

**Council Meeting: July 14, 2009**

**SUBJECT:** Consider Approval of an Amendment to Action Plans for Fiscal Years 2004-08; Approval of Conditional Commitment of a \$1.3 Million Loan of HOME Funds for Rehabilitation of Aster Park; and Approval of Budget Modification No. 1

**REPORT IN BRIEF**

This report submits for approval by City Council an amendment to Action Plans for Fiscal Years 2004-08, in accordance with requirements of the U.S. Department of Housing and Urban Development (HUD), and a conditional commitment of funds for rehabilitation of Aster Park Apartments, located at 1059 Reed Avenue in Sunnyvale.

According to HUD regulations, the City must amend its Action Plan(s) prior to committing HUD funds to any activity not specifically described in the Action Plan for the fiscal year in which those HUD funds were received. "Specifically described" means that the Action Plan narrative identified the property where the planned activity would occur.

The proposed commitment to Aster Park requires such an amendment because, although the type of activity (acquisition and/or rehabilitation of affordable rental housing), was included as a proposed HOME-funded activity in current and prior years' Action Plans, a specific property was not identified for rehabilitation with HOME funds at the time. HUD grantees often include an activity in an Action Plan without specifying a particular property in order to meet the short-term budgeting deadlines of the HOME program, while allowing funds from multiple, relatively small, annual HOME grants to accumulate in order to provide the larger subsidy amounts required to assist multi-family housing projects.

The proposed amendment would allow the City to use \$1.3 million in HOME funds previously allocated for rental housing assistance, but not committed or expended by the expenditure deadlines, for the rehabilitation of Aster Park, a 95-unit affordable family rental and senior housing project built in Sunnyvale in 1975 and owned by Mid-Peninsula Housing Coalition. At least \$686,559 of these funds must be committed to an eligible HOME activity by July 31, 2009, or the funds will be reclaimed by HUD. By committing the \$1.3 million of

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available HOME funds, the City will meet its future two-year HOME commitment deadline for July 31, 2010.

Staff recommends that City Council approve the proposed Amendment to Fiscal Years 2004-08 Action Plans and conditional commitment of \$1.3 million for the rehabilitation of Aster Park apartments.

### **BACKGROUND**

The HOME Investment Partnerships Program statute states that Participating Jurisdictions (PJs) lose any portion of their HOME grant that they have not committed within two years of their grant award date. The HOME program also has a five-year expenditure deadline for expending funds that have been committed to a particular activity. The City issues a Request for Proposals for capital projects to be funded with available HOME or CDBG funds whenever sufficient funds are available to fund such a project, typically every year or two.

Such a Request for Proposals was issued in December 2008, requesting proposals for approximately \$680,000 in available HOME funds for construction, preservation, or rehabilitation of very low income rental housing, as well as for proposals for CDBG funds for a wider variety of capital projects. No applications for HOME funds were received, most likely due to the limited types of housing projects that can be funded with HOME, and the typical need for at least \$1 million in HOME funds to make such a project financially feasible, due to all of the federal regulations and affordability restrictions involved.

Staff has recently been notified by HUD that the City must commit at least \$686,559 of its prior years' unexpended HOME funds in order to comply with the HOME program commitment and expenditure deadlines applicable to its 2004 through 2007 HOME grants. If the City does not commit this amount by July 31, 2009, these HOME funds will be disencumbered by HUD and will no longer be available to the City.

### **EXISTING POLICY**

#### **2005-2010 Sunnyvale Consolidated Plan:**

Goal B-1: Acquisition and/or Rehabilitation of Existing Assisted Rental Housing to Maintain Affordability

**Housing and Community Revitalization Sub-element:**

Goal C.2.b: Continue the rehabilitation loan program for single, multifamily and mobile homes

**DISCUSSION**

HOME funds may be used for the construction, rehabilitation, or acquisition of housing for low-income households, however HOME funds cannot be provided to a project that previously received HOME funds. Therefore many affordable rental housing projects in Sunnyvale are not eligible to receive HOME funds for rehabilitation now, because the City previously provided HOME funds for their construction, acquisition, and/or prior rehabilitation work.

Staff has scanned the City for a HOME-eligible project that could use at least the amount of HOME funds expiring this year, where the property owner could enter into a conditional commitment with the City before July 31, 2009. Aster Park is the only local property identified that is eligible for and in need of HOME funds for rehabilitation, and it is owned by a party that can enter into a commitment in such a short time frame. Most of the other affordable rental properties in need of this type of rehabilitation subsidy are ineligible because they have received HOME funds in the past, and private rental property owners are typically unwilling or unable to comply with the HOME regulations, which can be quite restrictive and somewhat onerous for an inexperienced borrower.

Mid-Peninsula Housing Coalition (MPHC), a non-profit housing developer, has proposed rehabilitation of their Aster Park property, a 95-unit rental housing complex for low-income families and seniors. The project was acquired in 1991 with a City loan of \$450,000 in Housing Mitigation funds as well as a HUD Section 236 loan of approximately \$800,000, and provides affordable rental housing for low-income families and seniors. The current affordability term will expire with the end of the City loan term in March 2010. For that reason, this project was identified in the Draft Housing Element as an at-risk project; however, its affordability could be preserved with an extension of the City financing.

Preservation of at-risk projects can fulfill a portion of the City's state-mandated requirements to provide lower income housing in each housing element cycle. Mid-Peninsula has expressed a willingness to extend the affordability term on the property for another fifty-five years, which qualifies it as a preservation project, if the City will extend the term of its current Housing Mitigation loan for at least forty years.

MPHC has had a successful 33-year relationship with the City of Sunnyvale, and has earned a reputation as one of California's leading nonprofit developers of affordable housing, with extensive experience in the development, management, and rehabilitation of affordable housing projects. MPHC has developed more than 6,000 affordable units in seven California counties and has won numerous awards for its well-built and well-managed properties. MPHC owns and manages 578 affordable rental housing units in six properties in Sunnyvale which include: Aster Park, Moulton Plaza, Homestead Park, Morse Court, Crescent Terrace, and the Carroll Inn, as well as the Fair Oaks Senior Housing project currently in the pre-construction phase. Their properties are monitored annually by the City as well as various state, federal, and private funding agencies for compliance with rigorous financial, property management, maintenance, and legal requirements, and MPHC provides the City with an annual report and audit each year for its inspection.

Mid-Peninsula has recently completed inspections of the property that identified a total of approximately \$1.6 million in critical health and safety corrections and other rehabilitation work, including ADA retrofits, improved fire protection devices, window replacement, pavement repair, and other interior and exterior rehabilitation. In addition, using funding available from HUD or elsewhere, they propose to install solar hot water heating systems to save energy and reduce operating costs. Approximately \$1.3 million for this project is currently available from prior years' unexpended and uncommitted HOME Funds. Mid-Peninsula is committing its own financial resources to the extent necessary to complete the project, which they estimate to be approximately 20% of the total project cost, or \$300,000.

The proposed rehabilitation of Aster Park will enable the City to commit its expiring HOME funds in a timely manner, avoiding a similar timeliness issue next year when approximately the same amount of HOME funds will expire, and it also address high priority needs described in the Consolidated Plan. With a City cost of less than \$14,000 per unit to rehabilitate affordable rental housing for low and very low income families and seniors, and preserve affordability for another 55 years, this is an extremely cost-effective way to provide and maintain the City's affordable housing stock.

The proposed Amendment to Action Plans for Fiscal Years 2004-08 is included as **Attachment A**. The Amendment provides a description of the available funds for re-allocation from each year's grant. The Proposed Agreement for the Conditional Commitment of HOME funds by and between the City of Sunnyvale and Mid-Peninsula Housing Coalition is included as **Attachment B**. A

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proposal from Mid-Peninsula Housing Coalition for the rehabilitation of Aster Park is shown in **Attachment C**.

### **FISCAL IMPACT**

Approval of the Amendment to Fiscal Years 2004-08 Action Plans will not impact the General Fund. If the City fails to commit available HOME funds to HUD by July 31, 2009, these funds will be deducted from the current unencumbered balance in the HOME fund.

The commitment of HOME funds to this project would ensure that the City would meet HUD's deadlines for use of HOME funds. For purposes of the commitment deadline, a commitment may be conditioned upon satisfactory completion of an environmental review. Budget Modification No. 1 has been prepared to appropriate \$1.3 million from the HOME Fund to fund the amount necessary to cover the total required commitment requested from the City.

### **BUDGET MODIFICATION NO. 1 FISCAL YEAR 2009/2010**

<b><u>HOME Fund</u></b>	<b><u>Current</u></b>	<b><u>Increase</u></b>	<b><u>Revised</u></b>
<b><u>Expenditures:</u></b>		<b><u>(Decrease)</u></b>	
Aster Park Rehabilitation	\$0	\$1,300,000	\$1,300,000
Future HOME Projects	\$1,962,327	(\$1,300,000)	\$662,327

### **PUBLIC CONTACT**

A public notice of the proposed project and Action Plan amendment was printed in the Sunnyvale Sun newspaper on June 10, 2009, indicating the start of a review and comment period. The draft Amendment to Fiscal Years 2004-08 Action Plans was made available for public review at the One-Stop Center at City Hall, at the Sunnyvale Library, and on the City of Sunnyvale website: <http://sunnyvale.ca.gov/housing>. Part of the public review process included a public hearing before the Housing and Human Services Commission (HHSC), which was on June 24, 2009. Following the public hearing, the HHSC unanimously agreed to recommend approval of the Amendment to PY 2004-08 Action Plans and conditional commitment. Public contact was also made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department

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of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

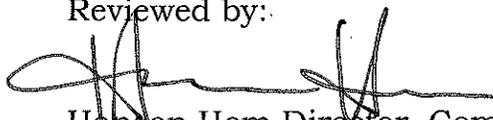
### **ALTERNATIVES**

1. Approve the Amendment to Fiscal Years 2004-08 Action Plans to re-allocate \$1.3 million in HOME funds, conditionally commit \$1.3 million for the rehabilitation of Aster Park Apartments, and approve Budget Modification No. 1.
2. Approve the Amendment to Fiscal Years 2004-08 Action Plans; conditionally commit HOME funds to Aster Park; and approve Budget Modification No. 1, with modifications as determined by the City Council.
3. Direct staff to identify an alternate activity or change the funding amount in the recommended Amendment to Fiscal Years 2004-08 Action Plans.
4. Do not take action at this time and forego \$686,559 in HOME funds currently available to the City for affordable housing activities.

### **RECOMMENDATION**

Staff recommends Alternative 1, Approve the Amendment to Fiscal Years 2004-08 Action Plans to allocate \$1.3 million in HOME funds, conditionally commit \$1.3 million for the rehabilitation of Aster Park Apartments, and approve Budget Modification No. 1.

Reviewed by:

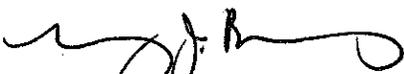


Hanson Hom Director, Community Development

Suzanne Isé, Housing Officer

Prepared by: Katrina L. Ardina, Housing Programs Analyst

Approved by:



Mary Bradley

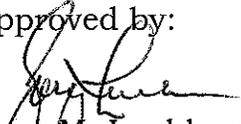
Finance Director

2009 JUL 14 10:11 AM  
CITY OF SUNNYVALE  
COMMUNITY DEVELOPMENT

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Approved by:



Gary M. Luebbers  
City Manager

**Attachments**

- A. Amendment to Fiscal Years 2004-08 Action Plans
- B. Agreement for the Conditional Commitment of HOME funds by and between the City of Sunnyvale and Mid-Peninsula Housing Coalition
- C. Proposal from Mid-Peninsula Housing Coalition

# **ATTACHMENT A**

## **AMENDMENT TO THE ANNUAL ACTION PLANS PROGRAM YEARS 2004, 2005, 2006, 2007 AND 2008 HOME PROGRAM**

## CITY OF SUNNYVALE

### Amendment to the Annual Action Plans Program Years 2004, 2005, 2006, 2007 and 2008 HOME Program

**The City of Sunnyvale is amending its FY 2004-2008 Annual Action Plans as follows:**

Allocate unexpended and uncommitted HOME funds in the amount of \$1.3 million to Mid-Peninsula Housing Coalition for the rehabilitation of Aster Park, a 95-unit affordable family rental and senior housing project built in Sunnyvale in 1975.

<b>Program Year</b>	<b>Funds</b>	<b>Source</b>
2004	214,798.35	unexpended CHDO funds
2005	112,196.70	unexpended CHDO funds
2006	145,891.24	uncommitted funds
2007	617,336.64	uncommitted funds
2008	209,777.07	uncommitted funds
<b>Total</b>	<b>1,300,000.00</b>	

Activity: Acquisition and/or rehabilitation of affordable rental housing

Project level Accomplishment: 95 housing units

Proposed Outcome: Sustainability for the purpose of providing decent affordable housing

Performance Measure: Number of affordable housing units rehabilitated

**ATTACHMENT B**

**AGREEMENT FOR THE  
CONDITIONAL COMMITMENT  
OF HOME FUNDS BY AND  
BETWEEN  
THE CITY OF SUNNYVALE AND  
MID-PENINSULA HOUSING  
COALITION**

**AGREEMENT FOR THE CONDITIONAL COMMITMENT OF HOME FUNDS BY  
AND BETWEEN THE CITY OF SUNNYVALE AND MID-PENINSULA HOUSING  
COALITION**

**THIS AGREEMENT** dated the 17th day of July 2009, is by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter "CITY"), and MID-PENINSULA HOUSING COALITION, a California non-profit corporation (hereinafter "DEVELOPER").

**WHEREAS**, Mid-Peninsula Housing Coalition (MPHC), a non-profit housing developer, has proposed rehabilitation of their Aster Park property, a 95-unit rental housing complex for low-income families and seniors located at 1059 Reed Avenue in Sunnyvale; and

**WHEREAS**, the project was assisted in 1991 with a City loan of \$450,000 in Housing Mitigation funds; and

**WHEREAS**, the current affordability term will expire with the end of the City loan term in March 2010; and

**WHEREAS**, Aster Park was identified in the City's Draft Housing Element as an at-risk project, and its affordability could be preserved with an extension of the city financing; and

**WHEREAS**, the proposed rehabilitation will address one of the City's objectives to assist in the preservation of affordable rental housing units; and

**WHEREAS**, the CITY deems it desirable to enter into an Agreement with the DEVELOPER for the purpose of providing a conditional commitment of HOME funds, prior to the completion of the environmental review process, for rehabilitation of Aster Park; and

**NOW, THEREFORE**, in consideration of committing HOME funds for the rehabilitation of Aster Park located at 1059 Reed Avenue in order for DEVELOPER to preserve affordable housing, the CITY and DEVELOPER mutually agree as follows:

**1. AVAILABILITY, FUNDING AND USE OF HOME FUNDS**

A. This Agreement provides for the conditional commitment of HOME funds in accordance with 24 CFR 92.2. Upon City Council's approval of funding and once the project has met environmental review requirements, the funding reservation will then be converted to a project-specific HOME commitment and the CITY will proceed with a full written agreement that meets the requirements of the HOME regulations set forth in 24 CFR Part 92.

B. DEVELOPER acknowledges that this is a conditional commitment which does not constitute a commitment of funds until the satisfactory completion of an environmental review and receipt by the CITY for the release of funds from HUD under 24 CFR Part 58. The environmental review may result in a decision that may modify or cancel the CITY's conditional commitment to provide funds to the project. This agreement to provide funds to the project is conditioned on the CITY's

determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

- (1) Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a release of funds from the U.S. Department of Housing and Urban development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on the CITY's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.
- (2) The parties acknowledge that this Agreement prohibits the parties from undertaking or committing any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance. Violation of this provision may result in the denial of any funds under the agreement.
- (3) The parties also acknowledge that this agreement does not provide any legal claim to any amount of HOME funds to be used for the specific project or site unless and until the site has received environmental clearance.

C. The DEVELOPER is acting as a developer for the project under this Agreement. The DEVELOPER as a developer must obtain financing and construct the project.

D. Income limits applicable to prospective tenants of the project will not exceed HUD's limits based on the limits in force and effect at the time of qualification. The current HUD income limits will be reflected in the final written agreement between the CITY and DEVELOPER for the HOME funds.

E. The CITY shall commit HOME funds in the amount of One million Three hundred and 00/100 Dollars (\$1,300,000) toward the rehabilitation of the project as described in Exhibit A, expecting that rehabilitation can reasonably start within twelve (12) months of the agreement date.

## **2. PROJECT REQUIREMENTS**

A. DEVELOPER shall comply with the applicable requirements of 24 CFR Part 92, Subpart F, the HOME Final Rule, which include:

(1) 24 CFR §92.250 Maximum per-unit subsidy: The amount of HOME Program funds that may be invested on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD based on the limits in force and effect at the time of rehabilitation. Current HUD per-unit dollar limits are available at the HUD office.

(2) 24 CFR §92.251 Property standards: Housing that is constructed with HOME Program set-aside funds must be decent, safe and sanitary and meet applicable CITY codes, ordinances,

zoning ordinances and any necessary accessibility requirements at the time of project completion. Newly constructed housing must also meet the current edition of the Model Energy Code.

(3) 24 CFR §92.252 Qualification as Affordable Housing – Rental Housing: Periods of Affordability. HOME-assisted units must meet affordability requirements. The period of affordability shall be consistent with the HOME affordability requirements, which will be for a minimum of twenty years.

B. DEVELOPER shall comply with the applicable requirements of 24 CFR Part 92, Subpart H, which include:

(1) 24 CFR §92.350 Other Federal requirements: The DEVELOPER shall comply with the following Federal requirements set forth in 24 CFR part 5, Subpart A as specified below:

a. Nondiscrimination and equal opportunity: No person shall on the grounds of race, color, national origin, religion, age, sex, sexual orientation, status as a parent, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME Program funds.

b. Anti-lobbying: No federal funds may be expended by the recipient of a cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress or an official or employee of the CITY in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

c. Debarment and Suspension: DEVELOPER shall comply with the nonprocurement debarment and suspension common rule in accordance with 24 CFR §84.13. This common rule restricts contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

d. Drug-Free Workplace: DEVELOPER shall comply with the certification requirements of the Drug-Free Workplace Act of 1988 in accordance with 24 CFR §84.13.

e. Restrictions on Assistance to Noncitizens and Qualified Aliens. The DEVELOPER shall comply with the restrictions on assistance to noncitizens and qualified aliens as described in 24 CFR Part 5. The definition of “Qualified Alien” is described in the Personal Responsibility and Work Opportunity Act (PRWOA). Certain noncitizens and qualified aliens, as described in PRWOA, are not eligible to apply for or receive federal public benefits from the project covered by this agreement. “Federal public benefits”, includes but are not limited to, any financial assistance, public services, public or assisted housing, or any other similar benefit for which payment or assistance are provided to an individual, household, or family eligibility unit by funds of the United States. In determining and verifying eligibility of noncitizens and qualified aliens applications for services provided under this Agreement, DEVELOPER agrees to comply with requirements as provided in 24 CFR 5.510 and 5.512.

(2) 24 CFR §92.356(f)(1) Conflict of Interest: DEVELOPER certifies to HUD and the CITY that the DEVELOPER of a project assisted with HOME Program funds, or officer, employee, agent, consultant of the DEVELOPER may not occupy a HOME-assisted affordable housing unit in this project. In accordance with the provisions of 24 CFR §92.356(f)(2), exceptions to the provisions of 24 CFR §92.356(f)(1) may be granted by the CITY upon written request of the DEVELOPER on a case-by-case basis when the CITY determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the DEVELOPER's HOME-assisted project. DEVELOPER certifies to the CITY that, in the event the DEVELOPER becomes aware of any governing board member, director, officer, agent, consultant or employee of the DEVELOPER having a prohibited interest from the HOME-assisted project covered by this Agreement, DEVELOPER shall immediately notify the CITY.

C. DEVELOPER shall comply with the applicable requirements of 24 CFR Part 92, Subpart K, which include:

(1) 24 CFR §92.505 Applicability of uniform administrative requirements: DEVELOPER is required to establish standards for financial management systems in accordance with 24 CFR §84.21. DEVELOPER shall employ those management techniques necessary to insure adequate and proper fiscal accountability of all HOME Program funds received and disbursed. This requirement shall include separate ledgers and accounting for HOME Program funds. Source documentation of all HOME Program expenditures including payroll, purchase vouchers, and claims, etc., shall be kept on file by the DEVELOPER and reserved for a five (5) year period after project completion. Project completion is defined in paragraph 7 of this Agreement.

(2) 24 CFR §92.506 Audit: The DEVELOPER shall comply with the audit requirements of 24 CFR §84.26 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The DEVELOPER is required to submit a copy of the audit to the Assistant Director, HUD.

(3) 24 CFR §92.508 Recordkeeping: The DEVELOPER must establish and maintain sufficient records to enable the CITY and HUD to determine whether the DEVELOPER has met the requirements of the HOME Program regulation. All records pertaining to the use of HOME Program funds pursuant to this Agreement must be retained for five (5) years after project completion. DEVELOPER shall establish an accurate, complete, and orderly system of recordkeeping pursuant to 24 CFR §92.508 for administrative and financial records including but not limited to:

- a. Records concerning designation as a Developer;
- b. Administrative Records;
- c. Financial Records;
- d. Debarment Records;
- e. Description and location of the activity assisted with HOME funds;
- f. Documentation that the project meets a national objective;
- g. Eligibility determination for each recipient of the project;
- h. The source and application of funds for the project, including supporting

- documentation;
- i. Records demonstrating that the requirements of 24 CFR Part 84 have been met;
  - j. Records concerning the use of funds for Developer set-aside funds and demonstrating compliance with the requirements of 24 CFR §92.300;
  - k. Records demonstrating compliance with the requirements of this Agreement.
  - l. Records demonstrating resolution of any findings or concerns detected during required inspections, monitoring reviews and audits.

### 3. DURATION OF AGREEMENT

A. This Agreement commences on **July 24, 2009** and shall terminate upon the execution of a full written agreement that meets the requirements of the HOME regulations set forth in 24 CFR Part 92.

B. This Agreement may be terminated or suspended in whole or in part at any time by written agreement of the parties. This Agreement may be terminated or suspended by the CITY, in whole or in part, for cause, after notice and an opportunity for the DEVELOPER to present reasons why such action should not be taken. Grounds constituting causes include, but are not limited to: DEVELOPER fails to comply with provisions of this Agreement or with any applicable laws, regulations, guidelines, or procedures, or is unduly dilatory in executing its commitments under this Agreement or a prior Agreement with the CITY, including, but not limited to, submission of required reports due, resolution of monitoring findings, and monitoring results; purposes for the HOME funds have not been or will not be fulfilled or would be illegal to carry out; DEVELOPER has submitted incorrect or incomplete documentation pertaining to this Agreement.

C. In the event CITY must initiate proceedings to enforce the terms and conditions of this Agreement or seek redress for damages caused by the DEVELOPER's breach of this Agreement, CITY shall be entitled to recover all costs, including without limitation, court costs and attorneys fees, incurred in such proceedings.

D. If the DEVELOPER fails to demonstrate to the CITY's satisfaction that it has met the requirements of this Agreement, the CITY may take any or all corrective or remedial action, or actions, including but not limited to:

(1) DEVELOPER shall prepare and follow a schedule of actions that are approved by the CITY for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the project.

(2) DEVELOPER shall establish and follow a management plan that assigns responsibilities that is approved by the CITY for carrying out the remedial actions.

(3) CITY may cancel or revise activities likely to be affected by the performance deficiency.

(4) DEVELOPER shall reimburse HOME Program funds to the CITY in any amount not used in accordance with the requirements of this Agreement.

(5) CITY may take necessary actions to decertify the agency as a DEVELOPER.

(6) Any and all rights and remedies available in law or equity.

**4. PERSONNEL POLICIES AND INTERNAL PROCEDURES**

A. Personnel policies and operating procedures of the DEVELOPER shall be the responsibility of and shall be determined by the DEVELOPER; such policies and procedures shall be in accordance with applicable laws and regulations. Copies of such personnel policies and internal operating procedures, including any amendments thereto, shall be furnished to the CITY within ten (10) days upon request.

B. DEVELOPER may enter into contracts for necessary assistance in completing the tasks to be performed under this Agreement. Such contracts shall be in accordance with applicable law and regulations; and further, DEVELOPER shall be responsible for the work performed by such contractors/subcontractors and for all expenditures made under such contracts.

**5. INDEPENDENT CONTRACTOR STATUS**

A. DEVELOPER is an independent contractor, notwithstanding any other provisions of this Agreement, and shall be fully responsible for and shall have the sole and exclusive control of DEVELOPER employees, contractors/subcontractors, and agents in the means and methods required in fulfilling the obligations of the DEVELOPER under this Agreement.

B. DEVELOPER agrees to conduct itself in a manner consistent with such status and further agrees that it will neither hold itself out as nor claim to be an officer, employee or agent of the CITY by reason of this Agreement, and that it will not by reason of this Agreement make any claim, demand, or application for any right or privilege applicable to an officer, employee or agent of the CITY, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

**6. INSURANCE**

A. DEVELOPER, at its sole cost and expense, shall obtain and maintain in full force and effect, throughout the entire term of this agreement, insurance coverage insuring not only DEVELOPER and its subcontractors, if any, but also, with the exception of worker's compensation and employer's liability insurance, CITY, its officers, agents, and employees, and each of them. CITY, its officers, agents and employees, and each of them, shall be named additional insureds on any such policy. The policy amounts shall be as follows:

- \_\_\_\_\_ Not less than \$500,000.00 for death or injury to any person
- \_\_\_\_\_ Not less than \$500,000.00 for loss of or damage to property
- \_\_\_\_\_ Not less than \$500,000.00 for each occurrence

\_\_\_\_\_ Not less than \$500,000.00 combined single limit for death or injury to persons, or loss of or damage to property.

Said insurance shall include not less than \$500,000 coverage for each occurrence of legal malpractice.

Certificates of such insurance shall be filed with CITY concurrently with the execution of this agreement, or, with the approval of CITY's CONTRACT MANAGER, within ten (10) days thereafter. Said certificates shall be subject to the approval of CITY's CONTRACT MANAGER, shall name the CITY as an "Additional Insured", and shall contain an endorsement stating that said insurance is primary coverage and will not be cancelled or altered by the insurer except after filing with CITY's CONTRACT MANAGER not less than thirty (30) days' written notice of such cancellation or alteration. Current certifications of such insurance shall be kept on file at all times during the term of this agreement with the CITY.

B. Workers' Compensation: DEVELOPER shall comply with the Labor Code of the State of California, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code.

C. Proof of Insurance: The DEVELOPER shall not commence work under this Agreement until it has obtained all the insurance required under this section through an insurance provider duly authorized to provide insurance in the State of California and the CITY has approved the insurance. The DEVELOPER, within ten (10) days of execution of this Agreement, shall furnish the CITY with proofs of insurance showing the types, amounts and classes of operations covered, effective dates and dates of expiration of the policies. Such proofs of insurance shall contain substantially the following statement: "The insurance covered by this certification will not be cancelled or materially altered, except after ten (10) days written notice has been received by the CITY."

## **7. INDEMNIFICATION AND HOLD HARMLESS**

The DEVELOPER understands and agrees while it is performing under this Agreement that it will hold harmless and indemnify the CITY, its officials, and employees against all claims and actions and all expenses defending same, that are brought as a result of any injury or damage sustained by any person or property in consequence of any act or omission by the DEVELOPER.

## **8. MISCELLANEOUS**

A. Interpretation and Enforceability: Should it become necessary to determine the meaning or otherwise interpret any word, phrase or provision of this Agreement, or should the terms of this Agreement in any way be the subject of litigation in any court of law or equity, it is expressly agreed where definitions are provided by federal law then federal law shall control; however, where definitions are not provided by federal law then the laws of the State of California shall control same.

B. Governing Law and Severability: Federal law and the laws of the State of California shall govern this Agreement. In the event that any provisions or clauses of this Agreement shall be adjudicated by a court of competent jurisdiction to conflict with applicable law, such conflict shall not affect any

other provisions or clauses of this Agreement, which shall be given full force and effect without the conflicting provisions or clauses. To this end, the provisions and clauses of this Agreement are declared severable.

C. Non-Waiver of Defaults: Any failure by the CITY, at any time, to enforce or require the performance of any of the terms or conditions of this Agreement, or to exercise a right hereunder, or to make payment or reimbursement of the DEVELOPER, shall not, nor shall it be construed to constitute a waiver or limitation of any terms, conditions or rights of the CITY or HUD hereunder or at law.

D. Assignment: DEVELOPER shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without the prior written consent of the CITY, which may be withheld in the CITY'S sole discretion.

E. Binding Effect: The terms and conditions of this Agreement shall extend and inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, trustees, successors and assigns.

F. Ability and Experience: DEVELOPER certifies that it possesses experience, knowledge, and ability in conducting and performing the project, which is the subject of this Agreement and agrees to use such experience, knowledge, and ability in its prosecution and completion of this Agreement. DEVELOPER agrees to put forth its best efforts on behalf of low-income families and promises to adhere to good business and professional practices in its prosecution and completion of this Agreement.

G. Agreement Composition: This Agreement constitutes the entire Agreement between the parties.

H. General: The captions and headings used in this Agreement are intended for convenience only and shall not be used for purposes of construction or interpretation.

I. Points of Contact:

(1) In the case of DEVELOPER, the address is as follows:

Executive Director  
Mid-Peninsula Housing Coalition  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404

(2) In the case of the CITY, the address is as follows:

Housing Officer  
Department of Community Development  
City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

**9. MODIFICATION OR AMENDMENTS TO AGREEMENT**

A. Written agreement required: This Agreement may be extended, renewed or otherwise modified or amended only by the written agreement of the duly-authorized representatives of the CITY and the DEVELOPER.

B. Prior approval of CITY required: All proposed modifications or amendments to this Agreement, including the waiver of any provision herein, must be submitted to the CITY, in writing, and approved by the CITY prior to the desired effective date of the amendment.

The parties to this Agreement hereby indicate their acknowledgment and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives.

For purposes of identification, this Agreement shall be numbered Conditional HOME Commitment 0910-01: Mid Peninsula Housing Coalition

**IN WITNESS WHEREOF**, the parties have executed this agreement in duplicate.

APPROVED AS TO FORM:

**CITY OF SUNNYVALE**

\_\_\_\_\_  
City Attorney

BY: \_\_\_\_\_

Name: Suzanne Ise'  
Title: Housing Officer

**MID-PENINSULA HOUSING COALITION**  
**a California nonprofit public benefit corporation**

BY: \_\_\_\_\_

Name: Matt Franklin  
Title: Executive Officer

**Exhibit A**  
**Project Description for Rehabilitation of Aster Park, Sunnyvale**

<b>ASTER PARK ESTIMATED REHABILITATION</b>		
<b>Critical Repairs</b>		
Install Tamper Proof Smoke Alarm	\$	13,400
Carbon monoxide Detectors		6,200
Sidewalk Repair (Trip Hazard)		5,600
GFCI Protection (Kitchen Bathrooms)		3,520
Sub Total	\$	28,720
<b>Non-critical Repairs</b>		
Landscaping	\$	12,000
Storm water Basin maint.		1,500
Repair Site Lighting		1,500
Dryrot repair		41,000
Pest control (Termites)		65,000
Bathroom ceiling fan Replacement		16,625
Replace Obsolete Windows (Energy Efficient)		700,000
Insulation		17,000
Handicap Access		700
Asphalt replacement		2,300
Replace Kitchen Cabinets, Countertops		404,000
Specific Unit Repairs		9,000
Sub Total		\$1,270,625
<b>Total</b>		<b>\$1,299,345</b>

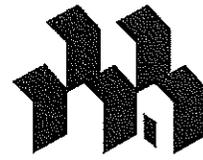
Note: Additional costs for solar hot water, Davis Bacon labor compliance, and soft costs (design & permitting) are not included in the above total. Developer will obtain other funding for these additional costs.

**ATTACHMENT C**

**PROPOSAL FROM  
MID-PENINSULA HOUSING  
COALITION**

June 8, 2009

Ms. Suzanne Ise, Housing Officer  
City of Sunnyvale  
Community Development Department  
456 W. Olive Avenue  
PO Box 3707  
Sunnyvale, CA 94088-3707



**Mid-Peninsula Housing Coalition**

303 Vintage Park Drive, Suite 250  
Foster City, California 94404  
Tel: [650] 356-2900  
Fax: [650] 357-9766  
email: midpen@midpen-housing.org  
Web: www.midpen-housing.org

**RE: Aster Park  
Request for HOME Funds**

Dear Ms. Ise:

This letter will serve as a request from Mid-Peninsula Housing Coalition (MPHC) to receive HOME funds for the above captioned property. Pursuant to our conversations, we would like to request \$1.3 million to perform necessary rehabilitation and retrofit for the project.

Aster Park is located at 1059 Reed Avenue, Sunnyvale, CA south of Highway 101 and east of the Lawrence Expressway. Built in 1975, Aster Park was Sunnyvale's second subsidized housing development for families and senior citizens. The property consists of 95 townhouses and garden apartments, which includes the following:

- 12 one-bedroom units – 627 square feet
- 42 two-bedroom units – 803 square feet
- 33 three-bedroom units – 1,259 square feet
- 8 four-bedroom units – 1,381 square feet

The property has 93,845 rentable square feet on approximately 4.75 acres of land (density is 20 units per acre). One-bedroom units, used primarily for seniors, are located away from the children's playground, close to transportation and shopping. The unit amenities include fully fenced patios or decks, carpets, drapes, ranges and refrigerators. Two-bedroom units and above contain washer-dryer hook-ups. Common area amenities include laundry room, community center, computer center, and playgrounds.

Aster Park has a Section 8 Housing Assistance Payment Contract (HAP) for 38 units. The contract expires in March 2011. Additionally, 5 units are eligible for HUD rent supplement and 23 units are eligible for HUD 236 rents.

Attached is a list of rehabilitation items taken off of the Engineering Report conducted for the Aster Park refinance. As you can see, it is rather substantial. We have not factored in Prevailing Wages, which will be associated with the HOME Find allocation. Mid-Pen will use reserves to cover any additional funds required over the HOME award, including the potential for Solar Hot Water, soft costs and the cost of the Davis Bacon.



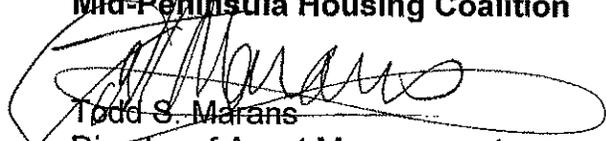
Equal Housing Opportunity-Professionally managed by Mid-Peninsula Housing Management Corporation

<b>ASTER PARK ESTIMATED REHABILITATION</b>		
<b><u>Critical Repairs</u></b>		
Install Tamper Proof Smoke Alarm	\$	13,400
Carbon monoxide Detectors		6,200
Sidewalk Repair (Trip Hazard)		5,600
GFCI Protection (Kitchen Bathrooms)		3,520
	Sub Total	\$ 28,720
<b><u>Non-critical Repairs</u></b>		
Landscaping	\$	12,000
Storm water Basin Maintenance		1,500
Repair Site Lighting		1,500
Dryrot repair		41,000
Pest control (Termites)		65,000
Bathroom ceiling fan Replacement		16,625
Replace Obsolete Windows (Energy Efficient)		700,000
Insulation		17,000
Handicap Access		700
Asphalt replacement		2,300
Replace Kitchen Cabinets, Countertops		404,000
Specific Unit Repairs		9,000
	Sub Total	\$1,270,625
<b>Total</b>		<b>\$1,299,345</b>

As noted above, with all of our CDBG/HOME transactions, we are prepared to infuse equity into the project. The estimate above does not include soft costs such as Architectural and Engineering or Permits and Fees. Additionally, as noted above, the estimate does not include Davis Bacon/Prevailing wages, which could add 15%-20% to the costs. We had also indicated that we are considering adding Solar Hot Water as part of the rehab/retrofit. While I do not have a definitive number for these items currently, our assumption is that the Costs would be upward of \$300K. Therefore, it is fair to assume that Mid-Pen will infuse 25% to 30% into the rehabilitation. Currently, we have more than adequate reserves to cover this.

Receiving this award will have a substantial impact on maintaining the physical integrity of the property, creating a positive environment for the residents as well as helping MPHCC to maintain the affordability in perpetuity. We will be available on the 24<sup>th</sup> to answer any questions, comments or concerns the City Council may have. Please do not hesitate to contact us if we can provide edification any issues surrounding our request.

Regards,  
**Mid-Peninsula Housing Coalition**

  
 Todd S. Marans  
 Director of Asset Management