

AGREEMENT
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND THE
CITY OF GILROY
FOR INSTALLATION OF A RECYCLED WATER PIPELINE
WITHIN HECKER PASS DEVELOPMENT PROJECT

This REIMBURSEMENT AGREEMENT ("Agreement") between the Santa Clara Valley Water District, a California independent special district (hereinafter referred to as "District") and the City of Gilroy, a California municipal corporation (hereinafter referred to as "City") sets forth the respective roles and responsibilities of the District and City in regard to the design and construction of a pipeline extension to the District's recycled water distribution facilities located in the City of Gilroy, and is made and entered into as of 18th of September, 2017.

District and City are collectively referred to hereinafter as the Parties, and may be referred to individually as Party.

RECITALS

WHEREAS, District manages groundwater and provides wholesale water supply in Santa Clara County, including the City; and

WHEREAS, the District and City developed a South County Recycled Water Master Plan report for expanding recycled water use in southern Santa Clara County; and

WHEREAS, District owns and operates a recycled water distribution system in southern Santa Clara County; and

WHEREAS, Meritage Homes has gained City's approval of a proposed residential development project requiring recycled water in the City; and

WHEREAS, Meritage Homes is required to install a portion of a 12-inch inside diameter (12-inch diameter) recycled water pipeline in the public street and right-of-way that will extend the District's master recycled water distribution system located in the City of Gilroy within and adjacent to an area where Meritage Homes will be performing work related to their residential development project.

WHEREAS, instead of Meritage Homes' installing said 12-inch diameter recycled water pipeline, District desires Meritage Homes to install a 24-inch inside diameter (24-inch diameter) recycled water pipeline, and with respect to such work has requested that City act as a conduit between District and Meritage Homes and to provide administrative services with respect to the work; and

WHEREAS, the City has therefore asked Meritage Homes to install a 24-inch diameter recycled water pipeline in the public street and right-of-way that will extend the District's recycled water distribution system located in the City of Gilroy within and adjacent to an area where Meritage Homes will be performing work related to their residential development project, subject to the terms and conditions of an Agreement

between City and Meritage Homes to be negotiated and described in this Agreement below as the Meritage Homes Construction Contract.

WHEREAS, the 24-inch diameter recycled water pipeline work that City has asked Meritage Homes to perform also constitutes a portion of the work that: (i) Meritage Homes has agreed to perform pursuant to the terms and requirements of a Property Improvement Agreement, No. 2015-07, covering certain real estate and property improvements known as and called: Hecker Pass-West Cluster (Hoey), Tract No 10279 APNs: 810-20-20 and 810-20-04 between City and Meritage Homes dated October 25, 2015 and (the "Hoey PIA"), and (ii) the City anticipates Meritage Homes will perform pursuant to the terms and requirements of a Property Improvement Agreement that is currently pending execution with respect to certain real estate and property improvements known as and called: Hecker Pass – Heartland Gardens (Heartland Gardens), Tract No. 10379 APN: 810-20-15 (the "Heartland Gardens PIA") (both the "Hoey PIA" and "Heartland Gardens PIA" are hereafter, collectively, referred to as the "PIAs").

WHEREAS, Meritage Homes has indicated that it desires to install said 24-inch diameter recycled water pipeline instead of a 12-inch diameter recycled water pipeline installation so long as it is reimbursed for the difference in cost for installing the 24-inch diameter recycled water pipeline instead of the 12-inch diameter recycled water, subject to the terms and conditions of the Meritage Homes Construction Contract to be negotiated with the City; and

WHEREAS, the City desires that the difference in Meritage Homes' cost required to install said 24-inch diameter recycled water pipeline instead of a 12-inch diameter recycled water be reimbursed by the District, subject to the terms and conditions of the Agreement and the Meritage Homes Construction Contract to be negotiated.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties herein expressed, District and City hereby agree as follows:

AGREEMENT PROVISIONS

1. PROJECT DESCRIPTION

The project will expand the District's recycled water southern Santa Clara County distribution system by increasing the size of approximately 4,520 linear feet of High Density Polyethylene (HDPE) recycled water pipeline as generally shown as Phase 3 and Phase 4 in Exhibit "A" titled "Recycled Water System Map," attached hereto and incorporated into this Agreement by this reference ("Project"). City shall ensure Meritage Homes shall use its best efforts to administer the Project with the targeted goal of achieving Project completion pursuant to the terms and requirements of the PIAs respectively but not later than three (3) years after the effective date of this Agreement ("Completion Deadline"). The Project will be completed in the following two phases: (1) Phase 3, Hoey, Grassland Way from Third Street to the western boundary of Tract 10279 to be completed on or about December 2016, and (2) Phase 4, Heartland Gardens, Grassland Way from the western boundary of Tract 10279 until such street transitions to Lone Oak Lane and termination at the intersection of Lone Oak Lane and 2

Oaks Lane estimated to be completed on or about December 2017.

The City shall have no liability to District if the targeted Completion Deadline is not met. If both Parties determine the Project cannot be completed by this date, then the Parties will meet and confer to identify a revised Completion Deadline. In addition, if the City approves of extensions to Project completion under the applicable PIA, such extensions shall also serve to extend the Completion Deadline.

2. ESTIMATED COST OF THE PROJECT

Based on engineering estimates, the estimated cost for Meritage Homes to design and construct the Project, which includes design and installation of the increased size of: (i) 1,340 linear feet of 24-inch diameter recycled water pipeline in Phase 3, as Five Hundred Twenty-Four Thousand Three Hundred Sixty-Eight Dollars and Eighty Cents (\$524,368.80), and (ii) 3,180 linear feet of 24-inch diameter recycled water pipeline in Phase 4, as One Million Two Hundred Forty Four Thousand Three Hundred Ninety Seven Dollars and Sixty Cents (\$1,244,397.60).

Based on engineering estimates, the estimated cost for Meritage Homes to design and construct the original: (i) 1,340 linear feet of 12-inch diameter recycled water pipeline in Phase 3, as One Hundred Thirty-Nine Thousand Three Hundred and Sixty Dollars (\$139,360.00), and (ii) 3,180 linear feet of 12-inch diameter recycled water pipeline in Phase 4, as Three Hundred Thirty Thousand Seven Hundred Twenty Dollars and Zero Cents (\$330,720.00).

The cost to be reimbursed to Meritage Homes by the District is the difference between the cost of installing the 1,340 linear feet of 24-inch diameter recycled water pipeline in Phase 3 and 3,180 linear feet of 24-inch diameter recycled water pipeline in Phase 4 (\$1, 768,766.40) minus the amount it would have cost to install a 12-inch diameter recycled water pipeline in Phases 3 and 4 pursuant to the PIAs (\$470,080.00). This estimated difference in cost is One Million Two Hundred Ninety-Eight Thousand Six Hundred Eighty-Six Dollars and Forty Cents (\$1,298,686.40) and shall be referred to as the "Eligible Cost" as more fully described in Exhibit "B", attached hereto and incorporated into this Agreement by this reference. In no event shall City be liable to District if the difference in cost or reimbursement to Meritage Homes exceeds the Eligible Cost. The potential for cost overruns shall be addressed in the Meritage Homes Construction Contract.

3. CONSTRUCTION CONTRACT BETWEEN CITY AND MERITAGE HOMES.

City shall use good faith efforts to negotiate and enter into an agreement with Meritage Homes whereby Meritage Homes would construct the Project on a cost reimbursement basis on terms acceptable to City, subject to this Section 3 below ("Meritage Homes Construction Contract"). If the City is successful in negotiating the Meritage Homes Construction Contract, the Meritage Homes Construction Contract must be in writing, executed by Meritage Homes and City, and must incorporate and pass through to Meritage Homes all of the following terms, unless otherwise approved by the District (which approval shall not be unreasonably withheld, conditioned or delayed):

- (a) District shall have the benefit of all rights, remedies and redress against Meritage Homes that the City has against Meritage Homes, insofar as

applicable to the Meritage Homes Construction Contract; and Meritage Homes shall have the benefit of all rights, remedies and redress against the District that Meritage Homes has against the City, insofar as applicable to payment for the construction of the Project. The Meritage Homes Contract shall provide that City with a right, at any time, to assign City's rights under the Meritage Homes Contract to the District, and thereupon be relieved of all obligations under the Meritage Homes Contract, such that the Meritage Homes Contract shall become a direct contract between District and Meritage Homes.

- (b) To the extent permitted by law, Meritage Homes and all of its contractors and subcontractors performing work under this Agreement, if any, shall indemnify, defend, save and hold harmless the District and City and their respective directors, council members, officers, employees, volunteers and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from Meritage Homes's (or its contractors' and subcontractors') negligence or willful misconduct directly or indirectly related to the Project.
- (c) Meritage Homes and all of its contractors performing work on the Project shall obtain and maintain insurance of the types and in the amounts provided in Exhibit "D" of this Agreement. Meritage Homes shall name the District and City (including District's board members, officers, employees, and agents) as additional insureds on such insurance. Insurance requirements provided for under the PIA shall meet these requirements so long as Meritage Homes names the District and City (including District's board members, officers, employees, and agents) as additional insureds.
- (d) Meritage Homes shall meet with the District and City prior to finalizing the design work for the Project to discuss final design matters and construction scheduling.
- (e) Meritage Homes' contractor shall provide a written Project cost estimate, Exhibit "B", and guaranty bond in favor of District covering all work for construction of the Project for a period of one (1) year after Project completion. Meritage Homes shall agree that the contractor's and subcontractors contractual warranty obligations as to the Project will include the District as a beneficiary, and that Meritage Homes will provide the District with a copy of all documentation provided by contractors and subcontractors of any warranties related to the Project and District rights as a beneficiary to such warranties. Faithful performance and payment bonds provided for under the PIA shall meet this bonding requirement so long as the Project is covered by the PIA.
- (f) Meritage Homes and its contractor(s) will be solely responsible for the construction of the Project and for all persons or entities engaged in such work, including, but not limited to; contractors, subcontractors, suppliers, and providers of services. Meritage Homes shall agree to require its contractor(s) to construct the Project in conformance with the final design agreed to by the District and City and all applicable laws. Meritage Homes

will be responsible for all permit acquisitions, construction management, testing, and acceptance of the Project and other work performed by its contractors. Meritage Homes will provide District and City with a copy of all submittals and Requests for Information ("RFI") associated with the Project for the District's and City's review in conjunction with Meritage Homes providing them to the engineer of record. Meritage Homes will contractually obligate the engineer of record to accept input from the City regarding such submittals and RFIs and to discuss and provide the City with a written explanation for any disagreement.

- (g) Meritage Homes shall ensure that its contractor prepares as-built drawings certified by a California licensed professional engineer. Meritage Homes will supply such drawings to the District and City with electronic AutoCAD "dwg" file version within ninety (90) calendar days after City's acceptance of the Project.
- (h) Meritage Homes shall provide the District's construction inspectors with access to the Project construction site during normal business hours. District will not direct the work of contractor. District will communicate any concerns to the City's inspector who shall be responsible for addressing those concerns and when applicable use reasonable efforts to facilitate resolution of any disagreements related to the Project construction.
- (i) After completion and District's acceptance of the Project, whichever is later, Meritage Homes will assign ownership of all deliverables, including the installed recycled water pipeline, resulting from the Project to the District free and clear of all liens, security interests, and other encumbrances.

If City is able to negotiate a draft Meritage Homes Construction Contract acceptable to the City, then not later than 30 business days after delivery of that negotiated draft contract to District, District shall respond whether such draft contract is acceptable to the District. If the draft Meritage Homes Contract is not acceptable to the District, then the City shall not execute it, and this Agreement shall be terminated, unless such date is extended by mutual agreement of the Parties (without any obligation on the part of either Party to so agree).

4. ENCROACHMENT PERMIT(S) FOR CONTINUING ENCROACHMENT

City represents that the Project deliverables, including the recycled water pipeline, will be installed under a public street and right-of-way. City shall issue all encroachment permit(s) necessary to enable the District to continue to own, operate and maintain the Project deliverables under the public street and right-of-way, without cost to District, but otherwise subject to and in accordance with City's normal policies and procedures.

5. REIMBURSEMENT OF PROJECT WORK

- (a) The City shall request from the District reimbursement to Meritage Homes for Eligible Costs by submitting an invoice: (i) not more frequently than on a monthly basis during the course of construction; and (ii) after 100% completion of the Project and District's acceptance of all deliverables

resulting from the Project. The District will withhold a retainage of 10% from each approved invoice. Within 30 days of the District's acceptance of the Project (including acceptance of the professional engineer's certified as-built drawings), the District will release the accrued retainage to the City.

- (b) Each invoice for reimbursement of Eligible Costs shall contain the following information: (i) the total Eligible Costs that have been incurred by Meritage Homes for the Project during the period identified in that particular invoice; and (ii) the initials of the Meritage Homes's project manager, certifying that the invoice being submitted accurately and reasonably reflects the construction costs of the Project during the period identified in the particular invoice. As used in this Agreement, "Eligible Costs" means all costs invoiced to City by Meritage Homes for the design and construction of the Project and reimbursable to Meritage Homes under the Meritage Homes Construction Contract, including without limitation the costs of materials, supplies, equipment and labor expended towards the Project.
- (c) District shall promptly review a submitted invoice. If District disapproves of any portion of the submitted invoice, District shall notify City within fifteen (15) calendar days after District's receipt of that invoice of the amounts disapproved and the reasons for disapproval. Any portion of the submitted invoice not disapproved by District within this fifteen (15) day period shall be deemed approved by District. If any portion of the invoice is approved by District (which approval shall not be unreasonably withheld or conditioned), District shall pay the approved portion of the invoice to City within thirty (30) calendar days after District's receipt of that invoice. Any and all funds paid to the City under this Agreement shall be used solely to pay Meritage Homes the Eligible Costs.

6. CITY'S ADDITIONAL RESPONSIBILITIES

- (a) Provide engineering and construction management for the Project.
- (b) Manage City's contractual relationship with Meritage Homes for construction of the Project, including paying all related Meritage Homes invoices funded by District.
- (c) Invoice District for Eligible Costs.
- (d) Use good faith efforts to negotiate for the inclusion in the Meritage Homes Construction Contract of all of the terms specified in Section 3 of this Agreement.
- (e) Use good faith efforts to obtain a Project cost estimate from Meritage Homes.
- (f) Notify District of all approved Project change orders that will increase the cost of the Project above the Eligible Costs. The total Project cost shall

not exceed the Eligible Costs (\$1,298,686.40) plus a 15% Contingency (\$194,802.96) for approved Project change orders.

- (g) Provide District with copies of Project contract documents and documentation for all costs incurred to the extent in City's possession.

7. DISTRICT'S ADDITIONAL RESPONSIBILITIES

- (a) Pay approved City invoices within thirty (30) calendar days after receipt.
- (b) Notify City of invoice problems within fifteen (15) calendar days after receipt.
- (c) Provide engineering review and inspection support as requested by the City for the Project.
- (d) Provide special inspection support as requested by the City for any specialty pipe installations, coatings etc requested by the District for the Project.
- (e) Provide design specifications for the pipe and allow Meritage Homes and City to determine the final line and grade of the pipe within the City street Right of Way.
- (f) Participate in construction progress meetings.
- (g) Not unreasonably withhold, condition or delay approval of Eligible Costs.

8. DOCUMENT REVIEW

City will, upon reasonable advance written notice, shall make available for inspection to the City and District all records, books and other documents relating to the Project that are in the possession of the City.

9. TERM

- (a) The term of this Agreement commences on the date first written above and shall continue until construction close-out of the Project and all payments of Eligible Costs are made by the District, unless earlier terminated as provided in Section 3 or subsection 9(b) of this Agreement.
- (b) This Agreement may be terminated for cause by either Party for failure to comply with any terms and conditions of this Agreement, provided, however, that the Party in breach shall have twenty (20) calendar days or such period as the Parties may otherwise agree in writing to cure such breach following written notification. In the event of termination of this Agreement, the Meritage Homes Construction Contract shall be deemed to have been assigned to and assumed by District, the Meritage Homes Construction Contract shall become a direct contract between District and Meritage Homes, and District shall indemnify, defend and hold City and City's council members, officers, employees, volunteers and agents from and against any and all claims, actions, liabilities, damages, losses, or

expenses, including attorneys' fees, arising from District's breach of its obligations under the Meritage Homes Construction Contract.

10. NOTICE

Any notice given under this Agreement shall be in writing and delivered by personal delivery or by United States mail depository, first class postage prepaid and addressed to the Party for whom intended.

(a) If to District:

Hossein Ashktorab, Water Use Efficiency Unit Manager
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

(b) If to City:

Girum Awoke, Director of Public Works
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Any Party may change such address by notice given to the other Party as provided herein.

11. MISCELLANEOUS TERMS

- (a) This Agreement embodies the entire understanding between the Parties pertaining to the subject matter contained in it; supersedes any and all prior negotiations, correspondence, understandings, or Agreements of the Parties; and may be waived, altered, amended, modified, or repealed, in whole or in part, only on the written consent of both Parties to this Agreement.
- (b) No failure or delay on the part of either Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder.
- (c) This Agreement shall be binding on and enforceable by and against the Parties to it and their respective heirs, legal representatives, successor governmental entities, and permitted assigns, except that neither this Agreement nor the duties or obligations under this Agreement may be assigned by a Party without the prior written consent of the other Party (which consent may be withheld by a Party in its sole and absolute discretion).

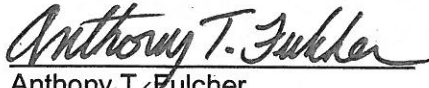
- (d) Each individual executing this Agreement on behalf of their respective entity represents and warrants that (i) the individual is duly authorized to execute and deliver this Agreement on behalf of that entity; (ii) this Agreement is valid and binding on that entity and enforceable against that entity in accordance with its terms; and (iii) that entity is duly organized, validly existing, and in good standing under the laws of its jurisdiction.
- (e) This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any conflict of law provisions thereof.
- (f) The federal and state courts within County of Santa Clara, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement. Each Party expressly consents to the personal jurisdiction of and venue in such courts.
- (g) Each Party was represented by legal counsel in the preparation of this Agreement. Therefore, any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.
- (h) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (i) All provisions of this Agreement are separate and divisible, and if any part is held invalid, the remaining provisions shall continue in full force and effect.

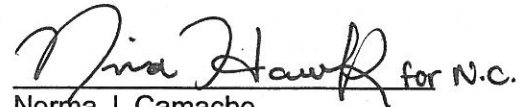
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IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT effective as of the date first set forth above.

APPROVED AS TO FORM:

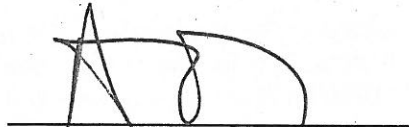
SANTA CLARA VALLEY WATER DISTRICT

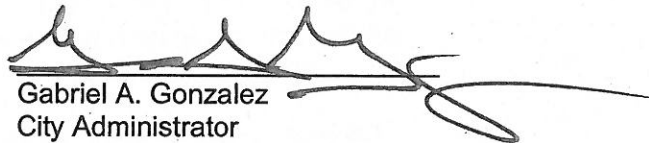

Anthony T. Fulcher
Sr. Assistant District Counsel


Norma J. Camacho
Chief Executive Officer

APPROVED AS TO FORM:

CITY OF GILROY


Andrew L. Faber
City Attorney


Gabriel A. Gonzalez
City Administrator

ATTEST:

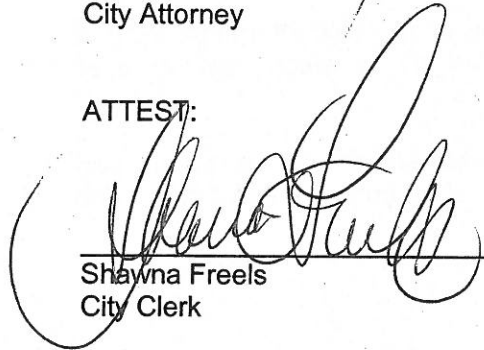

Shawna Freels
City Clerk

EXHIBIT "A": Recycled Water System Map

EXHIBIT "B": Project Cost Estimate

EXHIBIT "C": Property Improvement Agreement

EXHIBIT "D": Insurance Requirements

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

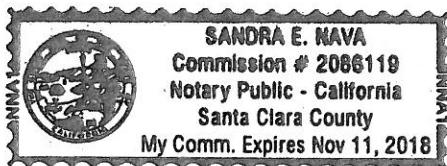
State of California)
County of Santa Clara)

On October 17, 2017 before me, Sandra E. Nava, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Gabriel A. Gonzalez
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Sandra E. Nava
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

EXHIBIT "A" - Recycled Water System Map

EXHIBIT "B"**Project Cost Estimate****Table 1: Phase 3 - Hecker Pass West Cluster (Hoey) Project Cost Estimate**

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	Development Pipeline: 24" HDPE Upsized	1,340	LF	\$ 391.32	\$ 524,368.80
2	Developer Responsibility per PIA: 12" DIP	1,340	LF	\$ (104.00)	\$ (139,360.00)
Phase 3 Eligible Cost					\$ 385,008.80
Phase 3 Project Contingency (15%)					\$ 57,751.32

Table 2: Phase 4 - Hecker Pass Heartland Gardens Project Cost Estimate

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	Development Pipeline: 24" HDPE Upsized	3,180	LF	\$ 391.32	\$ 1,244,397.60
2	Developer Responsibility per PIA: 12" DIP	3,180	LF	\$ (104.00)	\$ (330,720.00)
Phase 4 Eligible Cost					\$ 913,677.60
Phase 4 Project Contingency (15%)					\$ 137,051.64

EXHIBIT "C"

Property Improvement Agreement

DOCUMENT: 23171732

Pages: 22

RECORDING REQUESTED BY:

City of Gilroy



Fees	88.00
Taxes	
Copies	
AMT PAID	88.00

WHEN RECORDED, MAIL TO:

Shawna Freels
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
City

RDE # 026
12/14/2015
2:13 PM

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Property Improvement Agreement No. 2015-07
Hecker Pass – West Cluster Hoey – Tract 10279
APN: 810-20-020
Meritage Homes Corp.

PROPERTY IMPROVEMENT AGREEMENT
RESIDENTIAL

AGREEMENT FOR EXTENSIONS OF WATER DISTRIBUTION SYSTEMS:
IMPROVEMENT OF STREETS: INSTALLATION OF SEWERS, STORM
DRAINS AND OTHER PUBLIC WORKS FACILITIES
Property Improvement Agreement No. 2015-07

This Property Improvement Agreement ("Agreement") is made and entered into this 28th day of OCTOBER, 2015, by and between the City of Gilroy, a municipal corporation, herein called the "City," and Meritage Homes, a California corporation, herein called the "Developer".

WHEREAS, a final map of subdivision, record of survey or building permit (Site Clearance) application has now been submitted to the City for approval and acceptance, covering certain real estate and property improvements known as and called: Hecker Pass – West Cluster Hoey, Tract No 10279 APN: 810-20-020, a legal description of which is attached hereto and incorporated herein as Exhibit "A" (the "Property"), and as described in the project improvement plans entitled Tract No 10279 Hecker Pass – West Cluster Hoey.

WHEREAS, the Developer is the fee owner of the Property and requires certain utilities and public works facilities in order to service the Property under the minimum standards established by the City and,

WHEREAS, the City, by and through its City Council, has enacted certain Codes, Ordinances and Resolutions and certain Rules and Regulations have been promulgated concerning the subject matter of this Agreement and,

WHEREAS, the City has certain responsibilities for maintenance and operation of such utilities and public service facilities after acceptance by City, and for providing the necessary connecting system, general plant and appurtenances, and the City is agreeing to discharge those responsibilities, provided that Developer has faithfully and fully complied with all of the terms, covenants, conditions to be performed by Developer pursuant to this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and in order to carry on the intent and purpose of said Codes, Ordinances, Resolutions and Regulations and established policies of the City and the laws of the State of California and the United States of America it is agreed by and between the parties as follows:

SECTION 1

That all Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America concerning the subject matter of this Agreement are hereby referred to and incorporated herein to the same effect as if they were set out at length herein. Said Codes, Ordinances, Resolutions, Rule and Regulations include, but are not limited to, the following: the Code of the City of Gilroy, the current Zoning Ordinance, and the currently adopted Uniform Building Code.

SECTION 2

The Developer agrees:

- a. To perform each and every provision required by the City to be performed by the Developer in each and every one of said Codes, Ordinances, Resolutions, Rules and other Regulations and established policies of the City and the laws of the State of California and the United States of America, including without limitation, the California Labor Code and California Public Contract Code. Developer further agrees and acknowledges that it is its obligation to determine whether, and to what extent, the work performed under this Agreement is subject to any Codes, Ordinances, Resolutions, Rules and other Regulations and established policies of the City and the laws of the State of California, the United States of America, the California Labor Code and Public Contract Code relating to public contracting and prevailing wage laws.
- b. To grant to the City without charge, free and clear of encumbrances, any and all easements and rights of way in and to the Property necessary for the City in order that its water, electricity, and/or sewer lines in or to said Property may be extended.
- c. To indemnify, defend with counsel of City's choice and hold the City free and harmless from all suits, fees, claims, demands, causes of action, costs, losses, damages, liabilities and expenses (including without limitation attorneys' fees) incurred by City in connection with (i) any damage done to any utility, public facility or other material or installation of the City on said Property which the Developer or any contractor or subcontractor of the Developer, or any employee of the foregoing, shall do in grading or working upon said Property; or (ii) arising or resulting directly or indirectly from any act or omission of Developer or Developer's contractors, or subcontractors, or any employee of the foregoing in connection with the work performed by them in connection with this Agreement, including without limitation all claims relating to injury or death of any person or damage to any property.
- d. To construct and improve all public works facilities and other improvements described in this Agreement and the improvement plans submitted to the City of Gilroy in furtherance of this Agreement on file with the City of Gilroy. All construction and improvements shall be completed in accordance with all standards established in the Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America and this agreement, and in accordance with the grades, plans, and specifications approved by the City Engineer. Developer shall furnish two good and sufficient bonds, a Payment Bond on a form provided by the City and a Faithful Performance Bond, both of which shall be secured from a surety company admitted to do business in California. Each bond shall set forth a time period for performance by the contractor of its obligations and the terms and conditions on which the City may obtain the proceeds of the bond.

The Faithful Performance Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the improvements described in this Agreement, and shall secure payment to City and the Developer of any loss due to the default of the contractor or its inability or refusal to perform its contract. The performance bond shall by its terms remain in full force and effect for a period of not less than one year after completion of the improvements by Developer and acceptance of the improvements by City, to guarantee the repair and replacement of defective material and faulty workmanship. Upon completion of the improvements by Developer

and acceptance of the improvements by City, Developer may substitute for the performance bond securing maintenance described above, a separate maintenance bond issued by an admitted surety in the amount of ten percent (10%) of the total contract price of the improvements (provided that the amount of said bond shall not be less than One Thousand Dollars (\$1,000) to cover the one-year maintenance period.

The Payment Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Developer may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the contractor or subcontractor in performing the work, or taxes or amounts to be withheld thereon. The Payment Bond shall provide that the surety will pay the following amounts should the Contractor or a Subcontractor fail to pay the same, plus reasonable attorneys' fees to be fixed by the court if suit is brought upon the bond: (1) amounts due to any of the persons named in California Civil Code Section 9100; (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed for the improvements described in this Agreement; and (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor. The Payment Bond shall, by its terms, inure to the benefit of any of the persons named in Civil Code Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

Simultaneously with the submission of its building permit application (Site Clearance), the Developer shall submit the following for both the surety that furnishes the Payment Bond and the surety that furnishes the Faithful Performance Bond: (1) a current printout from California Department of Insurance's website (www.insurance.ca.gov) showing that the surety is admitted to do business in the State; or (2) a certificate from the Clerk of the County of Santa Clara that the surety's certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended or in the event that it has, that renewed authority has been granted.

- e. Except as otherwise expressly provided in this Agreement, all plan check and inspection fees which are payable by Developer pursuant to the attached comprehensive fee schedule are due and payable to the City prior to Council approval of the final map of the subdivision. Upon approval of the record of survey or the building permit covering the real estate to be improved and before any work is done therein, the Developer shall pay to the City all other sums payable by Developer pursuant to the attached comprehensive fee schedule.
- f. At all times during the term of this Agreement and until the improvements constructed by Developer are accepted by City, Developer shall, at no cost to City obtain and maintain (a) a policy of general liability and property damage insurance in the minimum amount of One Million Dollars (\$1,000,000), combined single limit for both bodily injury and property damage; (b) workers' compensation insurance as required by law; and (c) broad form "Builder's Risk" property damage insurance with limits of not less than 100% of the estimated value of the improvements to be constructed by Developer pursuant to this Agreement.

All such policies shall provide that thirty (30) days written notice must be given in advance to City prior to termination, cancellation or modification. The insurance specified in (a) above shall name City as an additional insured and the insurance specified in (c) shall name City as a loss payee, and

shall provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the acts or omissions of Developer or Developer's contractors or subcontractors or their respective employees. Developer hereby waives, and Developer shall cause each of its contractors and subcontractors to waive, all rights to recover against City for any loss or damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement or actually carried by Developer in connection with the work described in this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an occurrence basis and not on a claims made basis and shall be issued by insurance companies acceptable to City. Prior to commencing any work pursuant to this Agreement, Developer shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained.

SECTION 3

That all the provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be completed to City's satisfaction within one year from and after the date and year of this Agreement first above written. Developer shall maintain such public works facilities and other improvements described in this Agreement at Developer's sole cost and expense at all times prior to acceptance by City in a manner which will preclude any hazard to life or health or damage to property.

SECTION 4

That the faithful and prompt performance by the Developer of each and every term and condition contained herein is made an express condition precedent to the duty of the City to perform any act in connection with this transaction, and the failure, neglect or refusal of the Developer to so perform, or to pay any monies due hereunder when due shall release the City from any and all obligations hereunder and the City, at its election, may enforce the performance of any provision herein, or any right accruing to the City or may pursue any remedy whatsoever it may have under applicable laws or the Codes, Ordinances, Resolutions, Rules and Regulations of the City, in the event of any such default by Developer.

SECTION 5

That this Agreement, including without limitation the general stipulations outlined in Section 6 below, is an instrument affecting the title or possession of the real property and runs with the land. Except as expressly provided in the second sentence of Item 9 of the general stipulations set forth in Section 6 below (relating to the payment of reimbursement to the original Developer named in this Agreement), all the terms, covenants and conditions herein imposed shall be binding upon and inure to the benefit of City, Developer, the successors in interest of Developer, their respective successors and permitted assigns and all subsequent fee owners of the Property. The obligations of the Developer under this Agreement shall be the joint and several obligations of each and all of the parties comprising Developer, if Developer consists of more than one individual and/or entity. Upon the sale or division of the Property, the terms of this Agreement shall apply separately to each parcel and the fee owners of each parcel shall succeed to the obligations imposed on Developer by this Agreement.

SECTION 6

That the following general stipulations shall be completed subject to the approval of the Public Works Director/City Engineer.

1. The project shall comply with all applicable requirements of the Hecker Pass Specific Plan, Backbone Infrastructure Plan, and Development Agreement (DA).
2. The Project shall comply with all Tentative Map conditions and applicable mitigation measures as contained in City Council Resolution 2007-03 (TM 05-13 approval) and as amended by TM 15-04 (proposed Tentative Map amendment to TM 05-13).
3. The Developer acknowledges that changes to the project plans may result from review and approval of TM 15-04 which may require removal and/or relocation of improvements. The Developer accepts the responsibility and cost for implementing the changes.
4. The Developer shall perform all work in compliance with the City of Gilroy Specifications Standards Design Criteria and Hecker Pass Specific Plan Development Agreement and is subject to all laws of the City of Gilroy by reference.
5. The Developer shall obtain the required Habitat Conservation Plan (HCP) Permit and pay the applicable fees prior to grading or improvement plan approval.
6. Prior to the acceptance of the 3rd Street/Santa Teresa Roundabout improvements or prior to the issuance of the first certificate of occupancy for Tract 10279, whichever comes first, the Developer shall complete revegetation improvements, to the satisfaction of the Director of Public Works, on the 1.7± acre parcel located at the southwest corner of Santa Teresa Boulevard and 3rd Street, adjacent to the Uvas Creek Park Preserve. The Developer has agreed to perform these improvements which were an outstanding condition of approval of Tract 9374 – Village Green. The cost to re-design the revegetation and the installation of these improvements are to be reimbursed by the Tract 9374 developer.
7. The Developer shall extend and join the two 46' wide private streets, designated as Apple Tree Way and Apricot Way, past the easterly property line of TM 05-13 to the adjacent "Lands of Arias" parcel (APN: 810-20-004) to form a looped roadway.
8. Prior to the acceptance of the 3rd Street improvements or prior to the issuance of the first certificate of occupancy for Tract 10279, whichever comes first, the Developer shall complete, to the satisfaction of the Director of Public Works, the landscaping for the detention basin referred to as "Channel and West Detention Basin" in the approved Improvement Plans for Tract 10220 (Hecker Pass – East Cluster) located north of TM 05-13 and on the north side of the future 3rd Street extension within a portion of APN: 810-20-020. The detention basin shall be privately owned and maintained per the Hecker Pass Development Agreement. The private entity responsible for the maintenance shall also be responsible for the regulatory monitoring and reporting for this basin.

9. The City and Developer both acknowledge that the additional 11 units from the adjacent parcel, "Lands of Arias" (APN: 810-20-004), is proposed to be included in the density calculations for Tract 10279 (total of 95 units). However, the impact fees cannot be accurately calculated until the proposed Tentative Map amendment (TM 15-04) to TM 05-13 is approved. The impact fees included with this Agreement are based on the current Tract 10279 only. The impact fees will be recalculated upon approval of a new tract map resulting from TM 15-04 but prior to the first building permit for Tract 10279.
10. The Developer agrees to extend the boundary of the future City park site, designated as Parcel B on the approved map for Tract 10220 (Hecker Pass – East Cluster), from the westerly property line of Tract 10220 to the westerly property line of a future triangular tract (referred to as the "Hoey Triangle") located within a portion of APN: 810-20-020.
11. The existing Hecker Pass Development Agreement required the completion of encroachment permit applications for construction of a roundabout at the intersection of Hecker Pass Highway at Autumn/3rd Street by the 150th building permit. Due to circumstances beyond the immediate control of the Developer and understanding there may be delay by the issuing agency, Caltrans - District 4, to issue said encroachment permit, the threshold for obtaining the encroachment permit from Caltrans for the proposed roundabout intersection is raised to the 200th building permit.
12. Prior to the 200th building permit, the Developer shall complete the 3rd Street/Santa Teresa Roundabout improvements.
13. As a condition of recordation of the Final Map, the Developer shall pay the City \$1,700,000.00, which is the 3rd installment of the Public Benefit fee. The first and second installment funds, in the amount of \$50,000.00 and \$250,000.00 respectively have been paid by the Developer.
 - a. The \$2,000,000 Public Benefit Fee will be deposited into a trust account that will be used to reimburse the Developer via progress payments that reflect the completion of the 3rd Street improvements and upon receipt of the 3rd installment funds as they become available.
 - b. At completion of the 3rd Street improvements, the Traffic Improvement Fund (TIF) will reimburse an amount up to \$300,000 over the \$2,000,000 Public Benefit Fee needed to complete the 3rd Street improvements in accordance with Section 6.2.
14. The project shall fully comply with the measures required by the City's Water Supply Shortage Regulations Ordinance (Gilroy City Code, Chapter 27, Article VI), and subsequent amendments, which was adopted on August 4, 2014 to meet the requirements imposed by the State of California's Water Board. This Ordinance established permanent voluntary water saving measures and temporary water conservation standards.
 - a. All construction water from fire hydrants shall be metered and billed at the current hydrant meter rate.
 - b. Recycled water shall be used for construction water, where available, as determined by the Public Works Director. Recycled water shall be billed at the municipal industrial rate based on the current Santa Clara Valley Water District's municipal industrial rate.
 - c. Where recycled water is not available, as determined by the Public Works Director, potable water shall be used. All City potable water will be billed based on the City's comprehensive fee schedule under the Portable Fire hydrant meter rate.

15. Prior to issuance of the 250th residential building permit or as determined by the Public Works Director, the Developer shall underground all overhead utilities along Hecker Pass Highway (SR 152).
16. A minimum of one exterior monument shall be set. Additional monuments can be required by the City Engineer or City Surveyor as deemed necessary.
17. Location of monuments shall be tied out prior to work. Any City monument damaged, displaced or destroyed shall be replaced at the Developer's sole expense.
18. In accordance with the California Professional Land Surveyors' Act (Business and Professions Code) Chapter 15 Sections 8771 and 8725, California Penal Code 605, and California Government Code 27581, the Developer, their employees, subcontractors, and/or any person performing construction activities that will or may disturb an existing roadway/ street monument, corner stake, or any other permanent surveyed monument shall show all current monuments on the plans and shall ensure that a Corner Record and/or Record of Survey are filed with the County Surveyor Office prior to disturbing said monuments. All disturbed or destroyed monuments shall be reset and filed in compliance with Section 8771.
19. Prior to the recordation of the Final Map, the Conditions, Covenants and Restrictions shall be approved by the Planning Division.
20. The Developer shall enter into a Landscape Maintenance Agreement prior to the first building permit for Tract 10279 or as determined by the Director of Public Works.
21. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities.
NOTE: The capping of any well will require inspection by the Santa Clara Valley Water District.
22. Schedule the construction of improvements along existing public roads so that the work affecting vehicular traffic is completed with a minimum interruption to traffic.
23. All work within the public right-of-way shall be subject to the approval of the Public Works Director/City Engineer.
24. Off-site public improvements shall be installed per the approved Improvement Plans.
25. The City shall be notified at least two (2) working days prior to the start of any construction work and at that time the contractor shall provide a project schedule and a 24-hour emergency telephone number list.
26. All work shown on the approved improvement plans shall be inspected. Uninspected work shall be removed as deemed appropriate by the City Engineer.
27. All work shall be coordinated so that the existing residents on all adjacent streets have access to their properties.

28. Before construction utilizing combustible materials may proceed, an all-weather access must be provided to within 150 feet of the building site; and at least one in service fire hydrant must be available within 150 feet of each portion of the site wherein this construction is to take place. Location of the fire hydrants will be determined by the Fire Chief.
29. The Developer shall provide to the City of Gilroy electronic files, in a format acceptable to the City (PDF, DWG format, AutoCAD 2004 maximum) of the final map, tract map and/or parcel map, improvement plans, and record drawings.
30. Before issuance of any building permit, all roadway infrastructures shall be in place and covered with an all-weather road subject to the approval of the City Engineer.
31. If there are any reimbursements payable to the Developer, they must be specifically identified in this Agreement. Any such reimbursements shall be payable to the original Developer named in this Agreement above, and shall not inure to the benefit of any subsequent owners of all or any portion of the Property. All reimbursements payable to Developer shall be subject to the City's reimbursement policies and ordinances in effect from time to time, including without limitation any expiration dates identified in such policies and ordinances. Such reimbursement shall be solely contingent upon the availability of the City's Traffic Impact Fee Funds and in no case shall the reimbursement be paid beyond ten (10) years after the execution of the Agreement. In addition to any other conditions, requirements and limitations set forth in the City's reimbursement policies and ordinances from time to time, (i) in no event shall any reimbursements be payable to Developer if City determines in its sole and absolute discretion from time to time that there are not sufficient reserves then on hand in the specific reimbursement fund from which Developer's reimbursement is payable, over and above any amounts anticipated to be required to be expended from such reimbursement fund, which reserves, at a minimum, are equal to at least half of the remaining average yearly anticipated expenditures of such reimbursement fund as determined by City from time to time; (ii) City may, in its sole and absolute discretion, make partial reimbursement payments to Developer in yearly increments, as determined by City; and (iii) City may defer payments in any given year if projects deemed by City to be of high importance are determined by City, in its sole and absolute discretion, to be warranted or necessary, and the funds in such reimbursement fund are designated by the City for use on such projects of high importance.

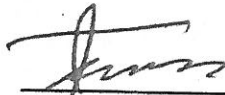
SECTION 7

That the attached Development Cost Schedule enumerates all fees and their extensions.

TOTAL AMOUNT DUE CITY \$232,864.76

CITY OF GILROY

By:



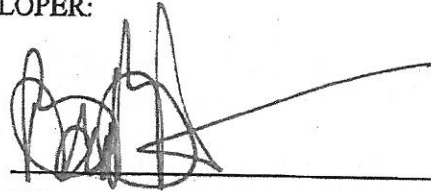
J. Edward Tewes
Interim City Administrator

Date:

11-13-15

DEVELOPER:

By:



Name:

Brian Bonbeck

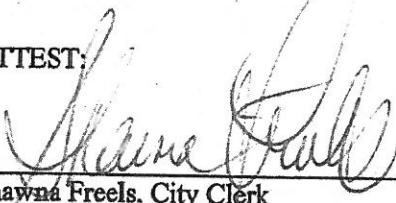
Title:

VP LAND ACQ

Date:

OCT. 28, 2015

ATTEST:



Shawna Freels, City Clerk

APPROVED AS TO FORM:



Linda A. Callon, City Attorney

NOTE: If Developer is a corporation, the complete legal name and corporate seal of the corporation and the corporate titles of the persons signing for the corporation shall appear above.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Solano)
 On October 28, 2015 before me, Victoria Adams, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Brian Bombeck
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Victoria Adams
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa ClaraOn Nov. 13, 2015 before me, Inga Alonzo, Notary Public

Date

Here Insert Name and Title of the Officer

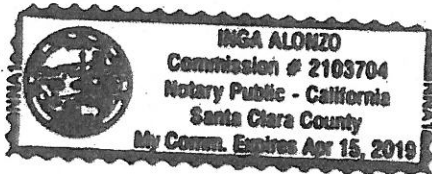
personally appeared J. Edward Tewes

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Inga Alonzo
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

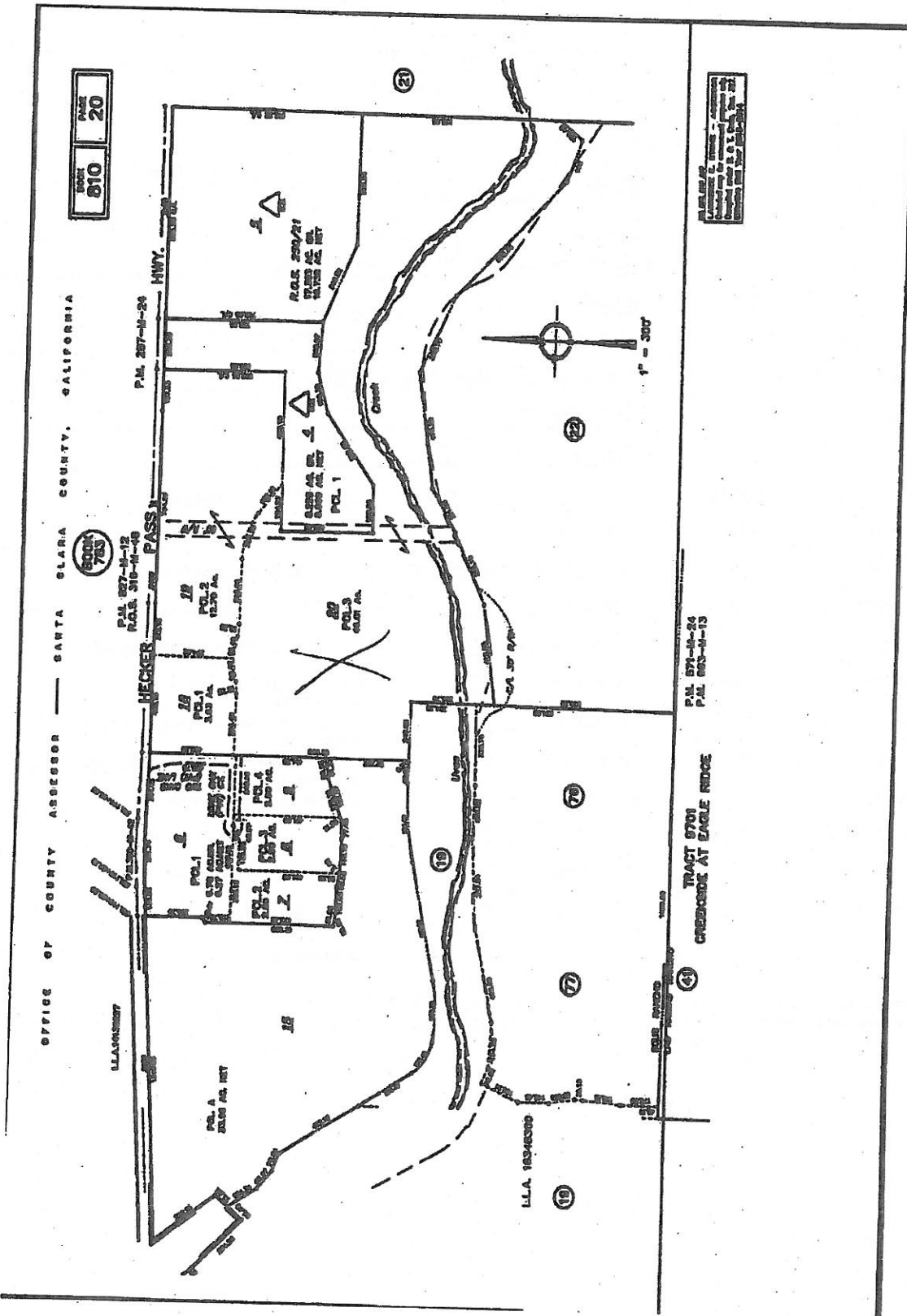
EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Gilroy , County of Santa Clara, State of California, described as follows:

PARCEL 3, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 10, 2008 IN BOOK 827 OF MAPS AT PAGES 12-13.

APN: 810-20-020



**CITY OF GILROY
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
COST ESTIMATE
EFFECTIVE 7/1/2015**

ENCOMPASS NO: E1 16010009 Revised:
 DATE: 05-Oct-15 Revision Number:
 NUMBER: Revision By:
 PROJECT LOCATION: Between Lone Oak Way / 3rd Street & Grassland Way
 PARCEL NUMBER: 810-20-020
 OWNER/DEVELOPER: Meritage Homes
 MAILING ADDRESS: 1671 E. Monte Vista, Ste 214, Yacaville, CA 95687
 TELEPHONE NO: (707) 359-2000
 PREPARED BY: Claudia Moran-Garcia

Account No.	Key Code	Fee:	Credits:	Amount Due:	Account Description	Paid on Invoice #
100-2601-0000-3625	4904	\$3,450.60		\$3,450.60	Special Public Works Serv.	
100-2601-0000-3605	4702	\$325,835.16	\$122,939.00	\$202,896.16	Eng Plan Check & Insp	
420-2600-0000-3660	4501	\$25,944.00		\$25,944.00	Storm Development Fee	
432-2600-0000-3660	3301	\$574.00		\$574.00	Str Tree Development Fee	
433-2600-0000-3660	4905	\$888,720.00			DEFERED TO BUILDING PERM Traffic Impact Fee	
435-2600-0000-3660	4509	\$970,872.00			DEFERED TO BUILDING PERM Sewer Development Fee	
436-2600-0000-3660	4510	\$360,696.00			DEFERED TO BUILDING PERM Water Development Fee	
440-2600-0000-3660	4515	\$1,530,732.00			DEFERED TO BUILDING PERM Public Facility Fee	
720-0433-0000-3620	2202	\$0.00		\$0.00	Const Water Use Fee	
801-2601-PWD0-3899	4703	\$0.00		\$0.00	Reimbursements	
801-2601-PWD0-3899	4703	\$0.00		\$0.00	Other Reimbursements	
Total				\$232,864.76		

Payment Bond Amount for all Improvements \$3,803,990
 Performance Bond Amount for all Improvements \$3,803,990

CITY OF GILROY
COMMUNITY DEVELOPMENT DEPARTMENT
ENGINEERING DIVISION
COST ESTIMATE
ALL PUBLIC FACILITY, SEWER, WATER & TRAFFIC FEES ARE DEFERED

ENCOMPASS NO:
 DATE:
 NUMBER:
 PROJECT LOCATION:
 PARCEL NUMBER:
 OWNER/DEVELOPER:
 MAILING ADDRESS:
 TELEPHONE NO:
 PREPARED BY:

E1

15010009

6-Oct-2015

Between Lone Oak Way / 3rd Street & Grassland Way

810-20-020

Meritage Homes

1671 E. Monte Vista, Ste 214, Vacaville, CA 95687

(707) 369-2000

Claudia Moran-Garcia

COST SCHEDULE TYPE:

DEFER PUBLIC FACILITY FEE ?

DEFER SEWER, WATER, TRAFFIC FEES ?

FINAL ENGINEERINGCOST ESTIMATE ? ☒ PLAN CHECK ? ☒INCENTIVE AGREEMENT ONLY ? ☒TO PERMIT ? ☒TO FINAL ? ☒TO PERMIT ? ☒TO FINAL ? ☒

NOTE: This Preliminary Cost Schedule is an estimate and will be adjusted to the rates in effect at the time permits are issued.

Site Information:

	Gross Acres:	Lots:	Units:	Sq Ft:
Residential-Low ?	46.000	108	84	
Residential-High ?	0.000	0	0	
Commercial-Low ?	0.000	0	0	
Commercial-High ?	0.000	0	0	
Industrial-General ?	0.000	0	0	
Industrial-Warehouse ?	0.000	0	0	
Assembly Hall?	0.000	0	0	
Common Area?	0.000	0	0	

Commercial/Industrial Allocations:

Sewer GPD:

Water GPD:

Reimbursements and credits:**Front Footage/Square Footage Charges**

Street Tree FF:	Water FF:	Sewer FF:	Storm FF:	Const Water Acres to be Developed:
1,400.0	0.0	0.0	0.0	0.000
Pavement SF:	Median SF:	Sidewalk SF:	Curb/Gutter FF:	Construction Water FF:
0.0	0.0	0.0	0.0	0.0

SPECIAL PUBLIC WORKS SERVICES

100-2601-0000-3625

\$3,450.60

Maps:

Final Map	\$1,755.00 +	\$15.70 / lot	<input checked="" type="checkbox"/>	\$3,450.60	Fee ID N0-FINALM
Parcel Map	\$2,035.00 +	\$630.00 / lot	<input checked="" type="checkbox"/>	\$0.00	Fee ID N0-PARCELM
Re-assessment Map (Assessment District Parcels)	\$1,710.00 +	\$630.00 / lot	<input checked="" type="checkbox"/>	\$0.00	Fee ID N-ASSESM

Administration Fees:

(Cost Schedules, Agreements, R/W Reviews and Other Misc. Services)

0 hr Misc Services	\$185.00 / hr.	<input checked="" type="checkbox"/>	\$0.00	Fee ID N-MISC
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Special Staff Analysis

0 hr Special Analysis	\$143.44 / hr.	<input checked="" type="checkbox"/>	\$0.00	
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G:\COMDEV\ENGINEERING\DEVELOPMENT PROJECTS\Tract File\Tr 10279 - Hoey South Hecker Pass (87 Lots)\Invoices & Estimates\Tract 10279 Hecker Pass - West Cluster Hoey FY
 COST SCHEDULE Fees Last Revised January 20, 2012

ENGINEERING PLAN CHECK & INSPECTION

100-2601-0000-3605

COST ESTIMATE

ACTUAL COST OF PUBLIC IMPROVEMENTS FINAL ENGINEERING PLAN CHECK

2015-2016

\$325,835.16

\$0.00

At time of Improvement Plan/Final Map submittal 40% of fee is due for Plan Check. Remainder 60% due prior to submittal of Final Map for Council approval

Additional Plan Review After First Three Submittals or Review of Changes, Additions or Revisions to Approved Plans

0 hr Additional Plan Review (2 Hour Minimum)	\$143.44 / hr.	<input type="checkbox"/> N	\$0.00	Fee ID N0-GRADINS
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Re-Inspection Fee 0 hr Re-Inspection	\$125.00 / hr.	<input type="checkbox"/> N	\$0.00	Fee ID N0-GRADINS
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Inspections outside of normal business hours 0 hr Inspection	\$475.00 +	\$160.00 / hr. after 3hrs	<input type="checkbox"/> N	\$0.00	Fee ID N0-GRADINS
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		COST ESTIMATE		ACTUAL COST		DIFFERENCE
(Based on total cost of improvements)			\$3,803,990.		\$0	(\$325,835.16)
Estimated Cost of Improvements						Fee ID N0-PCKINS
12.6%	\$0	\$100,000	<input type="checkbox"/> Y	\$12,600.00	<input type="checkbox"/> Y	\$0.00
10.5%	\$100,000	\$200,000	<input type="checkbox"/> Y	\$10,500.00	<input type="checkbox"/> Y	\$0.00
8.4%	over	\$200,000	<input type="checkbox"/> Y	\$302,735.16	<input type="checkbox"/> Y	\$0.00
Payment Bond Amount for all improvements		\$3,803,990				
Performance Bond Amount for all improvements		\$3,803,990				

IMPACT FEES

Storm Drain Impact Fee	420-2600-0000-3660	\$25,944.00
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a. Residential-Low	\$564.00 / acre	<input type="checkbox"/> Y	\$25,944.00	Fee ID N0-SD-LD
b. Residential-High	\$886.00 / acre	<input type="checkbox"/> Y	\$0.00	Fee ID N0-SD-HD
c. Commercial	\$1,528.00 / acre	<input type="checkbox"/> Y	\$0.00	Fee ID N0-SD-C
d. Industrial	\$1,128.00 / acre	<input type="checkbox"/> Y	\$0.00	Fee ID N0-SD-I
e. Assembly Hall	\$564.00 / acre	<input type="checkbox"/> Y	\$0.00	Fee ID N0-SD-AH

Street Tree Fee	432-2600-0000-3660	\$574.00
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a. City Planting and Replacement	\$3.06 / f.f. x	<input type="checkbox"/> N	0.0 =	\$0.00	Fee ID N0-TREEPLT
b. Inspection and Replacement	\$0.41 / f.f. x	<input type="checkbox"/> Y	1,400.0 =	\$574.00	Fee ID N0-TREEINS

Traffic Impact Fee	433-2600-0000-3660	DEFERED TO BUILDING PERMIT
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a. Residential-Low	\$10,580.00 / unit	<input type="checkbox"/> Y	\$868,720.00	Fee ID N1-TRAF-LD
b. Residential-High	\$8,577.00 / unit	<input type="checkbox"/> Y	\$0.00	Fee ID N2-TRAF-HD
c. Commercial-Low Traffic (< 10.75 trips/1000 sf)	\$11,706.00 / k.s.f.	<input type="checkbox"/> Y	\$0.00	Fee ID N3-TRAF-CL
d. Commercial-High Traffic (≥ 10.75 trips/1000 sf)	\$23,647.00 / k.s.f.	<input type="checkbox"/> Y	\$0.00	Fee ID N3-TRAF-CH
e. Industrial-General	\$4,639.00 / k.s.f.	<input type="checkbox"/> Y	\$0.00	Fee ID N4-TRAF-G
f. Industrial-Warehouse	\$3,362.00 / k.s.f.	<input type="checkbox"/> Y	\$0.00	Fee ID N4-TRAF-IW

Sewer Impact Fee				435-2600-0000-3660		
a. Residential-Low	\$11,558.00	/ unit	<input checked="" type="checkbox"/> Y	\$970,872.00	DEFERED TO	<u>BUILDING PERMIT</u>
					Fee ID N1-SS-LD	
b. Residential-High	\$6,254.00	/ unit	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N2-SS-HD	
c. Commercial/Industrial	\$3,658.00	/ cgp	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N5-SS-C/I	
Water Impact Fee				436-2600-0000-3660		
a. Residential-Low	\$4,294.00	/ unit	<input checked="" type="checkbox"/> Y	\$360,696.00	DEFERED TO	<u>BUILDING PERMIT</u>
					Fee ID N1-WATR-LD	
b. Residential-High	\$1,737.00	/ unit	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N2-WATR-HD	
c. Commercial/Industrial	\$6,731.00	/ kgpd	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N5-WTR-C/I	
Public Facilities Impact Fee				440-2600-0000-3660		
a. Residential-Low	\$18,223.00	/ unit	<input checked="" type="checkbox"/> Y	\$1,530,732.00	DEFERED TO	<u>BUILDING PERMIT</u>
					Fee ID N1-PF-LD	
b. Residential-High	\$15,332.00	/ unit	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N2-PF-HD	
c. Commercial	\$2,746.00	/ k.s.f.	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N3-PF-C	
d. Industrial	\$1,215.00	/ k.s.f.	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N4-PF-I	
Water User Fee (Construction)				720-0433-0000-3620		
	\$3.00	/ f.f.	<input checked="" type="checkbox"/> Y	\$0.00	Fee ID N0-CONWTFF	\$0.00
	\$182.73	/ a.c.		\$0.00	Fee ID N0-CONWTAC	

FRONT FOOT CHARGES

(Used to charge and reimburse fees for existing infrastructure)

The Half-Pipe schedule is used to determine the front footage reimbursement to former developers for infrastructure previously installed along the front footage of the development.

The Full Pipe schedule is used to determine the oversizing reimbursement to the developer for installing water, sewer, and storm main extensions to sizes required by each master plan that are greater than the sizes required by the development. The oversized portion is the difference between the master planned size for the main and the greater of the main size required by the development or the developer's minimum responsibility for each main.

Water

801-2601-PWD0-3699

\$0.00

Water Mains - including fire hydrants, valves, valve boxes and other pertinences.

Developer responsibility is up to and including 12" mains

	Half Pipe		Linear Footage			
6 inch Main	\$39.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR06-1/2
8 inch Main	\$41.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR08-1/2
10 inch Main	\$47.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR10-1/2
12 inch Main	\$52.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR12-1/2
14 inch Main	\$57.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR14-1/2
16 inch Main	\$62.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR16-1/2
18 inch Main	\$68.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR18-1/2
20 inch Main	\$76.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR18-1/2
24 inch Main	\$82.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR24-1/2
30 inch Main	\$91.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR30-1/2
36 inch Main	\$106.00 / LF x	N	0.0	=	\$0.00	Fee ID N-WR36-1/2

Front Foot Charges Continued

(Used to charge and reimburse fees for existing infrastructure)

Sewer

801-2601-PWD0-3899

\$0.00Sewer Mains - including manhole and other pertinences.
Developer responsibility is up to and including 12" mains.

	<u>Half Pipe</u>		<u>Linear Footage</u>		
6 inch Main	\$73.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS06-1/2
8 inch Main	\$75.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS08-1/2
10 inch Main	\$81.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS10-1/2
12 inch Main	\$83.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS12-1/2
15 inch Main	\$87.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS15-1/2
18 inch Main	\$93.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS18-1/2
21 inch Main	\$102.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS21-1/2
24 inch Main	\$106.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS24-1/2
27 inch Main	\$122.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS27-1/2
30 inch Main	\$144.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS30-1/2
33 inch Main	\$158.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS33-1/2
36 inch Main	\$178.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS36-1/2
39 inch Main	\$212.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS39-1/2
42 inch Main	\$265.00 / LF x	N	0.0	=	\$0.00 Fee ID N-SS42-1/2

Street Improvements

801-2601-PWD0-3899

\$0.00Pavement, Sidewalks & Medians

		<u>Square Footage</u>		
AC/Bike path: base	\$2.55 / SF x	N	0.0	= \$0.00 Fee ID N-STR-ACB
AC/Bike path: pvmf	\$2.50 / SF x	N	0.0	= \$0.00 Fee ID N-STR-ACP
Sidewalk: new	\$9.75 / SF x	N	0.0	= \$0.00 Fee ID N-STR-S/W
Sidewalk: replace	\$13.25 / SF x	N	0.0	= \$0.00 Fee ID N-STR-S/W/R
Resurfacing	\$2.55 / SF x	N	0.0	= \$0.00 Fee ID N-STR-RESU
Landscaped Median	\$20.35 / SF x	N	0.0	= \$0.00 Fee ID N-STR-LANM
Hardscaped Median	\$11.63 / SF x	N	0.0	= \$0.00 Fee ID N-STR-HARD

Traffic Signals (equipment only)

		<u>% of Lump Sum</u>		
Traffic Signal-3 leg	\$130,200.00 / LS x	N	0%	= \$0.00 Fee ID N-STR-TS3L
Traffic Signal-4 leg	\$158,500.00 / LS x	N	0%	= \$0.00 Fee ID N-STR-TS4L

Curb and Gutter

		<u>Linear Footage</u>		
Curb/Gutter: new	\$25.85 / LF x	N	0.0	= \$0.00 Fee ID N-STR-C/G
Curb/Gutter: replace	\$33.40 / LF x	N	0.0	= \$0.00 Fee ID N-STR-C/GR
Curb Ramps	\$1,057.63 / LF x	N	0.0	= \$0.00 Fee ID N-STR-CR

Front Foot Charges Continued

(Used to charge and reimburse fees for existing Infrastructure)

Storm Drain

Storm Mains - including manholes, catch basins and other pertences.
Developer responsibility is up to and including 24" mains.

801-2601-PWD0-3699

\$0.00

	Half Pipe		Linear Footage		
18 inch Main	\$63.00 / LF x	N	0.0	=	\$0.00
21 inch Main	\$69.00 / LF x	N	0.0	=	\$0.00
24 inch Main	\$70.00 / LF x	N	0.0	=	\$0.00
27 inch Main	\$82.00 / LF x	N	0.0	=	\$0.00
30 inch Main	\$89.00 / LF x	N	0.0	=	\$0.00
33 inch Main	\$91.00 / LF x	N	0.0	=	\$0.00
36 inch Main	\$95.00 / LF x	N	0.0	=	\$0.00
42 inch Main	\$99.00 / LF x	N	0.0	=	\$0.00
48 inch Main	\$117.00 / LF x	N	0.0	=	\$0.00
54 inch Main	\$137.00 / LF x	N	0.0	=	\$0.00
60 inch Main	\$158.00 / LF x	N	0.0	=	\$0.00
66 inch Main	\$179.00 / LF x	N	0.0	=	\$0.00
72 inch Main	\$200.00 / LF x	N	0.0	=	\$0.00
78 inch Main	\$216.00 / LF x	N	0.0	=	\$0.00
84 inch Main	\$231.00 / LF x	N	0.0	=	\$0.00
90 inch Main	\$246.00 / LF x	N	0.0	=	\$0.00
96 inch Main	\$261.00 / LF x	N	0.0	=	\$0.00

NOTE: All deferred and/or estimated fees will be adjusted to the rates in effect at the time fees are paid.

The undersigned agrees to provide actual construction costs for recalculation of fees and pay any underestimated fees prior to final acceptance. If the recalculated fees are less than the estimate, the City of Gilroy will refund the difference. Additional plan review required by changes, additions or revisions to approved plans, re-inspections and inspections outside of normal business hours will be billed as shown in the City of Gilroy's most current comprehensive fee schedule at the hourly rates in effect at the time of inspection.

Accepted by:

Print Name:

Date:

JAN CARUS, LAND DEVELOPMENT MGR
10/29/15

OVERSIZING SCHEDULE

(Used to reimburse oversized infrastructure)

Total Oversized Water, Sewer and Storm Drain Main Reimbursement\$0.00**Total Oversized Water Main Reimbursement**

(Developer is responsible for up to and including 12" mains)

\$0.00

		Oversized Full Pipe \$/foot	Minimum 12" main Full Pipe \$/foot	Oversized Footage	Oversized Reimbursement
14 inch	Main	\$114.00	\$104.00	x 0.0 =	\$0.00 N
16 inch	Main	\$124.00	\$104.00	x 0.0 =	\$0.00 N
18 inch	Main	\$135.00	\$104.00	x 0.0 =	\$0.00 N
20 inch	Main	\$151.00	\$104.00	x 0.0 =	\$0.00 N
24 inch	Main	\$164.00	\$104.00	x 0.0 =	\$0.00 N
30 inch	Main	\$182.00	\$104.00	x 0.0 =	\$0.00 N
36 inch	Main	\$211.00	\$104.00	x 0.0 =	\$0.00 N

Total Oversized Sewer Main Reimbursement

(Developer is responsible for up to and including 12" mains)

\$0.00

		Oversized Full Pipe \$/foot	Minimum 12" main Full Pipe \$/foot	Oversized Footage	Oversized Reimbursement
15 inch	Main	\$174.00	\$166.00	x 0.0 =	\$0.00 N
18 inch	Main	\$186.00	\$166.00	x 0.0 =	\$0.00 N
21 inch	Main	\$204.00	\$166.00	x 0.0 =	\$0.00 N
24 inch	Main	\$211.00	\$166.00	x 0.0 =	\$0.00 N
27 inch	Main	\$244.00	\$166.00	x 0.0 =	\$0.00 N
30 inch	Main	\$287.00	\$166.00	x 0.0 =	\$0.00 N
33 inch	Main	\$315.00	\$166.00	x 0.0 =	\$0.00 N
36 inch	Main	\$356.00	\$166.00	x 0.0 =	\$0.00 N
39 inch	Main	\$423.00	\$166.00	x 0.0 =	\$0.00 N
42 inch	Main	\$529.00	\$166.00	x 0.0 =	\$0.00 N

Total Oversized Storm Drain Main Reimbursement

(Developer is responsible for up to and including 24" mains)

\$0.00

		Oversized Full Pipe \$/foot	Minimum 24" main Full Pipe \$/foot	Oversized Footage	Oversized Reimbursement
27 inch	Main	\$164.00	\$140.00	x 0.0 =	\$0.00 N
30 inch	Main	\$177.00	\$140.00	x 0.0 =	\$0.00 N
33 inch	Main	\$182.00	\$140.00	x 0.0 =	\$0.00 N
36 inch	Main	\$189.00	\$140.00	x 0.0 =	\$0.00 N
42 inch	Main	\$197.00	\$140.00	x 0.0 =	\$0.00 N
48 inch	Main	\$233.00	\$140.00	x 0.0 =	\$0.00 N
54 inch	Main	\$273.00	\$140.00	x 0.0 =	\$0.00 N
60 inch	Main	\$315.00	\$140.00	x 0.0 =	\$0.00 N

Oversizing Schedule Continued

(Used to reimburse oversized infrastructure)

Oversized Storm Drain Main Reimbursement Continued

		<u>Oversized Full Pipe \$/foot</u>	<u>Minimum 24" main Full Pipe \$/foot</u>		<u>Oversized Footage</u>		<u>Oversized Reimbursement</u>	
66 inch	Main	\$357.00	- \$140.00	x	0.0	=	\$0.00	N
72 inch	Main	\$399.00	- \$140.00	x	0.0	=	\$0.00	N
78 inch	Main	\$431.00	- \$140.00	x	0.0	=	\$0.00	N
84 inch	Main	\$461.00	- \$140.00	x	0.0	=	\$0.00	N
90 inch	Main	\$492.00	- \$140.00	x	0.0	=	\$0.00	N
96 inch	Main	\$522.00	- \$140.00	x	0.0	=	\$0.00	N

EXHIBIT "D"

INSURANCE REQUIREMENTS FOR MERITAGE HOMES AND CONTRACTOR(S)

Please refer to the following insurance coverage and provisions:

Without limiting the City of Gilroy's (City) indemnification of, or liability to the Santa Clara Valley Water District (District), the City must ensure Meritage Homes and its contractor(s) (Meritage Homes and its contractor(s) are collectively referred to hereafter as the "Insured Parties") assigned to the Project maintain during the term of this Agreement, or as may be further required herein, the following insurance coverage(s) and provisions:

Insured Parties must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Insured Parties' insurance agent(s) and/or broker(s), who have been instructed by Insured Parties to procure the insurance coverage required herein.

In addition to certificates, Insured Parties must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before the contract commences.** In the event of a claim or dispute, District has the right to require Insured Parties' insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Insured Parties must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

Required Coverages

1. **Commercial General/Business Liability Insurance** with coverage as indicated:

\$10,000,000 per occurrence / **\$10,000,000** aggregate limits for bodily injury and property damage

\$10,000,000 Products/Completed Operations aggregate (to be maintained for at least three (3) years following acceptance of the work by District.

General Liability insurance must include:

- a. Coverage at least as broad as found in standard ISO form CG 00 01.
- b. Premises and Operations.
- c. Contractual Liability expressly including liability assumed under this AGREEMENT.
- d. If Insured Parties will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- e. Owners and Contractors' Protective liability.
- f. Severability of Interest.

- g. Explosion, Collapse and Underground Hazards, (X, C, and U).
- h. Broad Form Property Damage liability.
- i. If the standard ISO Form wording for "OTHER INSURANCE," or other comparable wording, is not contained in Insured Parties' liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and any insurance or self-insurance maintained by City and District, their respective elected and appointed officers, directors, board and council members, employees, volunteers and agents will be in excess of Consultant's insurance and will not contribute to it.

2. Business Auto Liability Insurance with coverage as indicated:

\$2,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

3. Professional/Errors and Omissions Liability with coverage as indicated:

\$5,000,000 per claim/ **\$5,000,000** aggregate.

Professional/Errors and Omission Liability appropriate to the Consultant's profession, and must include:

- a. If coverage contains a deductible, or self-insured retention, it shall not be greater than one hundred thousand dollars (\$100,000) per occurrence/event.
- b. Coverage shall include contractual liability.
- c. If coverage is claims-made:
 - i. Certificate of Insurance shall clearly state that the coverage is claims-made.
 - ii. Policy retroactive date must coincide with or precede the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
 - iii. Policy must allow for reporting of circumstances or incidents that might give rise to future claims.
 - iv. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.

4. Workers' Compensation and Employer's Liability Insurance

Statutory California Workers' Compensation coverage covering all work to be performed for the City and District.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

5. Surety Bonds

Insured Parties shall provide the following Surety Bonds:

- a. A Bid Bond.

- b. A Performance Bond.
- c. A Payment Bond.

General Requirements

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s)** Insured Parties must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **District District, its Directors, officers, employees, volunteers and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Insured Parties will be notified of such requirement(s) by the District.

(**NOTE:** Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037. Note: Editions dated 07/04 are not acceptable.)
2. **Primacy Clause:** Insured Parties' insurance must be primary with respect to any other insurance which may be carried by the District, its officer, employees, volunteers and agents, and the District's coverage must not be called upon to contribute or share in the loss.
3. **Cancellation Clause Endorsement:** Insured Parties must provide a cancellation endorsement stating that the insurer agrees to provide thirty (30) days' notice of cancellation (ten (10) days' notice for non-payment of premium). **NOTE: Adding wording to the standard wording in the ISO Certificate of Insurance is not acceptable.**
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the District's Risk Management Administrator.
5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, directors, employees, agents and volunteers; or the Insured Parties shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Subcontractors:** Should any of the work under this Agreement be sublet, the Insured Parties must require each of its subcontractors of any tier to carry the aforementioned coverages, or Insured Parties may insure subcontractors under its own policies.

7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Insured Parties for the benefit of the District must not be deemed to release or limit any liability of Insured Parties. Damages recoverable by the District for any liability of Insured Parties must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** All coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Insured Parties agrees on to waive subrogation against the District to the extent any loss suffered by Insured Parties is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy, or Builders' Risk policy described in **Required Coverages** above. Insured Parties agree to advise its broker/agent/insurer about this provision and obtain any endorsements, if needed, necessary to ensure the insurer agrees.
10. **Non-compliance:** The District reserve the right to withhold payments to the Insured Parties in the event of material noncompliance with the insurance requirements outlined above.
11. **Please mail the certificates and endorsements to:**

**Contract Administrator
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118**

IMPORTANT: On the certificate of insurance, please note either the name of the project or the name of the District contact person or unit for the contract.

If your insurance broker has any questions please advise him/her to call Mr. David Cahen, District Risk Management Administrator at (408) 265-2607, extension 2213.

