



Council Meeting: April 24, 2012

SUBJECT: Approval of Budget Modification No. 32 to Appropriate Housing Mitigation Funds to MidPen Housing Corporation and Charities Housing Development Corporation In Conjunction with Onizuka Air Force Station Base Realignment Closure

DISCUSSION

In planning the reuse of Onizuka AFS, the 1994 Base Closure Community Redevelopment and Homeless Assistance Act requires the City to "balance" homeless resident needs with other economic and development needs. The federally-mandated local screening process conducted by the Local Redevelopment Authority (LRA) produced two Notices of Interest (NOIs) or requests for portions of the Onizuka site from two non-profit housing agencies: MidPen Housing Corporation and Charities Housing Development Corporation. Earlier this year both homeless service providers amended their respective NOIs to reduce their claim to a 4.6-acre consolidated parcel located at the southern end of the Onizuka site. The overall number of homeless units decreased to 65, including two management units.

To facilitate the LRA's vision for reuse of the entire Onizuka site and to expedite construction of a homeless housing project at another more favorable location, the LRA and both non-profit housing agencies have agreed upon core terms, outlined in a Legally Binding Agreement (LBA). The LBA outlines two options for accommodating the NOIs submitted as part of the Onizuka AFS Base Realignment and Closure: executing a long-term lease with the providers for the 4.6-acre Onizuka parcel for their housing program; or implementing a substantially equivalent program through an off-site accommodation.

The 2.5-acre City-owned Armory site at 620 E. Maude has been identified as the possible offsite location. Similar to the original LBA approved by the LRA in December 2008, potential City assistance of \$8.2 million of Housing Mitigation Funds (HMF) is offered to both providers for the off-site accommodation. Most of these funds (\$7.4 million) would be used to secure a long-term lease for the Armory site, with the remaining funds (\$800,000) allocated in two phases for pre-development costs and other costs associated with project. No assistance is offered for the Onizuka site option.

Along with the Amended Redevelopment Plan and Housing Assistance Submission, the LBA was approved by the LRA on December 13, 2011 and executed by the City Manager on December 15, 2011.

The LBA provides for a total of \$400,000 in pre-development and development funds for each homeless provider. Sections 1.2 and 1.5.3(a) of the LBA outline an initial disbursement of \$50,000 per provider for pre-development activities upon execution of the LBA. Per Section 1.5.3(b) of the LBA, an additional \$350,000 is available to each homeless provider once the U. S. Department of Housing and Urban Development (HUD) approves the Homeless Assistance Submission, the homeless providers release their NOI claims at Onizuka, and the LRA elects to accept the release and executes the Armory Property Lease and Regulatory Agreement. Both homeless providers have submitted an initial request for reimbursement of some of their pre-development expenses.

EXISTING POLICY

Legislative Management Sub-Element, Goal 7.3C: Participate in intergovernmental activities, including national, state and regional groups as a means to represent the City's interests, influence policy and legislation, and enhance awareness.

Housing and Community Revitalization Sub-element, Goal A, Policy A.2: Facilitate the development of affordable housing through regulatory incentives and concessions, and/or financial assistance.

Housing and Community Revitalization Sub-element, Goal E, Policy E.6: Participate in the County Collaborative on Affordable Housing and Homeless Issues to provide a continuum of care of services and facilities for the homeless. Facilitate and sponsor the provision of housing for homeless people if the Onizuka base conversion plan is approved by the federal agencies. Support local service providers that offer facilities and support services to homeless individuals and families, and persons at risk of homelessness.

FISCAL IMPACT

The reimbursement of pre-development costs will be funded by the Housing Mitigation Fund. On December 13, 2011, Council approved the Onizuka Air Force Station Legally Binding Agreement that earmarked funding for these pre-development costs from Housing Mitigation funds that are currently set aside for use at the Onizuka site. Budget Modification No. 32 has been prepared to formally appropriate \$100,000 for the reimbursement of pre-development costs at the Armory site, per this agreement.

**Budget Modification No. 32
 FY 2011/2012**

	<u>Current</u>	<u>Increase/ (Decrease)</u>	<u>Revised</u>
Housing Mitigation Fund			
<u>Expenditures:</u>			
New Project: MidPen Housing Pre-Development Cost Reimbursement	\$0	\$50,000	\$50,000
New Project: Charities Housing Pre-Development Cost Reimbursement	\$0	\$50,000	\$50,000
<u>Reserves:</u>			
Onizuka Reserve	\$8,200,000	(\$100,000)	\$8,100,000

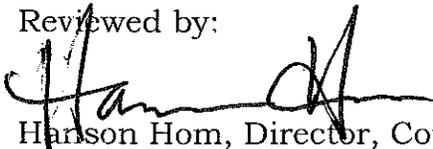
PUBLIC CONTACT

Public contact was 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 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.

RECOMMENDATION

Staff recommends approving Budget Modification No. 32 and creating two new capital projects to facilitate the disbursement of pre-development costs, not to exceed \$50,000 per affordable housing provider, as outlined in the LBA.

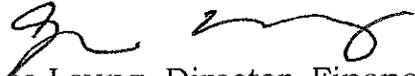
Reviewed by:



Hanson Hom, Director, Community Development

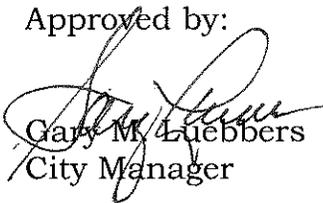
Prepared by: Ernie DeFrenchi, Affordable Housing Manager

Reviewed by:



Grace Leung, Director, Finance

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Executed Legally Binding Agreement
- B. MidPen Housing Corporation Expenses
- C. Charities Housing Development Corporation Expenses

Attachment A
Executed Legally Binding Agreement



CITY OF SUNNYVALE
OFFICE OF THE CITY ATTORNEY

David E. Kahn
City Attorney
Kathryn A. Berry
Sr. Assistant City Attorney
Rebecca L. Moon
Assistant City Attorney
Robert L. Boco
Assistant City Attorney
Jennifer Woodworth
Paralegal
Nella Lopez
Legal Secretary

December 15, 2011

Ms. Linda R. Charest
Base Realignment and Closure Coordinator
Office of Special Needs Assistance Programs, Room #7266
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

**Supplement to the LRA's Homeless Assistance Submission for
Onizuka Air Force Station in Sunnyvale, California**

Dear Ms. Charest:

It is my opinion as a member of the bar of the State of California that the Legally Binding Agreement executed on December 15, 2011, between the Onizuka AFS Local Redevelopment Authority, Mid-Peninsula Housing Corporation and Charities Housing Development Corporation and submitted by the Onizuka AFS Local Redevelopment Authority as part of the Homeless Assistance Submission for the Onizuka Air Force Station in Sunnyvale, California, is binding and enforceable under the laws of the State of California.

Sincerely,

A handwritten signature in black ink, appearing to read "David Kahn", written over a horizontal line.

David Kahn
City Attorney for the City of Sunnyvale
Counsel for the Onizuka Local Redevelopment Authority

**LEGALLY BINDING AGREEMENT
AMONG
THE ONIZUKA AIR FORCE STATION LOCAL REDEVELOPMENT AUTHORITY,
MIDPEN HOUSING CORPORATION
AND
CHARITIES HOUSING DEVELOPMENT CORPORATION**

1 **THIS LEGALLY BINDING AGREEMENT** (“**Agreement**”) is made as of the 16th
2 day of December, 2011, among the City of Sunnyvale, California, (“**City**”) acting as the
3 Federally recognized Local Redevelopment Authority (“**LRA**”) for the Onizuka Air Force
4 Station, Sunnyvale, California, MidPen Housing Corporation (“**MidPen**”) and Charities Housing
5 Development Corporation (“**Charities**”). MidPen and Charities may be referred to individually
6 as a “**Provider**” and jointly as the “**Providers.**” The LRA and the Providers may be referred to
7 individually as a “**Party**” or jointly as the “**Parties.**”

WITNESSETH

8
9
10
11 **WHEREAS**, the Onizuka Air Force Station (“**AFS**”) located in the City was
12 recommended for closure by the 2005 Base Closure and Realignment Commission;

13
14 **WHEREAS**, the property on which AFS is located (the “**AFS Property**”) will be
15 disposed of by the Department of Defense (“**DoD**”) pursuant to the Defense Base Closure and
16 Realignment Act of 1990, as amended (the “**Base Closure Act**”);

17
18 **WHEREAS**, the LRA is the federally recognized local reuse authority required by the
19 Base Closure Act to prepare a final redevelopment plan (“**Redevelopment Plan**”) for the AFS
20 Property;

21
22 **WHEREAS**, the Base Closure Community Redevelopment and Homeless Assistance
23 Act of 1994, as amended (the “**Redevelopment Act**”) requires that the LRA submit to the United
24 States Department of Housing and Urban Development (“**HUD**”) for approval a Homeless
25 Assistance Submission (“**HAS**”) and a copy of the legally binding agreement that the LRA
26 proposes to enter into with homeless providers selected by the LRA to implement homeless
27 programs that fill gaps in the existing continuum of care;

28
29 **WHEREAS**, this Agreement is intended to legally bind the Parties and to fulfill the
30 requirements of the Base Closure Act and the Redevelopment Act;

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1 **WHEREAS**, if HUD determines that the HAS and Redevelopment Plan adequately
2 address the needs of the homeless in the surrounding community and balance the needs of the
3 homeless with the needs of the community for economic redevelopment, then HUD will approve
4 the HAP and the Redevelopment Plan and notify the DoD and the LRA of such approval;

5
6 **WHEREAS**, pursuant to the screening process set forth in the Redevelopment Act and
7 the Base Closure Act, each Provider submitted a Notice of Interest (“**NOI**”) to the LRA, to use
8 portions of the AFS Property to carry out each Providers proposed homeless assistance program
9 (individually, a “**Program**” and collectively, the “**Programs**”);

10
11 **WHEREAS**, MidPen and Charities Housing submitted to the LRA revised NOIs to
12 consolidate their proposed homeless programs to construct permanent supportive housing for the
13 homeless (“**Consolidated Program**”) on approximately four and six-tenths (4.6) acres of land
14 located on the southern portion of the AFS Property (the “**Provider Property**” more particularly
15 described at Exhibit A);

16
17 **WHEREAS**, the LRA and the Providers wish to enter into this Agreement to set forth the
18 terms and conditions for the Providers to implement the Consolidated Program, comply with
19 applicable Federal laws, address the needs of the homeless, and to further the reuse and
20 redevelopment of Onizuka AFS.

21
22 **NOW, THEREFORE**, the Parties hereby agree as follows:

23
24 **ARTICLE 1. LRA OBLIGATIONS.**

25
26 **1.1 Redevelopment Plan.** The LRA will complete and file with DoD and
27 HUD on or before the federally mandated filing date, as such date may be extended, a HAS and
28 Redevelopment Plan that includes the use of the Provider Property by the Providers at no cost for
29 the purposes set forth in the Consolidated Program.

30
31 **1.2 Pre-Development Costs.** Following execution of this Agreement, the LRA
32 will reimburse each Provider up to fifty thousand (\$50,000.00) dollars for eligible administrative
33 and out-of-pocket costs associated with predevelopment activities approved by the LRA for
34 acquiring and developing the off-site accommodation, whether or not the LRA delivers to the
35 Providers an Election Notice all in accordance with Section 1.5 below.

36
37 **1.3 Acquisition of the Provider Property.** Following HUD approval of the
38 Redevelopment Plan, the LRA shall seek to acquire title to the Provider Property from the Air
39 Force at no cost pursuant to a Government deed to the Provider Property (“**Government Deed**”)
40 for Homeless Purposes, as hereinafter defined, in accordance with the Base Closure Act, the
41 Redevelopment Act, the Redevelopment Plan, the Consolidated Program and this Agreement.

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1 **1.4 Conveyance of the Provider Property.** Immediately upon receiving title to
2 the Provider Property from the Air Force, the LRA will execute and tender to each Provider
3 separate ninety (90) year ground leases for that Provider's allocated portion of the Provider
4 Property in accordance with the preliminary lease terms set forth at Exhibit B ("**Provider**
5 **Property Lease**") in accordance with the Base Closure Act, Redevelopment Act, the
6 Redevelopment Plan, the Consolidated Program and this Agreement so the Providers may
7 implement the Consolidated Program at the Provider Property in a manner that will serve
8 homeless persons who meet the definition of "homeless persons" as set forth in the McKinney-
9 Vento Act (42 U.S.C. § 11301 et seq.) ("**Homeless Purposes**") for the term of the leases. Each
10 Provider shall execute its Provider Property Lease no later than the later of June 30, 2013 or the
11 date the Air Force conveys the Provider Property to the LRA, with the ability to request an
12 extension at the discretion of the City of Sunnyvale City Manager.

13
14 **1.5. Off-Site Accommodation:** MidPen and Charities Housing submitted to the
15 LRA a proposed affordable housing program to construct permanent supportive housing for
16 persons of various income levels on property owned by the City of Sunnyvale ("**Affordable**
17 **Housing Program**"). Following the satisfaction of all of the contingencies set forth in Section
18 3.1, the LRA, at its sole discretion, may provide to the Providers an off-site accommodation
19 ("**Off-Site Accommodation**") to implement the Affordable Housing Program at the former
20 National Guard Armory site located at 620 E. Maude Avenue described more fully in Exhibit C
21 ("**Armory Property**"), by providing the Providers with a notice ("**Election Notice**") as follows:

22
23 **1.5.1** Together with the Election Notice, the LRA shall deliver to each Provider
24 an executed (a) ninety (90) year ground lease for that Provider's allocated portion of the
25 Armory Property in accordance with the preliminary Armory lease terms set forth at
26 Exhibit D ("**Armory Property Lease**") and (b) a regulatory agreement with the City, all
27 in accordance with the Base Closure Act, Redevelopment Act, the Redevelopment Plan,
28 the Affordable Housing Program and this Agreement so the Providers may implement,
29 among other homeless programs, the Affordable Housing Program at the Armory
30 Property. Each Provider shall execute its Armory Property Lease no later than December
31 30, 2013, or 21 months after the date of the Election Notice, whichever date is later.
32 However, the ability to request an extension for additional reasons shall be at the
33 discretion of the City Manager.

34
35 **1.5.2** As part of the Off-Site Accommodation, the LRA will provide each
36 Provider with a financial contribution in the amount of four million and one hundred
37 thousand (\$4,100,000.00) dollars ("**Financial Contribution**"), to be used by the Provider
38 for the predevelopment, entitlement and long-term lease of the Armory Property and the
39 construction of suitable facilities ("**Facilities**"). Collectively, the Armory Site and
40 Facilities are referred to as the "**Project**." All aspects of each Provider's Project shall
41 comply with the terms and conditions contained in the Armory Property Leases and the
42 Regulatory Agreement.

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1
2 **1.5.3** The total Financial Contribution shall be comprised of:

3
4 (a) A non-recourse fifty thousand (\$50,000.00) dollar loan paid to each
5 Provider to reimburse eligible administrative and out-of-pocket costs associated with
6 predevelopment activities set forth in Section 1.2 above.

7
8 (b) Not more than ninety (90) days after the LRA delivers the Election Notice,
9 and the Providers execute the Armory Property Leases and the Regulatory Agreement,
10 the LRA will reimburse each Provider a non-recourse three hundred fifty thousand
11 (\$350,000.00) dollar loan for eligible costs approved by the LRA for each Provider's
12 Project, for performing necessary technical studies, obtaining land use entitlements,
13 preparing construction documents and cost estimates, paying development and permit
14 fees, performing site remediation and clearance and constructing the Project.

15
16 (c) Not more than ninety (90) days after the City approves the land use
17 entitlements and Regulatory Agreement for the Armory Property, and the Providers
18 execute the Armory Property Lease and the Regulatory Agreement, and contingent upon
19 the sufficiency of the City's Housing Assistance Fund balance, the LRA shall make a
20 three million seven hundred thousand (\$3,700,000.00) dollar contribution in the form of a
21 deferred or residual receipts loan to each Provider. This \$3,700,000.00 shall be used by
22 the Providers to make one-time lump sum rent payments to the City under the terms of
23 the Armory Property Leases and Regulatory Agreement.

24
25 **1.6 Environmental Condition of Property.** In the event that an environmental
26 analysis undertaken by the Air Force (or any other environmental regulator, as applicable),
27 indicates that the Provider Property or the Armory Property, as appropriate, is not suitable for its
28 intended homeless purposes set forth in the Consolidated Program or the Affordable Housing
29 Program, as appropriate, then the Parties agree to make best efforts to negotiate an alternative
30 arrangement to accommodate the Consolidated Program.

31
32 **ARTICLE 2. PROVIDER OBLIGATIONS.**

33
34 **2.1 Consent to NOI Objectives.** In consideration for the long-term leases of the
35 Provider Property to the Providers, or the long term leases of the Armory Property to the
36 Providers, as appropriate, the Providers covenant and agree to lease, develop, improve and use
37 the Provider Property or the Armory Property, as appropriate, as the preferred means to
38 accomplish the goals set forth in the Consolidated Program in accordance with the
39 Redevelopment Plan, or the Affordable Housing Program, as appropriate, and this Agreement in
40 a manner that will serve Homeless Purposes for the term of the leases.
41

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1 **2.2 Effect of Election Notice.** In the event the LRA delivers the Election Notice to
2 the Providers, the Providers immediately will process through the City the required General Plan
3 Amendment, zoning and project entitlements and approvals necessary to construct the Project
4 and implement the Affordable Housing Program on the Armory Property.
5

6 **2.3 Costs.** Providers shall be responsible for costs and expenses associated with the
7 design, construction and operation of the Provider's Project to implement the Consolidated
8 Program on the Provider Property or the Affordable Housing Program on the Armory Property,
9 as appropriate, from the effective date of the Provider Property Leases or the Armory Property
10 Leases, as appropriate, using their own resources together with resources made available to the
11 Providers under this Agreement.
12

13 **2.4 Insurance.** From the effective date of, and in accordance with, the Provider
14 Property Leases or the Armory Property Leases, as appropriate, the Providers shall maintain a
15 policy of commercial general liability, bodily injury/property damage insurance for the Provider
16 Property or the Armory Property, as appropriate, and shall name the LRA as an additional
17 insured.
18

19 **2.5 Acceptance of Property.** The Providers will accept possession of the
20 Provider Property by means of the Provider Property Leases or the Armory Property by means of
21 the Armory Property Leases, as appropriate, and agree to the terms, conditions, covenants and
22 use restrictions contained therein.
23

24 **2.6 Transfer or Conveyance.** Without the written consent of the LRA, which
25 consent shall not be unreasonably withheld, conditioned or delayed, the Providers may not
26 convey or transfer any portion of the Provider Property or the Armory Property to another party,
27 either in whole or in part, except to a wholly-owned affiliated entity or limited partnership of a
28 Provider that assumes all obligations of the Provider under this Agreement. The LRA shall have
29 sixty (60) days from receipt of such notice to object in writing to such a transfer or conveyance.
30 Failure of the LRA to so object in writing within such sixty (60) day period shall be deemed
31 consent.
32

33 **2.7 Communication by Providers** If any Provider makes any written
34 comments, or engages in any written communications, with any local, state, or federal agency
35 regarding the approval or implementation of any future development proposals, applications,
36 approvals or permits (including any related environmental documentation) relating to the AFS
37 Property, or any proposed, approved, or existing uses to the AFS Property or off-site
38 accommodation purchased by a Provider pursuant to the terms of this Agreement, upon request,
39 such Provider shall immediately provide complete copies of such written comments or
40 communications to the LRA; provided, however, that all Provider communications with HUD
41 shall be immediately provided to the LRA.
42

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1 **2.8 Indemnification.** The Providers shall indemnify and save the LRA harmless
2 against any and all claims, demands, suits, judgments of sums of money to any party accruing
3 against the LRA for loss of life or injury or damage to persons or property growing out of,
4 resulting from, or by reason of any act or omission or the operation of the Providers, their agents,
5 servants or employees while engaged in or about or in connection with the discharge or
6 performance of the Provider Project or the implementation of the Consolidated Program or the
7 Affordable Housing Program by the Providers hereunder (unless the foregoing results from the
8 intentional acts or negligence of the LRA). The Providers shall also hold the LRA harmless
9 from any and all claims and/or liens for labor, services, or materials furnished to the Providers in
10 connection with the performance of the Providers obligations under this Agreement and any
11 obligations of the Providers by reason of a default under this Agreement.
12

13 **ARTICLE 3. CONTINGENCIES**

14
15 **3.1 Contingencies.** The obligations of the Parties set forth under this
16 Agreement are contingent upon the following events occurring (the “**Contingencies**”):
17

18 **3.1.1** Approval of the LRA’s Homeless Assistance Submission, including this
19 Agreement and the Redevelopment Plan, by HUD;
20

21 **3.1.2** The closure of Onizuka AFS and the disposal of the Provider Property by
22 the Air Force in accordance with the Redevelopment Plan; and
23

24 **3.1.3** The designation by the Air Force (and any other environmental regulator,
25 as applicable) that the Provider Property is environmentally suitable for the intended
26 purposes set forth in the Consolidated Program.
27

28 **ARTICLE 4. FAILURE BY THE PROVIDERS TO USE PROPERTY FOR HOMELESS**
29 **PURPOSES.**
30

31 **4.1 Notifications to LRA.** If the Providers (i) determine that they will no
32 longer use the Provider Property or the Armory Property, as appropriate, for Homeless Purposes
33 or the Affordable Housing Program, as appropriate, (ii) are notified by the Air Force that they are
34 failing to comply with any Government Deed covenants on the Provider Property, or (iii) are
35 notified by an agency of the United States that they are failing to comply with the terms and
36 conditions of the Consolidated Program, the Affordable Housing Program, or this Agreement,
37 then the Providers shall promptly notify the LRA of such event in writing.
38

39 **4.2 Return of Property to the LRA.**

40
41 **4.2.1** In the event that the Providers determine that they will no longer use the
42 Provider Property in accordance with the Provider Property Leases, or the Armory

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1 Property in accordance with the Armory Property Leases, as appropriate, for Homeless
2 Purposes in accordance with the Consolidated Program, the Affordable Housing
3 Program, and this Agreement, then the Providers shall promptly relinquish possession of
4 the Provider Property or the Armory Property, as appropriate, to the LRA.
5

6 **4.2.2** In the event that the LRA alleges that the Providers (i) have abandoned the
7 Provider Property or the Armory Property, as appropriate, or (ii) are not using the
8 Provider Property in accordance with the Provider Property Leases, the Consolidated
9 Program, and this Agreement or are not in compliance with one or more restrictions
10 contained in the Government Deed, or (iii) are not using the Armory Property in
11 accordance with the Armory Property Leases, the Consolidated Program, the Affordable
12 Housing Program, or this Agreement (collectively, an “**Alleged Default**”), then the LRA
13 shall send written notice to the Providers specifying in detail the nature of such Alleged
14 Default (the “**Provider Default Notice**”). The Providers shall have ninety (90) days
15 from receipt of the Provider Default Notice to cure an Alleged Default. In the event the
16 Providers do not cure the Alleged Default within the time period, then there shall exist an
17 “**Event of Default**” and the LRA shall be entitled to seek any and all legal remedies
18 necessary to enforce the terms of this Agreement, including, but not limited to (i) the
19 rights set forth in Section 4.3 or (ii) any available action at law or in equity as required to
20 compel performance of the terms of this Agreement.
21

22 **4.3 Right to Property.** Upon the occurrence of an Event of Default, the LRA shall
23 have an immediate right of entry to all or any portion of the Provider Property or the Armory
24 Property, as appropriate, and, at the option of the LRA, possession of the Provider Property or
25 the Armory Property, as appropriate, shall vest immediately in the LRA, pursuant to the terms of
26 the Provider Property Leases or the Armory Property Leases, as appropriate.
27

28 **4.4 Acquisition of Property by LRA.** In the event the Providers rights under the
29 Provider Property Leases or the Armory Property Leases, as appropriate, are extinguished in
30 accordance with Section 4.2 or Section 4.3, and possession of the Provider Property or the
31 Armory Property, as appropriate, is vested in the LRA, the LRA shall take appropriate actions to
32 secure, to the maximum extent practicable, the utilization of the Provider Property or the Armory
33 Property, as appropriate, and the buildings and improvements located on such property, by other
34 representatives of the homeless to assist the homeless in accordance with the Base Closure Act,
35 the Redevelopment Act, the Redevelopment Plan and the Homeless Assistance Submission;
36 however, the LRA itself shall not be required to utilize the Provider Property or the Armory
37 Property, as appropriate, or the buildings and improvements located on such property to establish
38 and operate a program to assist the homeless.
39

40 **ARTICLE 5. EFFECT OF OFF-SITE ACCOMMODATION.**
41

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1 **5.1 Effect of Off-Site Accommodation.** If the LRA delivers the Election Notice
2 together with the executed Armory Property Leases and Regulatory Agreement and makes the
3 Financial Contribution to the Providers, all in accordance with Section 1.5 of this Agreement:
4

5 **5.1.1** Simultaneously with the execution of the Armory Property Lease, the
6 Providers shall each release all of their rights in and to the Provider Property by
7 executing a release in substantially the same form set forth in Exhibit E (“**Provider**
8 **Release**”).
9

10 **5.1.2** The LRA may dispose of the Provider Property in accordance with the
11 Redevelopment Plan without regard to the Providers need to use the Provider Property
12 for Homeless Purposes.
13

14 **ARTICLE 6. ENTIRE AGREEMENT, AMENDMENT, WAIVER**

15
16 **6.1** This Agreement contains the entire agreement and understanding of the Parties
17 with respect to all rights and responsibilities associated with the AFS Property, and may not be
18 amended, modified or discharged, nor may any of its terms be waived except by an instrument in
19 writing signed by the Party to be bound thereby. The Parties hereto shall not be bound by any
20 terms, conditions, statements, warranties or representations, oral or written, not contained herein.
21 This Agreement supersedes and replaces any prior agreements by the Parties.
22

23 **ARTICLE 7. NOTICES**

24
25 **7.1** Any notice, request, demand, instruction or other document to be given or served
26 hereunder or under any document or instrument executed pursuant hereto shall be in writing and
27 delivered personally (including by messenger) or sent by United States registered or certified
28 mail, return receipt requested, postage prepaid or by courier, postage prepaid and addressed to
29 the parties at their respective addresses set forth below, and the same shall be effective upon
30 receipt if delivered personally or by messenger or two (2) business days after deposit in the mails
31 if mailed. A party may change its address for receipt of notices by service of a notice of such
32 change in accordance herewith.
33

34 If to the LRA: City Manager
35 City of Sunnyvale
36 456 West Olive Avenue
37 P.O. Box 3707
38 Sunnyvale, CA 94088-3707

39
40 With a copy to: George R. Schlossberg, Esq.
41 Kutak Rock, LLP
42 1101 Connecticut Ave, NW, Suite 1000

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION AND/OR WORK PRODUCT

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Page 9.

1 Washington, DC 20036

2
3 If to MidPen: MidPen Housing Corporation
4 303 Vintage Park Drive
5 Suite 303
6 Foster City, CA 94404
7 Attn: President

8
9 If to Charities: Charities Housing Development Corporation
10 1400 Parkmoor Avenue
11 Suite 190
12 San Jose, CA 95126
13 Attn: Executive Director
14

15 **ARTICLE 8. MISCELLANEOUS.**

16
17 **8.1 Survival and Benefit.** All representations, warranties, agreements,
18 obligations and indemnities of the Parties shall, notwithstanding any investigation made by any
19 Party hereto, survive the execution of the Provider Property Leases or the Armory Property
20 Leases, as appropriate, and the same shall inure to the benefit of and be binding upon the
21 respective successors and assigns of the Parties.
22

23 **8.2 Assignment.** Without written consent of the LRA, this Agreement is not
24 assignable by any Provider, either in whole or in part. The LRA may, in its reasonable
25 discretion, assign this Agreement to another public entity provided that such public entity
26 assumes and agrees to perform the LRA's obligations hereunder.
27

28 **8.3 Applicable Law.** This Agreement shall be governed by and construed in
29 accordance with federal law and the laws of the State of California, as applicable.
30

31 **8.4 Severability.** If any term or provision of this Agreement or the application
32 thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the
33 remainder of this Agreement, or the application of such term or provision to persons or
34 circumstances other than those as to which it is held invalid or unenforceable, shall not be
35 affected thereby, and each such term and provision of this Agreement shall be valid and be
36 enforced to the fullest extent permitted by law.
37

38 **8.5 Entire Understanding of the Parties.** This Agreement constitutes the entire
39 understanding and agreement of the Parties with respect to the implementation of those portions
40 of the Redevelopment Plan related to homeless needs and facilities pursuant to the Base Closure
41 Act and the Redevelopment Act. If any provision of this Agreement conflicts with a provision of

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

Page 10.

1 the Consolidated Program, the Affordable Housing Program or the Redevelopment Plan, the
2 provisions of this Agreement shall control to the extent of such conflict.

3
4 **8.6 Title of Parts and Sections.** Any titles of the sections or subsections of this
5 Agreement are inserted for convenience of reference only and shall be disregarded in interpreting
6 any part of the Agreement's provisions.

7
8 **8.7 Time is of the Essence.** In the performance of this Agreement, time is of the
9 essence.

10
11 **8.8 Multiple Originals; Counterparts.** This Agreement may be executed in
12 multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

13
14 **ARTICLE 9. EXHIBIT LIST**

15
16 **9.1** The following exhibits are attached hereto and made a part of this Agreement:

- 17
18 **Exhibit A Description of the Divided Provider Property**
19 **Exhibit B Preliminary Onizuka Lease Terms**
20 **Exhibit C Description of Divided Armory Property**
21 **Exhibit D Preliminary Armory Lease Terms**
22 **Exhibit E Form of Provider Release**
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IN WITNESS WHEREOF, the Parties have approved this Legally Binding Agreement on the _____ day of _____, 2011.

CITY OF SUNNYVALE

By:

Date: _____

MIDPEN HOUSING CORPORATION

By:

Date: _____

CHARITIES HOUSING DEVELOPMENT CORPORATION


By:

Date: 12-12-11

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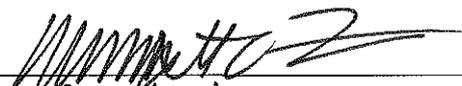
IN WITNESS WHEREOF, the Parties have approved this Legally Binding Agreement on the ____ day of _____, 2011.

CITY OF SUNNYVALE

By:

Date: _____

MIDPEN HOUSING CORPORATION



By: *President*

Date: _____

CHARITIES HOUSING DEVELOPMENT CORPORATION

By:

Date: _____

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IN WITNESS WHEREOF, the Parties have approved this Legally Binding Agreement on the 16th day of December, 2011.

CITY OF SUNNYVALE

By: 

Date: 12-15-11

MIDPEN HOUSING CORPORATION

By: _____

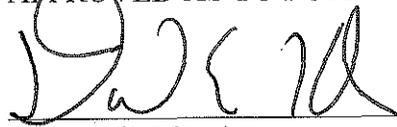
Date: _____

CHARITIES HOUSING DEVELOPMENT CORPORATION

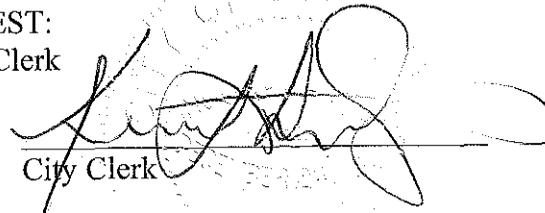
By: _____

Date: _____

APPROVED AS TO FORM:


Sunnyvale City Attorney

ATTEST:
City Clerk

By: 
City Clerk

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION AND/OR WORK PRODUCT

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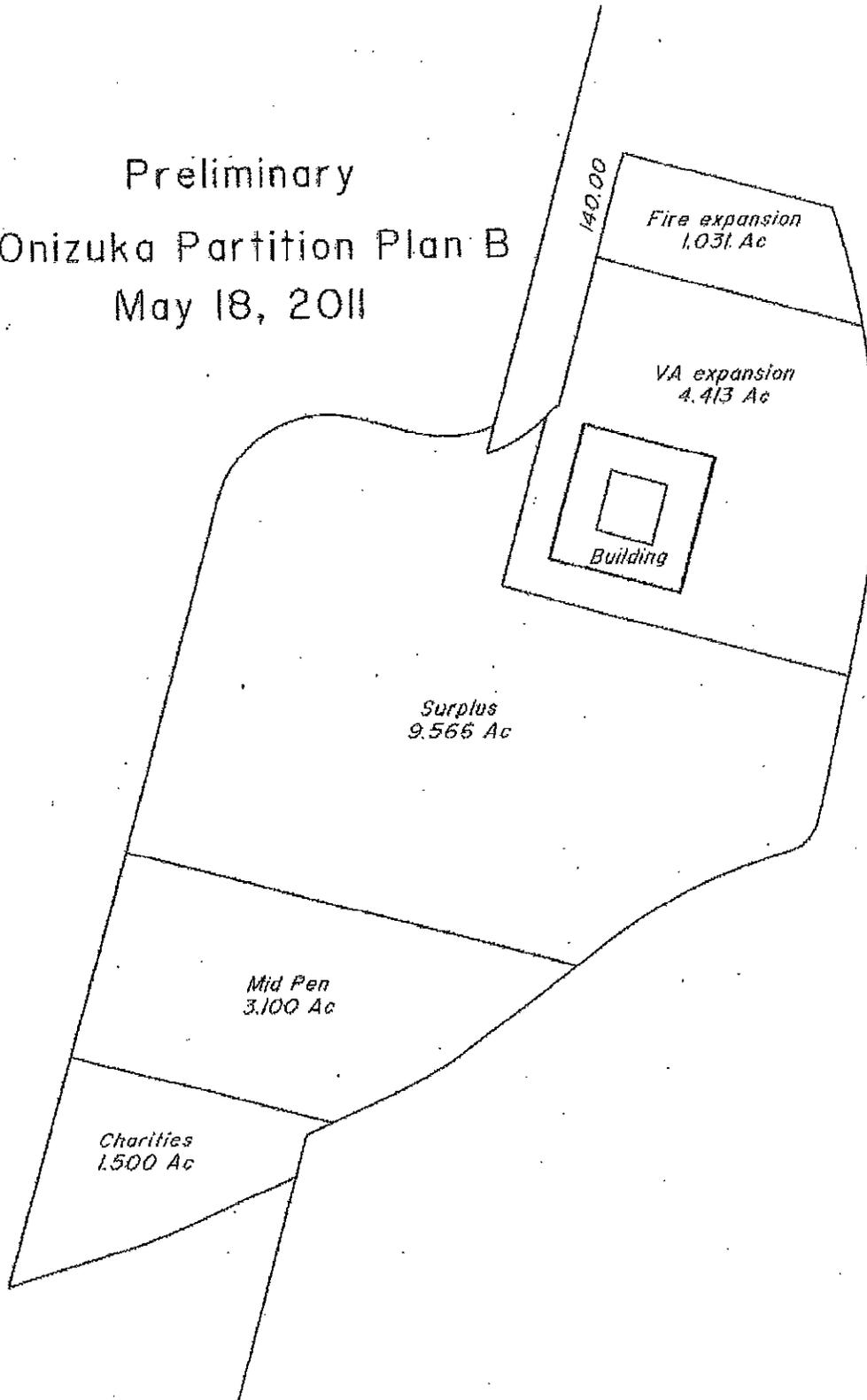
EXHIBIT A
Description of Divided Provider Property

PRIVILEGED AND CONFIDENTIAL
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Preliminary
Onizuka Partition Plan B
May 18, 2011



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EXHIBIT B
PRELIMINARY PROVIDER PROPERTY LEASE TERMS

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PRELIMINARY ONIZUKA LEASE TERMS

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- 1. Property See Exhibit A (to be determined)
Title in improvements to vest in Lessee during term of Lease
- 2. Term 90 years
- 3. Transfer of possession Lessee shall take possession pursuant to the LBA terms
- 4. Rent \$1 per year
- 5. Use Property shall be used for the Lessee's homeless assistance program as set forth in the NOI and the Consolidated Program in a manner that will serve homeless persons who meet the definition of "homeless persons" as set forth in the McKinney Vento Act (42 U.S.C. Section 11301 et seq).
- 6. Taxes All taxes paid by Lessee. Lessor will cooperate as necessary to allow Lessee to obtain property tax exemption.
- 7. Insurance Customary and reasonable insurance to be maintained by Lessee
- 8. Utilities Lessee responsible for all utility expenses and utility connections to Property
- 9. Encumbrances Fee interest in land may not be encumbered. Leasehold interest may be encumbered for purposes of financing the improvements without prior consent of Lessor
- 10. Default provisions Lessee shall have a defined period of time to cure defaults
- 11. Mortgagee protections Lenders and investor shall have cure rights and other standard protections in event of

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1		Lessee default. [Language to be agreed upon
2		by Lessor and Lessee]
3		
4	12. Maintenance and repair	Obligation on Lessor to maintain property
5		until possession is transferred to Lessee
6		
7	13. Risk of loss	Risk of loss transfers upon delivery of
8		possession to Lessee
9		
10	14. Indemnification	Standard Lessor indemnity provisions. The
11		parties shall hold each other harmless for all
12		losses caused by gross negligence or willful
13		misconduct of the other party
14		
15		Additional provisions to address
16		environmental indemnification
17		
18	15. Sublease/Assignment	Lessee to obtain prior written consent of
19		Lessor for all transfers, assignments or
20		subleases, except for permitted transfers to
21		affiliates and leases to residential tenants
22		
23	16. Start of Construction	Failure to commence construction within 1
24		year from the commencement date of the
25		Lease shall be an event of default unless
26		extended by mutual agreement.
27		
28	17. Consents	Lessor agrees not to unreasonably withhold
29		its consent.
30		
31	18. Reserves	Shall be maintained in accordance with
32		the requirements of all lenders
33		
34	19. Estoppel certificates	Lessor shall provide estoppel certificates
35		reasonably requested by lenders or investor
36		
37		

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT
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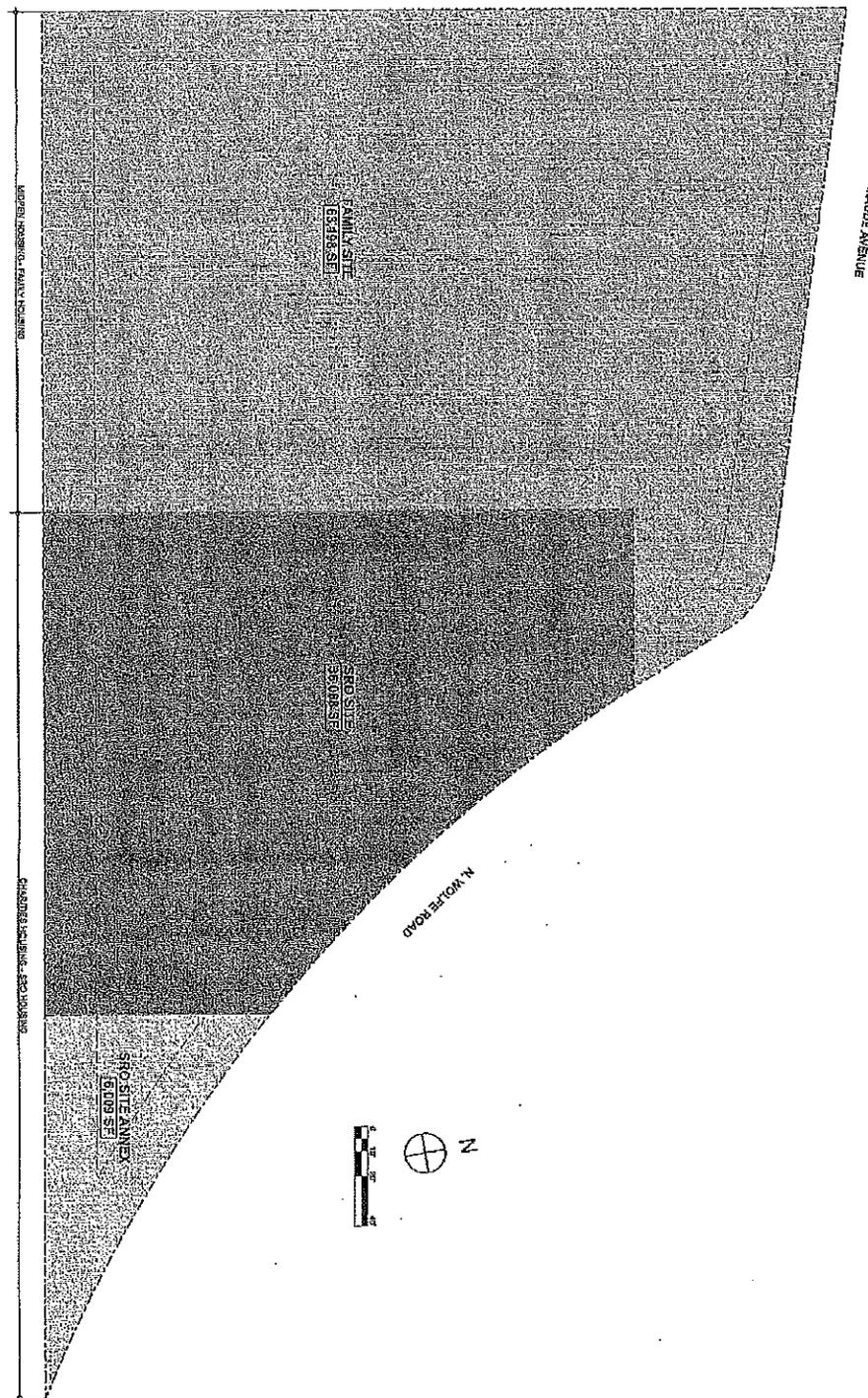
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EXHIBIT C
Description of Divided Armory Property

PRIVILEGED AND CONFIDENTIAL
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EXHIBIT D
PRELIMINARY ARMORY PROPERTY LEASE TERMS

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PRELIMINARY ARMORY LEASE TERMS

- 1
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- 3 1. Property See Exhibit C
- 4
- 5 Title in improvements to vest in Lessee
- 6 during term of Lease
- 7
- 8 2. Term 90 years
- 9
- 10 3. Transfer of possession Lessee shall take possession pursuant to the
- 11 LBA terms
- 12
- 13 4. Rent \$3.7 million lump sum
- 14
- 15 5. Use Property shall be used for the purposes as
- 16 set forth in the Lessee's Affordable Housing
- 17 Program and as approved by the City.
- 18
- 19 6. Taxes All taxes paid by Lessee. Lessor will
- 20 cooperate as necessary to allow Lessee to
- 21 obtain property tax exemption.
- 22
- 23 7. Insurance Customary and reasonable insurance to be
- 24 maintained by Lessee
- 25
- 26 8. Utilities Lessee responsible for all utility expenses
- 27 and utility connections for Property
- 28
- 29 9. Encumbrances Fee interest in land may not be encumbered.
- 30 Leasehold interest may be encumbered for
- 31 purposes of financing the improvements
- 32 without the prior consent of Lessor
- 33
- 34 10. Default provisions Lessee shall have a defined period of time
- 35 to cure defaults
- 36
- 37 11. Mortgagee protections Lenders and investor shall have cure rights
- 38 and other standard protections in event of
- 39 Lessee default. [Language to be agreed upon
- 40 by Lessor and Lessee]
- 41
- 42 12. Maintenance and repair Obligation on Lessor to maintain property

PRIVILEGED AND CONFIDENTIAL
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ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

Page 21.

1 until possession is transferred to Lessee

2
3 13. Risk of loss Risk of loss transfers upon delivery of
4 possession to Lessee

5
6 14. Indemnification Standard Lessor indemnity provisions. The
7 parties shall hold each other harmless for all
8 losses caused by gross negligence or willful
9 misconduct of the other party

10
11 Additional provisions to address
12 environmental indemnification

13
14 15. Sublease/Assignment Lessee to obtain prior written consent of
15 Lessor for all transfers, assignments or
16 subleases, except for permitted transfers to
17 affiliates and leases to residential tenants

18
19 16. Start of Construction Failure to commence construction within 1
20 year from the commencement date of the
21 Lease shall be an event of default unless
22 extended by mutual agreement.

23
24 17. Consents Lessor agrees not to unreasonably withhold
25 its consent.

26
27 18. Reserves Shall be maintained in accordance with
28 the requirements of all lenders

29
30 19. Estoppel certificates Lessor shall provide estoppel certificates
31 reasonably requested by lenders or investor

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EXHIBIT E
Form of Provider Release

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**PROVIDER RELEASE UNDER
LEGALLY BINDING AGREEMENT
AMONG
THE ONIZUKA AIR FORCE STATION LOCAL REDEVELOPMENT AUTHORITY,
MIDPEN HOUSING CORPORATION
AND
CHARITIES HOUSING DEVELOPMENT CORPORATION**

In accordance with that certain *Legally Binding Agreement Among the Onizuka Air Force Station Local Redevelopment Authority, MidPen Housing Corporation and Charities Housing Development Corporation, dated _____, 2011* (“LBA”), the undersigned applicant for surplus property at the Onizuka Air Force Station, located in the City of Sunnyvale, California, pursuant to the homeless screening conducted by the Onizuka Air Force Station Local Redevelopment Authority (“LRA”) pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, hereby withdraws its Notice of Interest and any claim for surplus property at the Onizuka Air Force Station.

Dated: _____

[Signature of Authorized Official of Homeless Provider]

Attachment B
MidPen Housing Corporation Expenses

Feasibility
 JOB CODE : 2100-500 / 009
 4/12/2012
 PROJECT NAME:
 Armory / Onizuka RFQ
 Invoice List
 ONIZUKA PDV D04

GL Code	Invoice #	Vendor	Invoice Date	This Draw Notes
1750-0334	01-02109211	AEI CONSULTANTS	1/26/2012	\$1,150.00
1750-0334	01-02109233	AEI CONSULTANTS	1/27/2012	\$6,530.00
1750-0331	1-4126	CARROLL ENGINEERING	1/10/2012	\$390.00
1750-0300	12-0002	JON WORDEN ARCHITECTS	1/23/2012	\$3,420.00
1750-0331	02-1662	AMSO CONSULTING ENGINEERS	2/20/2012	3,865.00
Total costs from December 14, 2011 to current				\$ 15,355.00

Attachment C
Charities Housing Development Corporation Expenses

Project: Sunnyvale Armory
Date: 4/13/2012

Activity	Vendor	Invoice Date	Invoice #	Amount
Architectural	Studio E	3/1/2012	1202.07	\$ 987.50
	Studio E	2/1/2012	1201.08	\$ 1,775.00
	Studio E	1/1/2012	1112.04	\$ 2,154.15
Civil	Carroll Engineering	1/10/2012	Jan-25	\$ 360.00
Geotech	AMSO Consulting Engineers	2/20/2012	02-1662	\$ 3,865.00
Phase I & II	AEI Consultants	1/26/2012	01-02109211	\$ 1,150.00
	AEI Consultants	1/27/2012	01-02109233	\$ 6,530.00
Reimbursables	POPP Communications	2/28/2012	10002350	\$ 30.69
TOTAL EXPENSES TO-DATE				\$ 16,852.34