of the BMR Program.
E. Consultant will continue to maintain the City Below Market Rate program website presence that will link to the City of Morgan Hill website.
F. Consultant and the City will develop mutually acceptable response times to BMR inquiries and processing times required to obtain City signatures.
G. Consultant shall maintain the City's existing databases of which the City will have full access to, and files for program administration, and establish a file retention and management system for the program that is accessible at all times by City Staff. All electronic records, databases, and correspondence will be considered work products that are property of the City of Morgan Hill. The Consultant will update the City's records monthly to ensure a coordinated seamless record keeping process.
H. Consultant will provide the applicants will the following services: <ol style="list-style-type: none">1. Conducting income qualifications including review of assets, income, Verification of employment (VOE) and all other necessary approvals to ensure qualification for the City BMR Program.2. Making necessary revisions to the City's existing program materials and legal documents, subject to City approval.3. Underwriting loan applications in accordance with program requirements.4. Preparing all loan documents, overseeing proper execution thereof, and conducting final approval reviews.



Community and Economic Development Consulting

5. Ensuring timely delivery of all necessary documents into escrow, and preparing escrow demands.
6. Overall management and implementation of specific program policies:
 7. Preparation of BMR program materials, revised as needed on an ongoing basis.
 8. Calculating all pay off demands and issuing any disclosures and tax forms as required by State and/or Federal Law.
 9. Calculating the resale value of all BMR homes, and annually submitting accurate property BMR values on behalf of the City to the County via a detailed workbook of data (individual resale calculation formulas on each BMR property to ensure County of Santa Clara Tax Assessor is provided annual updated property values). This information shall be accessible to the City and simultaneously submitted to the City in an electronic report with the transparent calculation used to generate the BMR value.
 10. Work with City staff to ensure a seamless and coordinated development of documents as it relates to the BMR Program, including the RDCS application process where BMR units are awarded, the Development Agreement, the Affordable Housing Agreement and any subsequent amendments to the Development.
- I. Consultant shall act as transaction coordinator for all real estate transactions and will follow the current City BMR Fee Schedule approved by City Council. Consultant will charge BMR re-sale transaction fees in line with applicable recorded Deed Restrictions per the Fee Schedule. Consultant will charge the developer transaction coordination fees in accordance with the Affordable Housing Agreement pertaining to the subject development project per the fee schedule.
- J. Consultant will coordinate document transmittals between buyers, homeowners, developers, and City as needed. Consultant will be responsible for ensuring all documents submitted for City signatures are complete and accurate. Consultant will be responsible for making any necessary corrections to documents.
- K. Consultant will work with City staff to coordinate tracking of BMR units produced, BMR units waived as part of BMR Reduction Program, and housing in-lieu fees collected.
- L. Consultant shall work alongside Staff to conduct monitoring to evaluate BMR owners' compliance with the terms and conditions of the BMR recorded deed restrictions including the following:
 1. Mailing monitoring letters to all the BMR units for self certification.
 2. Reviewing in conjunction with City staff, City or County Assessor data to assist in the process (e.g., water utility bills, property records)
 3. Review City's preliminary monitoring list to identify follow up actions required.
 4. Meet with City staff to develop guidelines for acceptable default remedies (e.g., allowing rental of BMR units for hardship cases).
 5. Attempt to cure asset management issues with proactive measures as approved by City Council procedures, and or the City Manager or his or her designee.
- M. Consultant shall work alongside Staff to investigate and identify cure for potential BMR defaults including:
 1. Conduct follow up of those BMR owners who do not submit their compliance documentation.



Community and Economic Development Consulting

2. Reviewing information from calls from BMR neighbors and interested parties.
3. Conduct reasonable follow-up investigation to assess potential BMR defaults including unit site visits.
4. Scheduled appointments with BMR owners
5. For confirmed defaults, provide owners with list of actions needed with a timeline to remedy the default and conduct follow-up to monitor compliance. Subsequently, provide the City with a letter documenting the efforts made by the administrator to cure the situation, include dates and times, response or lack thereof of the homeowner, and various ways in which the administrator tried to remedy the situation prior to escalation. This will be done on a case by case basis, coordinated with Staff, to ensure enforcements efforts are escalated as needed to preserve the affordability of the BMR home and assist families with guidance as needed.
6. Maintain a log of actions taken to remedy the defaults.
7. For those defaults in which the owners choose to not remedy the situation within a reasonable amount of time, Consultant will meet with City staff to determine the course of action to pursue.
8. Provide City with a list of any current BMR defaults and actions taken to date.

N. Consultant will provide the City with quarterly reports reflecting the following performance measures for BMR program administration. Additional measures may be developed in conjunction with City staff. Performance measures will be included in quarterly BMR summary reports.

- Qualified #_____ of buyers
- Ongoing development of New Buyer Pipeline (#_____ applications) to assist developers with closing on time
- Record #_____ Affordable Housing Agreements
- Held #_____ Lotteries for potential new homeowners
- Ongoing, BMR Website updates - www.HouseKeys.org to disseminate information and connect to the City of Morgan Hill Website
- Assist #_____ Development Projects that needed onboarding to City process and sale of units
- Record #_____ BMR Properties with Notice Of Defaults (NOD)
- Hold #_____ BMR Educational Orientations at City Hall with #_____ Registrants, conduct BMR orientations in the City off site on occasion to target audiences
- #_____ of BMR Existing Homeowner Workshops held to provide current homeowners and opportunity to stay engaged and educated on the BMR Program
- Assist #_____ BMR Home Sale transactions
- #_____ refinance transactions completed
- #_____ resale transactions completed
- #_____ new construction sales completed
- #_____ Escrow/Closings
- #_____ Identify and qualify New Lenders to facilitate Purchase Transactions and familiarize their legal teams with the Program's 45 year affordability restrictions



Community and Economic Development Consulting

<ul style="list-style-type: none"> ▪ Annually Respond to the County Tax Assessors request for a detailed description of each BMR Home in the City to ensure accurate property tax assessments ▪ # ___ Rehab and sold ▪ # ___ asset management cases cured ▪ General Asset Management Activity ▪ Model City Updates and progress ▪ \$ ___ Total Revenue Collected in relation to the City of Morgan Hill BMR Program with backup documentation.
<p>O. Consultant shall provide the City with a list of "problem properties" that have been identified with a case study description of the issue, concern, efforts made thus far, recommendations and solutions, next steps and results, this is an ongoing report.</p>
<p>P. Consultant will partner with the City to create City legal templates for documents required for signature by the BMR participants. Consultant shall supply documents that are typically used in Santa Clara County for residential real estate transactions (e.g. purchase and sale, disclosure acknowledgements, addendums, etc.)</p>
<p>Q. Consultant will create and maintain a list of approved loan officers and lending operations eligible to provide mortgage lending for purchase and refinance transactions, on the website, as well as the transparent process/steps in which a lender can take to become an approved lender.</p>
<p>R. Consultant will review individual BMR restrictions for terms and requirements as needed including sweat equity and equity share units, Madrone Plaza units, Royal Court, and Viale. Consultant will discuss its findings with City staff.</p>
<p>S. Consultant will prepare City staff reports on a time and materials basis.</p>
<p>T. Consultant enters into this contract with the City of Morgan Hill with the intention of continuing a Model City Project that incorporates Industry Best Practices, A BMR Database, and a Regional BMR Working Group. This Project will improve efficiencies and reduce program costs to the City.</p>
<p>U. Consultant will provide training, analysis and suggested improvements to the BMR Program, including Down Payment Assistance Loans (e.g. Sweat Equity)</p>
<p>V. Consultant will construct a work plan for a Regional BMR Working Group to explore strategies to preserve affordable housing stock, seek legislative solutions and examine program cost and value.</p>
<p>W. Consultant will design a Regional BMR Database that first focuses on the Morgan Hill Portfolio with the intention of introducing an Affordable Housing Technology Platform to facilitate all aspects of development, buyer orientation, buyer-property matchup, portfolio management and compliance.</p>
<p>X. Consultant will construct a work plan for a Regional BMR Working Group to explore strategies to preserve affordable housing stock, seek legislative solutions and examine program cost and value.</p>
<p>Y. Consultant will design a Regional BMR Database that first focuses on the Morgan Hill Portfolio with the intention of introducing an Affordable Housing Technology Platform to facilitate all aspects of development, buyer orientation, buyer-property matchup, portfolio management and compliance</p>



Nyanda & Associates
Community and Economic Development Consulting

Z. Consultant shall not provide real estate broker, real estate agent services under this agreement.

EXHIBIT B
Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys
SCHEDULE OF COMPENSATION RATES

BMR Program Budget		
Asset Manager	FT	\$55,681.60
Processor	FT	\$62,150.40
Underwriter	FT	\$60,673.60
Program Manager	PT (1/2)	\$78,000.00
Real Estate Attorney	FT	\$83,200.00
Benefits and Payroll		\$148,526.40
Communications Consultant	¼ time with Benefits	\$39,000.00
Real Estate Project Manager	¼ time with Benefits	\$39,000.00
Software Developer	¼ time with Benefits	\$39,000.00
Non Personnel	Overhead, Space, Computers, Phones, etc.	\$244,768.00
Total BMR Program Cost		\$850,000.00
New Construction Income	15 Units	\$150,000.00
BMR Resale Income	10 Units	\$150,000.00
Acquisition Income	3 Units	\$50,000.00
Total Offsets		\$350,000.00
Net Budget (Contract Request of the City)		\$500,000.00

Overhead breakdown

	Monthly	Yearly
Insurance (e.g. GL, E&O, Employed Lawyers Liability), License and Broker Association Dues	\$2,500	\$30,000
IT Services	\$2,500	\$30,000
Operations Vendors	\$6,000	\$72,000
General and Admin	\$2,500	\$30,000
Communications	\$1,500	\$18,000
“Overhead”		\$180,000



Community and Economic Development Consulting

Below Market Rate Program
Fee Schedule

Income Type	Fee Amount or Percentage of Sales Price Amount	Revenue Cap Per Transaction	12 Month Revenue Projection	Fees Charged to (Who Pays Fee):
New Construction	3%	\$10,000	\$150,000	Developer
BMR Resale Transaction	6%	\$15,000	\$150,000	Excess Sale Proceeds
Acquisition Transaction	5%	\$17,500	\$50,000	Excess Sale Proceeds
Subordination Fee	\$1,086	\$886 (\$200 to City of Morgan Hill)	N/A	BMR Owner Occupant



Community and Economic Development Consulting

EXHIBIT C
SCHEDULE OF PERFORMANCE

The schedule of performance will be from July 15, 2016 to July 15, 2017. City Manger may execute the option to extend the term for one year.