

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE BELOW MARKET RATE (BMR) PROGRAM FEE SCHEDULE, BMR DEVELOPMENT STANDARDS, AUTHORITY OF THE CITY MANAGER TO APPROVE AND EXECUTE PROGRAM GUIDELINES, DEVELOPMENT STANDARDS, AFFORDABLE HOUSING AGREEMENT PROVISIONS AND TO TAKE ANY ACTIONS NECESSARY TO ENSURE BMR PROGRAM IMPLEMENTATION, AND AUTHORIZE THE APPOINTMENT OF THE ADMINISTRATOR (NYANDA AND ASSOCIATES, LLC, D/B/A HOUSEKEYS) TO ACT ON BEHALF OF THE CITY IN CONNECTION WITH THE MANAGEMENT OF THE BMR PROPERTIES, AND AUTHORIZE THE CITY AND THE ADMINISTRATOR (NYANDA AND ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY D/B/A HOUSEKEYS) TO EXECUTE THE ASSIGNMENT AND ASSUMPTION OF THE CITY'S OPTION TO PURCHASE THE BMR PROPERTY IN ORDER TO COMPLETE THE ACQUISITION AND RESALE TRANSACTION, AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE AND ADMINISTER THE PROFESSIONAL SERVICES AGREEMENT WITH THE ADMINISTRATOR (NYANDA AND ASSOCIATES, LLC, D/B/A HOUSEKEYS) FOR PROVISION OF BELOW MARKET RATE (BMR) HOUSING SERVICES.

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 City of Morgan Hill Residential Development Control System ("RDCS"), awards competing developments points for provision of low-income and moderate-income housing and housing for the elderly; and

WHEREAS, Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios in the State and established a BMR Program that provides homeownership opportunities and affordability to low-income and moderate-income households; and

WHEREAS, The Excess Sales Proceeds value or equity in each below market rate property represents a bona fide City asset that subsidizes the affordability for each BMR Property Owner and is a vehicle that can be used to renovate older units, build new units and help pay for program administration; and

WHEREAS, The City recognizes that the declaration of restrictions, which secures the Excess Sale Proceeds, is a covenant that runs with the land by and between the BMR Property Owner and the City of Morgan Hill that restricts the right of use or enjoyment and should be enforced judicially; and

WHEREAS, A Program and Program Guidelines are essential to maintain integrity of the BMR program and compliance therewith and these guidelines and policies will be updated from time to time to address challenges and changes in the market and economic environment; and

WHEREAS, In order to respond to Program needs, the City Manager or his or her designee should be empowered to approve BMR Program Guidelines and BMR agreements; and

WHEREAS, In order to ensure compliance with the City's program the program must be actively administrated. The administration of the program can be achieved by City staff and/or an outside administrator. The City is empowered to delegate the day-to-day management of the Program to a third-party administrator; and

WHEREAS, Either in-house or third party administration is vital to ensure program integrity and continued affordability of Below Market Rate properties; and

WHEREAS, In response to the dissolution of the City's Redevelopment Agency, schedules have been put in place to pay for the costs of services funded by former Redevelopment Agency funds.

WHEREAS, the reasons supporting the entrance of the City into an agreement described in, and that is the subject of, this Resolution are set forth in detail in the City Council Staff Report entitled "Transition Plan Recommendations for Termination of Contract with Neighborhood Housing Services of Silicon Valley (NHSSV) For Administration of the City of Morgan Hill Below Market Rate (BMR) Housing Program" submitted for City Council consideration at its meeting of July 15, 2015, 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 activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; 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 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 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 following Below Market Rate Program Fee Schedule is incorporated herein by this reference and is attached hereto as Exhibit D BMR Fee Schedule is hereby approved; and
- b. That the Below Market Rate Program Development Standards, substantially in the form attached hereto as Exhibit E; and incorporated herein by this reference (BMR Development Standards) is hereby approved; and
- c. That the City Manager or the City Manager's designee, is hereby delegated authority to approve and directed to execute the following BMR Program Documents for applicability, and to update them from time to time, to address challenges and changes in the market and economic environment, enforcement and to address abuses of the BMR Program. 1.) BMR Program Ownership Housing Guidelines. The Administrator develops detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements. The BMR Ownership Housing Guidelines shall be approved by the City Manager or the City Manager's designee, and approved by the City Council from time to time. Guidelines will be published online and made available to the public, including guidelines for refinances, and hardship review. 2.) Resale Restriction Agreement 3.) Affordable Housing Agreement 4.) BMR Agreements. 5) Declaration of Restrictions and Affordable Housing Agreements may be amended from time to time subject to the approval by the City Manager or the City Manager's designee.
- d. That the City Council Authorizes the Appointment of the Administrator (Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys), to act on the City's behalf in connection with the management of the Below Market Rate Program, to act as City's agent in connection with the management of BMR properties and matters reasonably related thereto for the purpose and intent of maintaining and preserving the Affordability and BMR Program. The City, or Administrator via Power of Attorney, if authorized, may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for enforcement.
- e. That the City Council Authorizes the Administrator (Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys) and the City to act as the City's agent in connection with preserving the affordability of the BMR portfolio, to execute the assignment and assumption of the City's option to purchase a BMR Property in order to complete the acquisition and resale transaction, and to execute settlement agreements with homeowners to "cure"

properties that are in jeopardy of losing the affordability, and to execute appropriate loss mitigation options to preserve the BMR property's affordability.

- f. That the Professional Services Agreement with Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys for the provision of Below Market Rate (BMR) Housing Services substantially in the form attached hereto as Exhibit C and incorporated herein by this reference (the "Agreement") is hereby approved; and
- g. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit C; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed Five Hundred Thousand Dollars (\$500,000) for each of the next two years; and
- h. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 16-17 Annual Budget of City.

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 ____ day of _____, 201__ 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 ____, 201__.

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

DATE: _____

Irma Torrez, CITY CLERK

