

**HOUSING ASSISTANCE AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
KENT D. STEFFENS, PUBLIC WORKS DIRECTOR**

THIS AGREEMENT is made and entered into this 28th day of June, 2012, by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter referred to as the "City"), and KENT D. STEFFENS, an individual who has been employed by the City as Public Works Director (hereinafter referred to as "Steffens" or "Borrower").

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 Steffens'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 Steffens's services and, therefore, as a term and condition of employment of Steffens, would provide housing assistance within the guidelines set forth

in the resolution; and

WHEREAS, Steffens 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 Steffens regarding housing assistance. It is understood that subsequent to the execution of this Agreement, upon obtaining the loan authorized herein, Steffens 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 Steffens, nothing contained herein shall preclude the City from providing similar housing assistance with respect to any other property in accordance with the guidelines set forth in Resolution No. 125-89.

2. TERMS OF EMPLOYMENT. This Agreement addresses only one segment of Steffens's terms and conditions of employment. It is understood that the City and Steffens 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 Steffens a contract of employment as Public Works Director. The City continues to maintain its sole discretion, exercisable pursuant to Section 802 of the City Charter, to terminate Steffens'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 Steffens, for the purchase of a

single-family residence located at [REDACTED], Sunnyvale, California, the sum of Six Hundred Ninety-Seven Thousand Five Hundred and No/100 Dollars (\$697,500.00). The term of the loan shall be forty-five (45) years. The interest rate shall be the 11th District Cost of Funds which is 1.14%. Steffens hereby acknowledges he was offered and has accepted a term of assistance that allows a 2% deferral of the interest rate of 1.14% (resulting in a 0% interest rate) accruing during the initial sixty (60) months of the term of this loan, however monthly principal is due on the first day of each month, or in the alternative, deducted from Steffens' salary. Upon expiration of the five year interest discount period, the interest rate shall revert to that originally set forth in the note or the interest rate then prevailing under the program for fixed rate loans, whichever is lower. After the interest deferral period, the monthly payment of principal and interest is due on the first day of each month. Proceeds of the loan shall be used only to purchase the above-referenced residence for use in fact as the principal residence for Steffens.

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 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 Steffens. Steffens shall obtain a title report which endorses the City as a beneficiary on the title insurance policy. Steffens shall obtain, at Steffens'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.

Steffens shall obtain, at Steffens'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. Certain property inspection reports identified specific items that require repair by Steffens which are described in Exhibit "C" attached hereto and incorporated herein by reference.

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 transferred or assumed and are conditioned on the future continued performance of substantial services by Steffens. The loan obtained by Steffens, 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, Steffens 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 Steffens's compensation in connection with Steffens assuming the position of Public Works Director; that the payroll deduction provisions for loan repayment act as security for the benefit of the City; and that the general aspects of Steffens's relationship with the City indicate that the loan is fashioned for Steffens alone.

Further, it is agreed that upon termination of Steffens'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 Steffens.

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

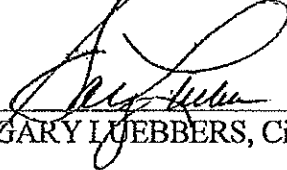
H. Monthly Payment. Steffens shall authorize the City, at its option, to make an automatic payroll deduction, or to designate a bank to which sufficient funds shall be paid by Steffens to cover the monthly loan payment. Such deduction, if made by the City, shall have priority over all other deductions, except to the extent that such other deductions are required by law. In the event of such deduction, the City and Steffens may agree to proration of the full monthly payment over the number of payrolls each month.

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

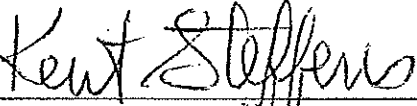
5. Itemization of Deductions. Steffens hereby certifies to the City that Steffens reasonably expects to be entitled to and will itemize deductions on his federal and state income tax returns for each year the loan is outstanding. Steffens acknowledges that the interest rate differential will constitute income because Steffens does not meet all of the IRS regulations related to the acceptance of a below market loan. Steffens does not meet the mileage regulation and because his interest rate is 0% for the first sixty months, he will not be able to itemize deductions for the loan payments. Borrower has been advised to consult with a tax professional concerning tax implications of the housing assistance program on Borrower's individual tax return.

DATED: June 25, 2012

CITY OF SUNNYVALE


By 
GARY LUEBBERS, City Manager

DATED: June 25, 2012

By 
KENT D. STEFFENS, Public Works Director

DATED: June 25, 2012

APPROVED AS TO FORM:

By 
MICHAEL D. MARTELLO, Interim City Attorney