

Agreement

This Agreement ("Agreement") is made as of this ____ day of _____, 2016, by and between **Virginia Lomanto, Trustee, or her successors of the Lomanto Living Trust dated July 10, 1989** as amended and restated ("Lomanto"), and the **City of Morgan Hill**, a governmental agency ("City").

RECITALS

A. The parties desire to have the cleanup completed on the property located at 1250 Barrett Avenue, Morgan Hill, CA 95037 (hereinafter referred to as the "Property").

B. The City does not want to enter into that certain Ground Lease with Option to Purchase (hereinafter referred to as the "Ground Lease") agreement with Lomanto until the cleanup on the Property is completed and Lomanto obtains a "no further action" letter or an equivalent statement settling the agency's action from the applicable agency at the County of Santa Clara.

C. Lomanto has obtained and received a written proposal and estimate by a licensed and qualified remediation company to complete the remediation work on the Property, however, Lomanto does not have the monies to pay for the cleanup of the Property.

D. The City is willing to establish a fund ("Fund") from which the remediation company can submit reasonable bills to the City directly for payment from time to time while effecting the remediation work, subject to the terms and conditions contained below.

E. Any monies paid out of the Fund established by the City shall be deducted from the first annual payment by the City to Lomanto under the Ground Lease. The initial amount of the Fund indicated below shall not be adjusted or changed without the mutual consent of both parties. This amount shall not reduce the 50% option credit provided to the City.

Now, Therefore, the parties agree as follows:

1. The City will establish the Fund with a maximum \$60,000.00 balance from which reasonable costs and expenses regarding the remediation of the Property shall be paid directly to the remediation company after providing sufficient supporting documentation of work progress to the City for approval.

2. All monies paid out of the Fund shall be deducted from the initial \$100,000.00 annual payment to be made by the City to Lomanto in accordance with the Ground Lease.

3. Lomanto shall be solely responsible for the remediation of the Property.

4. The City will not enter into the Ground Lease until the remediation of the Property is completed and Lomanto has received or obtained from the applicable agency at the County of Santa Clara a "no further action" letter or an equivalent statement settling the agency's

action from the applicable agency at the County of Santa Clara indicating or stating that the remediation of the Property has been completed to such a degree that the County will require no further actions by Lomanto.

5. The amount in the Fund shall not be increased without the mutual consent of both parties.

6. If Virginia Lomanto dies prior to completion of the remediation and the delivery of the appropriate document from the County confirming the cleanup, then Lomanto shall continue with the remediation under the same terms and provisions; provided, however, upon completion and delivery of to the City of the appropriate documentation of the completion of the clean-up, the City shall have sixty (60) days from the date of delivery of the appropriate documentation to the City in which to exercise its option to purchase the Property and execute the Purchase and Sale Agreement attached thereto as an exhibit. In such a situation, the remediation costs paid out of the Fund shall be deducted from the \$2,000,000 purchase price. If the City fails or refuses to exercise its option to purchase the Property and execute the Purchase and Sale Agreement, then the amount of the money paid out for the remediation or any other costs and expenses incurred shall be reimbursed or repaid to the City and any balance remaining in the Fund shall be the City's sole property.

7. All the other terms and conditions of the Ground Lease shall remain unchanged.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

Lessor:

Lessee:

Lessor: Virginia Lomanto, Trustee of the Lomanto Living Trust dated July 10, 1989, as amended and restated

City of Morgan Hill, a governmental entity

By Virginia Lomanto, Trustee of The Virginia Lomanto Living Trust dated July 10, 1989 by Ryan L. Krieger attorney in fact

Also:

By Lydia Pine
Lydia Pine, Successor Trustee

By _____
City Manager

Attest:

City Clerk/Deputy City Clerk

Approved as to form:

By _____
City Attorney