

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

323A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
March 11, 2010

**SUBJECT:** Partial Assignment and Assumption of Joint Community Facilities Agreement by and between McMillin Morgan Hill, LLC, MMH Property Holdings, LLC, and the County of Riverside.

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Partial Assignment and Assumption Agreement by and between McMillin Morgan Hill, LLC, MMH Property Holdings, LLC and the County in connection with Community Facilities District 2002-06 (Morgan Hill); and
2. Authorize the Chairman to execute the same.

**BACKGROUND:** MMH Property Holdings acquired certain real property from McMillin Morgan Hill within Improvement Area "C" of Community Facilities District (CFD) No. 2002-06 (Morgan Hill)

Juan C. Perez  
Director of Transportation

JCP:gh  
(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL  
BY:   
DALE A. GARDNER  
DATE: 3/10/10  
Official Concurrence

Policy  
 Policy

Consent  
 Consent

Dept't Recomm.:  
Per Exec. Ofc.:

Prev. Agn. Ref. 7/16/02, Item 3.20 | District: 3 | Agenda Number:

3.38a

The Honorable Board of Supervisors

RE: Partial Assignment and Assumption of Joint Community Facilities Agreement by and between McMillin Morgan Hill, LLC, MMH Property Holdings, LLC, and the County of Riverside.

March 11, 2010

Page 2 of 2

Hill).

McMillin Morgan Hill is conveying to MMH Property Holdings all rights, title, interests, benefits, duties, liabilities, obligations, and responsibilities related to Improvement Area "C" of CFD 2002-06 pursuant to the County Joint Community Facilities Agreement (JCFA), dated July 17, 2002 entered into by and among the County, McMillin Morgan Hill and Eastern Municipal Water District.

MMH Property Holdings hereby assumes and agrees to perform any and all remaining duties, liabilities, obligations and responsibilities of McMillin Morgan Hill with respect to Improvement Area "C" of CFD 2002-06 as provided in the County JCFA, accruing from and after the closing date of escrow for the sale and conveyance of the Property.

**PARTIAL ASSIGNMENT AND ASSUMPTION OF COUNTY JCFA**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF COUNTY JCFA (this "Assignment") dated as of \_\_\_\_\_, 2010 ("Effective Date") is executed by and among MCMILLIN MORGAN HILL, LLC, a Delaware limited liability company ("Transferor"), MMH PROPERTY HOLDINGS, LLC, a Delaware limited liability company ("Transferee"), and the COUNTY OF RIVERSIDE (the "County").

**RECITALS**

A. This Assignment is entered into by and among Transferor, Transferee and the County in connection with Transferor's sale and conveyance to Transferee, and Transferee's purchase and acquisition from Transferor, of certain real property located in an unincorporated area of the County which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). The Property encompasses all the real property owned by Transferor within Improvement Area C ("Improvement Area C") of Community Facilities District No. 2002-06 (Morgan Hill) of the Eastern Municipal Water District (the "CFD").

B. The close of escrow for the sale and conveyance of the Property by Transferor to Transferee occurred on or about September 30, 2009 (the "Closing Date").

C. As of the Closing Date, Transferee shall be responsible for the construction of all remaining public facilities required to be constructed as a condition of development of the Property, which public facilities will ultimately be owned, operated and maintained by the County (the "County Facilities"). The County Facilities are eligible to be financed with public funds pursuant to that certain Joint Community Facilities Agreement, dated July 17, 2002 (the "County JCFA"), entered into by and among the County, Transferor and Eastern Municipal Water District (the "Water District").

D. In connection with the foregoing and pursuant to Section 6.4 of the County JCFA, Transferor has agreed to assign to Transferee and Transferee has agreed to assume from Transferor, all of Transferor's rights, title, interests, benefits, duties, liabilities, obligations, and responsibilities related to the Property (*i.e.* Improvement Area C) pursuant to the County JCFA, including the right to receive payment for the acquisition of the County Facilities relating to Improvement Area C from proceeds of any Bonds (defined in the County JCFA) generated by the CFD with respect to Improvement Area C and available to fund such assigned County Facilities for Improvement Area C, including any such County Facilities previously constructed by Transferor.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Transferor, Transferee and the County agree as follows:

1. As of the Effective Date, Transferor hereby unconditionally grants, sells, transfers, conveys and delivers to Transferee all right, title, and interest of Transferor in and to, and all benefits accruing to Transferee under the County JCFA with respect to the Property (*i.e.* Improvement Area C), including all future rights to reimbursement for the acquisition of the

County Facilities relating to Improvement Area C, including any such County Facilities previously constructed by Transferor, from proceeds of any Bonds (defined in the County JCFA) generated by the CFD with respect to Improvement Area C and available to fund such assigned County Facilities for Improvement Area C (collectively, the "Assigned Rights").

2. Transferee hereby assumes and agrees to perform any and all remaining duties, liabilities, obligations or responsibilities of Transferor with respect to the Property (*i.e.* Improvement Area C) as provided in the County JCFA, accruing from and after the Closing Date.

3. Transferor agrees to indemnify, protect, defend and hold Transferee harmless from and against any and all claims, liabilities, losses, costs, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of or resulting from any breach or default by Transferor under the terms of the County JCFA occurring prior to the Closing Date.

4. Transferee agrees to indemnify, protect, defend and hold Transferor harmless from and against any and all claims, liabilities, losses, costs, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of or resulting from any breach or default by Transferee under the terms of the County JCFA occurring on or after the Closing Date.

5. Any notice or communication to Transferee under the County JCFA shall be given to Transferee as follows:

MMH PROPERTY HOLDINGS, LLC  
c/o JPMorgan Chase Bank, N.A.  
17875 VonKarman Avenue  
Irvine, California 92614  
Attn: Dottie Jensen  
Phone: (949) 833-4332  
Fax: (949) 833-6604  
Email: [dottie.jensen@jpmchase.com](mailto:dottie.jensen@jpmchase.com)

With a copy to:

Snell & Wilmer L.L.P.  
600 Anton Blvd., Suite 1400  
Costa Mesa, California 92626-7689  
Attn: Joseph L. Coleman  
Phone: (714) 427-7000  
Fax: (714) 427-7799  
Email: [jlcoleman@swlaw.com](mailto:jlcoleman@swlaw.com)

6. In the event that any party hereof shall bring any action or suit against the other by reason of any breach of any of the covenants, conditions, representations, warranties,

agreements or provisions contained in this Assignment, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees, as awarded by a court of competent jurisdiction.

7. This Assignment may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

8. The provisions of this Assignment shall be binding upon and inure to the benefit of the successors of Transferor, Transferee and the County. All rights, title, and interest to all benefits accruing under the County JCFA with respect to the Property (*i.e.* Improvement Area C) shall only be assigned to a subsequent assignee pursuant to the execution of an assignment and assumption agreement among the subsequent assignor, the subsequent assignee and the County, in a form acceptable to the County, whereby the parties consent to such assignment and the subsequent assignee expressly agrees to assume all duties, liabilities, obligations or responsibilities under the County JCFA and to be bound thereby.

***[Signatures on the Following Page]***

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

**“TRANSFEROR”**

**“TRANSFeree”**

MCMILLIN MORGAN HILL, LLC,  
a Delaware limited liability company

MMH PROPERTY HOLDINGS, LLC,  
a Delaware limited liability company

By: McMillin Management Services, LP,  
its Manager

By: JPMORGAN CHASE BANK, N.A.,  
a national banking association,  
Its Manager

By: Corky McMillin Construction  
Services, Inc., a California  
corporation,  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: *[Signature]*  
Name: BRION MORGAN  
Title: SVP

By: *[Signature]*  
Name: DON MITCHELL  
Title: SVP

**“COUNTY”**

COUNTY OF RIVERSIDE

\_\_\_\_\_  
Chairman, Board of Supervisors

FORM APPROVED COUNTY COUNSEL  
BY *[Signature]* 3/10/10  
DALE A. GARDNER DATE

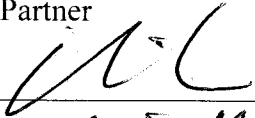
IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

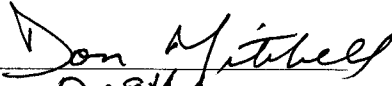
**“TRANSFEROR”**

MCMILLIN MORGAN HILL, LLC,  
a Delaware limited liability company

By: McMillin Management Services, LP,  
its Manager

By: Corky McMillin Construction  
Services, Inc., a California  
corporation,  
Its: General Partner

By:   
Name: Corky McMillin  
Title: SVP

By:   
Name: DON MITCHELL  
Title: SVP

**“TRANSFeree”**

MMH PROPERTY HOLDINGS, LLC,  
a Delaware limited liability company

By: JPMORGAN CHASE BANK, N.A.,  
a national banking association,  
Its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“COUNTY”**

COUNTY OF RIVERSIDE

\_\_\_\_\_  
Chairman, Board of Supervisors

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

**"TRANSFEROR"**

MCMILLIN MORGAN HILL, LLC,  
a Delaware limited liability company

By: McMillin Management Services, LP,  
its Manager

By: Corky McMillin Construction  
Services, Inc., a California  
corporation,  
Its: General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**"TRANSFeree"**

MMH PROPERTY HOLDINGS, LLC,  
a Delaware limited liability company

By: JPMORGAN CHASE BANK, N.A.,  
a national banking association,  
Its Manager

By: Dottie Jensen  
Name: DOTTIE JENSEN  
Title: VICE President

**"COUNTY"**

COUNTY OF RIVERSIDE

\_\_\_\_\_  
Chairman, Board of Supervisors



**CONSENT TO ASSIGNMENT**

The undersigned, EASTERN MUNICIPAL WATER DISTRICT, a public agency of the State of California ("EMWD"), on behalf of itself and EASTERN MUNICIPAL WATER DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2002-06 (Morgan Hill) (the "CFD"), hereby consents to the assignment and assumption provided in the foregoing Partial Assignment and Assumption of County JCFA, dated as of \_\_\_\_\_, 2010 (the "Effective Date"), entered into by and among MCMILLIN MORGAN HILL, LLC, a Delaware limited liability company ("Transferor") and MMH PROPERTY HOLDINGS, LLC, a Delaware limited liability company ("Transferee") and the COUNTY OF RIVERSIDE (the "County").

Dated: \_\_\_\_\_

**EMWD:**

EASTERN MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**

THAT CERTAIN REAL PROPERTY SITUATED IN THE UNINCORPORATED AREA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 1 THROUGH 105, INCLUSIVE, OF TRACT MAP 30885-1, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 408, PAGES 30 THROUGH 39, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOTS 1 THROUGH 112, INCLUSIVE, OF TRACT MAP 30885-2, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 408, PAGES 40 THROUGH 49, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOTS 1 THROUGH 112, INCLUSIVE, OF TRACT MAP 30885-3, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 408, PAGES 50 THROUGH 58, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4:

PARCELS 9, 10 AND 11 AND LETTERED LOTS "A" THROUGH "E" AND "U" OF PARCEL MAP 29608, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP RECORDED IN BOOK 201, PAGES 84 THROUGH 91, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF PARCEL 10 OF PARCEL MAP 29608, MORE PARTICULARLY DESCRIBED IN GRANT DEED RECORDED OCTOBER 10, 2006, AS INSTRUMENT NO. 2006-0746838, OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE ABOVE LAND INCLUDED WITHIN TRACT MAP 30885-1, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 408, PAGES 30 THROUGH 39, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE ABOVE LAND INCLUDED WITHIN TRACT MAP 30885-2, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 408, PAGES 40 THROUGH 49, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE ABOVE LAND INCLUDED WITHIN TRACT MAP 30885-3, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 408, PAGES 50 THROUGH 58, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 5:

BEING A PORTION OF THE LAND AS DESCRIBED IN DEED RECORDED NOVEMBER 29, 1967 AS INSTRUMENT NO. 104736 OF OFFICIAL RECORDS IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LYING WITHIN THE RANCHO PAUBA, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA WHICH WAS GRANTED BY THE GOVERNMENT OF THE UNITED STATES TO LUIS VIGNES BY PATENT DATED JANUARY 19, 1860 AND RECORDED IN BOOK 1, PAGE 45 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, STATE OF CALIFORNIA PER DEED, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF ANZA ROAD AND MORGAN HILL DRIVE, AS SHOWN ON PARCEL MAP 29608, FILED IN BOOK 201 OF PARCEL MAPS, PAGES 84 THROUGH 91, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT "B", AS SHOWN ON SAID PARCEL MAP;

THENCE, ALONG THE EASTERLY LINE OF SAID LOT "B" AND THE CENTERLINE OF ANZA ROAD SOUTH 23°51'54" EAST, (NORTH 23°53'04" WEST, A DISTANCE OF 398.27 FEET AS SHOWN ON SAID PARCEL MAP 29608) A DISTANCE OF 398.14 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT "B" SAID POINT BEING ON THE NORTHERLY LINE OF SAID DEED, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE, ALONG SAID LINE, SOUTH 66°08'06" WEST, A DISTANCE OF 155.00 FEET TO THE WESTERLY LINE OF SAID DEED, SAID LINE ALSO BEING THE EASTERLY LINE OF PARCEL 10, AS SHOWN ON SAID PARCEL MAP;

THENCE, ALONG SAID LINE, SOUTH 23°51'54" EAST, A DISTANCE OF 50.63 FEET;

THENCE, NORTH 66°08'06" EAST, A DISTANCE OF 155.00 FEET TO A POINT ON SAID CENTERLINE OF ANZA ROAD;

THENCE, ALONG SAID CENTERLINE, NORTH 23°51'54" WEST, A DISTANCE OF 50.63 FEET TO THE TRUE POINT OF BEGINNING.

APN: 966-170-017; 966-170-022, 024 THRU 028, 031; 966-440-001 THRU 025; 966-441-001 THRU 030; 966-450-001 THRU 032; 966-451-001 THRU 043; 966-460-001 THRU 053; 966-461-001 THRU 029; 966-470-001 THRU 027; 966-471-001 THRU 024; 966-480-001 THRU 026; 966-490-001 THRU 020; 966-491-001 THRU 015.