

**HOUSING ASSISTANCE AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
TERI L. SILVA, HUMAN RESOURCES DIRECTOR**

THIS AGREEMENT is made and entered into this 31st day of October, 2011, by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter referred to as the "City"), and TERI L. SILVA, an individual who has been employed by the City as Human Resources Director (hereinafter referred to as "Silva").

RECITALS

WHEREAS, on March 21, 1989, the City Council of the City of Sunnyvale adopted Resolution No. 125-89 revising established guidelines for the provision of housing assistance to newly appointed Charter officers and department directors which was amended in part by Resolution No. 160-96 on August 13, 1996; and

WHEREAS, recent 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; and

WHEREAS, by Section 4 of Resolution No. 125-89, the City Council has authorized the City Manager to act in accordance with the policy set forth in the resolution with respect to department directors appointed by the City Manager and to implement the policies as deemed necessary in order to fulfill the recruitment and hiring needs for such positions; and

WHEREAS, at the time of Silva's employment with the City, the City Manager determined through negotiation that provision of housing assistance pursuant to the resolution was necessary and appropriate in connection with the employment of Silva's services and, therefore, as a term and condition of employment of Silva, would provide housing assistance within the guidelines set forth in the resolution; and

WHEREAS, Silva 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, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. PURPOSE. The purpose of this Agreement is to set forth those terms reached by the City and Silva regarding housing assistance. It is understood that subsequent to the execution of this Agreement, upon obtaining the loan authorized herein, Silva must execute a Promissory Note and Deed of Trust to secure the 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 Silva, 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. 125-89.

2. TERMS OF EMPLOYMENT. This Agreement addresses only one segment of Silva's terms and conditions of employment. It is understood that the City and Silva 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 Silva a contract of employment as Human Resources Director. The City continues to maintain its sole discretion, exercisable pursuant to Section 802 of the City Charter, to terminate Silva'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 Silva, for the purchase of a single-family residence located at [REDACTED], Sunnyvale, California, the sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00). Beginning November 1, 2011, interest shall accrue at the rate of 1.316% per annum. The term of the loan shall be Forty-Five (45) years. Proceeds of the loan shall be used only to purchase the above-referenced residence for use as the principal residence for Silva.

B. Down Payment. The loan shall not exceed ninety percent (90%) of the purchase price of the subject property.

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

D. Miscellaneous Costs. City shall be responsible for all closing costs associated with the purchase of the residence, e.g., title report and insurance, escrow fees, appraisals, etc. Neither points nor loan fees shall be charged against Silva. Silva shall obtain a title report which endorses the

City as a beneficiary on the title insurance policy. Silva shall obtain, at Silva's expense, fire insurance extended coverage based upon the replacement value of the residence with the City as beneficiary to the extent of its loan.

Silva shall obtain, at Silva's expense, a termite inspection and other inspections deemed necessary by the City. In the event the City determines, in the exercise of its discretion, that its 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.

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

F. Loan Due on Sale, on Employment Termination. The loan and the benefits of the terms of the loan shall not be transferable or assumable and are conditioned on the future continued performance of substantial services by Silva. The loan obtained by Silva, in accordance with this Agreement, shall become due and payable upon sale or other transfer of the purchased residence in whole or in part. In this respect, Silva acknowledges the holding in *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943 (a copy of which is attached hereto as Exhibit "B"); and agrees that this loan shall not be assumable by any subsequent buyer, in that it is negotiated as a part of Silva's compensation in connection with Silva assuming the position of Human Resources Director; that the payroll deduction provisions act as security for the benefit of the City; and that the general aspects of Silva's relationship with the City indicate that the loan is fashioned for Silva alone.

Further, it is agreed that upon termination of Silva's employment with the City, for any reason other than death or disability retirement, the loan shall be payable in full within six (6) months from the date of termination. Similarly, the loan 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 Silva.

G. Prepayment Financing. Silva 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 Silva 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 rate which Silva will be paying pursuant to this Agreement, Silva shall retire this loan made by the City.

H. Monthly Payment. Silva shall authorize the City, at its option, to make an automatic payroll deduction, or to designate a bank to which sufficient funds shall be paid by Silva to cover the monthly loan payment. Such deduction, if made by the City, shall have priority over all

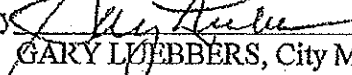
other deductions, except to the extent that such other deductions are required by law. In the event of such deduction, the City and Silva may agree to proration of the full monthly payment over the number of payrolls each month.

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

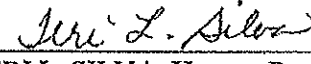
5. Itemization of Deductions. Silva hereby certifies to the City that Silva reasonably expects to be entitled to and will itemize deductions on his federal and state income tax returns for each year the loan is outstanding.

DATED: October 27, 2011

CITY OF SUNNYVALE

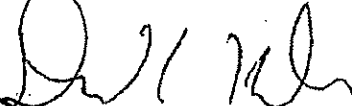
By 
GARY LJEBBERS, City Manager

DATED: October 27, 2011

By 
TERI L. SILVA, Human Resources Director

DATED: Oct. 27, 2011

APPROVED AS TO FORM:

By 
David E. Kahn, City Attorney