

HOUSING ASSISTANCE AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
DEANNA SANTANA, CITY MANAGER

THIS AGREEMENT is made and entered into this 22 day of February, 2016, by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter referred to as the "City"), and Deanna J. Santana, an individual who has been employed by the City as its City Manager (hereinafter referred to as "Director").

RECITALS

A. The City of Sunnyvale has maintained a program for the provision of housing assistance to newly appointed Charter officers and department directors since 1981. The program was amended several times since the City Council's initial approval, and on July 28, 2015, the City Council approved Resolution No. 712-15, which amended and restated the policy.

B. Trends in housing costs, the relative unavailability of new housing, and current housing financing conditions in the San Francisco Bay Area, and particularly in the City of Sunnyvale, tend to act as a disincentive to persons relocating to this area and, therefore, as an obstacle to the recruitment, hiring and retention of top quality high level management employees.

C. At the time of Director's employment with the City, the City Council determined through negotiation that the provision of housing assistance pursuant to City policy was necessary and appropriate in connection with the employment of Director's services and, therefore, as a term and condition of employment of Director, the City would provide Director housing assistance within the guidelines set forth in the resolution.

E. Director has determined to purchase a Residence within the City of Sunnyvale, and the parties hereto desire to set forth herein the terms and conditions of such housing assistance.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. **PURPOSE.** The purpose of this Agreement is to set forth those terms reached by the City and Director regarding housing assistance. It is understood that subsequent to the execution of this Agreement, upon obtaining the loan authorized herein, Director must execute a Promissory Note and Deed of Trust to secure the demand loan. It is further acknowledged that the terms set forth herein relate to the purchase of a specific Residence. In the event the purchase of that Residence is not consummated by Director, nothing contained herein shall preclude the City from providing similar housing assistance with respect to any other party in accordance with the guidelines set forth in Resolution No. 712-15.

2. **TERMS OF EMPLOYMENT.** This Agreement addresses only one segment of Director's terms and conditions of employment. It is understood that the City and Director may agree to such other terms as are consistent with the City Charter, Municipal Code, and adopted Management and Council appointees' compensation plan.

Further, it is expressly agreed that nothing contained herein shall be construed to provide Director a contract of employment as City Manager. The City continues to maintain its sole discretion, exercisable pursuant to Section 802 of the City Charter, to terminate Director's employment at any time. The exercise of such authority by City shall not establish a cause of action for money damages due to a loss of the housing assistance authorized by this Agreement.

3. TERMS OF HOUSING ASSISTANCE.

A. Loan Period. The City hereby agrees to loan to Director, for the purchase of Director's principal place of residence ("Residence") located at [REDACTED] Sunnyvale, California ("Residence"), the sum of one million, one hundred and sixty one thousand, five hundred and nineteen dollars and fifty nine cents (\$1,161,519.59). The term of the demand loan shall be forty five (45) years. The interest rate shall be .655%. The interest rate is fixed, as determined by the 11th District Cost of Funds at the time of purchase. Proceeds of the demand loan shall be used only to purchase the above-referenced real property for use as the principal Residence for Director. Director shall provide annual certification of primary residency which shall be submitted to the City's Finance Director upon request. Director shall use the above referenced address for all City of Sunnyvale databases and any Federal/State records such as tax filing and voter registration.

B. Down Payment. The loan shall not exceed ninety five percent (95%) of the purchase price of the Residence, Director shall make a down payment of five percent (5%) or more, and the loan on the Residence may not exceed ten times the Director's salary control point at the time of employment.

C. First Lien. The loan is a demand loan and must constitute a first lien upon the Residence, to be evidenced by a Promissory Note in the form attached hereto as Exhibit "A", attached and incorporated by this reference, which is secured by a Deed of Trust.

D. Close of Escrow and Miscellaneous Costs. Close of escrow may not be less than 30 days unless City waives this requirement for a shorter period. City shall be responsible for closing costs for document preparation, notary and recording fees, ALTA title policy, escrow fees, and appraisal fees. Neither points nor loan fees shall be charged against Director. Director

shall obtain a title report which endorses the City as a beneficiary on the title insurance policy. Director shall obtain, at her expense, fire insurance extended coverage based upon the replacement value of the Residence with the City as beneficiary to the extent of its loan, except where a Homeowners Association is the insured. Director shall obtain, at Director's expense, a termite inspection and other inspections deemed necessary by the City.

City will not pay for property inspections, homeowner's title policy, home warranties, insurance or other costs traditionally covered by the Seller or not listed in this Agreement, such as Seller's recording and notary fees and title policies. In addition, City will not pay any of the costs of resale of the property or repayment of the loan when required pursuant to Paragraph H below.

E. Refusal of All or Part of the Loan. This Agreement is subject to a determination that the demand loan is secured to the satisfaction of a loan committee composed of the Mayor, City Attorney and Director of Finance. The City shall retain an independent appraiser to determine the value of the Residence and security for the loan. In the event the loan committee determines, in the exercise of its discretion, that the loan is not adequately secured because of defects in the Residence, because of defects in title, or because of a low appraisal, the City may refuse to make any part or all of the loan.

F. Foreclosure. The City shall have all rights to foreclosure that exist pursuant to law.

G. Loan Due on Sale. The loan and the benefits of the terms of the loan shall not be transferable or assumable; the loan is a demand loan and is conditioned on the future continued performance of substantial services by Director. Demand loan means that, in accordance with this Agreement, the loan shall become due and payable upon sale or other

transfer of the purchased Residence in whole or in part. In this respect, Director acknowledges the holding in *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943 (a copy of which is attached hereto); and agrees that this loan shall not be assumable by any subsequent buyer, in that it is negotiated as a part of Director's compensation in connection with her assuming the position of City Manager; that the payroll deduction provisions act as security for the benefit of the City; and that the general aspects of Director's relationship with the City indicate that the loan is fashioned for Director alone.

H. Demand Loan Due on Employment Termination. Upon termination of Director's employment with the City, for any reason, the demand loan shall be payable in full within six (6) months from the date of termination, and shall be payable in full within six (6) months from the date of termination of the use of the subject property as the principal Residence of Director. In the event of death or disability of Director, Director or beneficiary shall have one year to repay the current balance owing on the demand loan.

I. Prepayment Financing. Director may prepay all or a portion of the loan received without penalty at any time within the term thereof. At such time as the interest rate which Director can obtain in the open mortgage market upon terms comparable or favorable to those of the subject loan is equivalent to or less than the Annual Percentage Rate (APR) which Director will be paying pursuant to this Agreement, Director shall retire her loan.

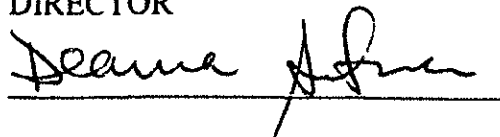
J. Monthly Payment. Director hereby authorizes the City, at its option, to make an automatic payroll deduction, or to designate a bank to which sufficient funds shall be paid by Director to cover the monthly loan payment. Such deduction if made by the City shall have priority over all other deductions, except to the extent that such other deductions are required by law.

4. INVALIDITY OF LOAN. In the event this Agreement and its loan authorization should be held invalid, the City and Director agree to discuss alternative compensation; however, such alternatives are within the City's discretion and Director shall have no vested right to alternative compensation.

5. ITEMIZATION OF DEDUCTIONS. Director hereby certifies to the City that Director reasonably expects to be entitled to and will itemize deductions on her federal and state income tax returns for each year the loan is outstanding.


6. IRS PRIMARY RESIDENCE TEST. Because Director's principal place of work in Sunnyvale is not 50 miles farther from her former residence than was her former principal place of work, Director acknowledges that this loan may be a taxable benefit and Director is encouraged to seek the advice of a tax specialist.

DIRECTOR



Deanna J. Santana, City Manager

APPROVED AS TO FORM:

By 

John Nagel, City Attorney

CITY OF SUNNYVALE:

By 

Mayor

Attachments:

A. Promissory Note

B. *Wellencamp v. Bank of America*