



ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

Page 2.

1 with the needs of the community for economic redevelopment, then HUD will recommend  
2 approval of the Reuse Plan and notify the DoD and the LRA of such approval;

3  
4 **WHEREAS**, pursuant to the screening process set forth in the Base Closure Act, the  
5 United States Department of Veterans Affairs (“VA”) submitted an Expression of Interest  
6 (“EOI”) to the United States Air Force (“Air Force”) to use portions of the AFS Property;

7  
8 **WHEREAS**, pursuant to the screening process set forth in the Redevelopment Act  
9 and the Base Closure Act, each Agency submitted a Notice of Interest (“NOI”) to the LRA  
10 on or before December 5, 2006, to use portions of the AFS Property to carry out each  
11 Agency’s proposed homeless assistance program (individually, a “Program” and  
12 collectively, the “Programs”);

13  
14 **WHEREAS**, the LRA is engaged in negotiations with and intends to enter into  
15 agreements with the Air Force and the VA regarding the reuse and redevelopment of the AFS  
16 Property;

17  
18 **WHEREAS**, depending upon the agreements that may be reached between the LRA,  
19 the VA and the Air Force, the LRA may choose to undertake one of several alternative  
20 scenarios with respect to implementation of the Agencies’ proposed Programs, including the  
21 provision of a Financial Contribution, as defined below, to each Agency so that each Agency  
22 may execute its Project, as defined below, at a different location;

23  
24 **WHEREAS**, if the LRA provides a Financial Contribution, as defined below, to each  
25 Agency, the LRA will enter into an escrow agreement with each Agency (“Escrow  
26 Agreement”), in substantially the same form as attached as Exhibit A, and a real estate  
27 development agreement with each Agency governing the execution of the Project, as defined  
28 below, in substantially the same form as attached as Exhibit B (“Development Agreement”);  
29 and

30  
31 **WHEREAS**, the LRA and the Agencies wish to enter into this Agreement to set forth  
32 the alternative scenarios for carrying out the Programs depending upon the agreements  
33 reached with both the Air Force and the VA, comply with applicable Federal laws, address  
34 the needs of the homeless, and to further the reuse and redevelopment of the AFS.

35  
36 **NOW, THEREFORE**, the Parties hereby agree as follows:

37  
38 **ARTICLE 1. LRA OBLIGATIONS.**

39  
40 **1.1 Reuse Plan.** The LRA will complete and file a HAP and a Reuse Plan with  
41 the DoD and HUD on or before the Federal mandated filing date, as such date may be  
42 extended.  
43

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1           1.1.1 Program Implementation Options. The Parties understand and agree  
2 that depending upon the agreements among the LRA, the VA and the Air Force, the LRA  
3 may choose to undertake various alternative scenarios with respect to implementing the  
4 Agencies' proposed Programs, including but not limited to those as set forth in Sections 1.1.3,  
5 1.1.4, 1.1.5, and 1.1.6 below ("**Program Implementation Options**").  
6

7  
8           1.1.2 LRA Election. The LRA will select, in its sole discretion, a Program  
9 Implementation Option ("**LRA Election**"), and will inform each Agency in writing of its  
10 election no later than ninety (90) days following the execution of the final disposal Record of  
11 Decision by the Air Force ("**LRA Election Date**").  
12

13           1.1.3 Disposal after VA and Agency Withdrawal Option. In the event that  
14 the LRA, the VA and the Air Force agree on the method of disposal for the AFS Property,  
15 whereby the VA agrees to withdraw its EOI and to relocate to an alternative location  
16 geographically removed from the AFS Property in exchange for a portion of the sales  
17 proceeds from the AFS Property requested by the VA in its EOI, then the LRA, at its sole  
18 discretion, may opt to arrange for implementation of the Programs under the terms and  
19 conditions set forth below ("**Option 1**").  
20

21                   1.1.3.1 Under Option 1, the LRA will provide each  
22 Agency with a financial contribution in an amount not to exceed \$4.1 million  
23 dollars ("**Financial Contribution**"), to be used for the location, option,  
24 predevelopment, entitlement and acquisition of land at an alternative location in the  
25 City which is geographically removed from the AFS Property ("**Land**") and the  
26 construction and/or rehabilitation of suitable facilities ("**Facilities**"). Collectively,  
27 the Land and Facilities are referred to as the "**Project.**" All aspects of each  
28 Agency's Project shall comply with the terms and conditions contained in the  
29 Development Agreement, a form of which is attached hereto as Exhibit B.  
30

31                   1.1.3.2 Under Option 1, the Financial Contribution shall  
32 be comprised of:  
33

34                           (a) not more than ninety (90) days after the Election Date,  
35 up to a \$50,000.00 contribution to each Agency to reimburse eligible administrative and out-  
36 of-pocket costs associated with identifying, optioning and acquiring the Land;  
37

38                           (b) up to a \$200,000.00 contribution to each Agency to  
39 reimburse eligible real estate option monies and predevelopment costs to entitle Land  
40 approved by the LRA (such sum of money to be available to each Agency not more than  
41 ninety (90) days after the Election Date (subject to DoD approving the LRA's Reuse Plan,  
42 HAP and disposition strategy or other LRA-approved agreement to compensate LRA costs to

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1 relocate Agency Programs), and subject to an LRA-approved site concept and submission to  
2 the LRA of a valid option agreement; and

3  
4 (c) up to \$3,850,000.00 to each Agency to reimburse  
5 eligible LRA approved Land acquisition costs and construction and/or rehabilitation of  
6 Facilities, (such sum of money to be available to each Agency after DoD issues a Final  
7 Record of Decision approving the LRA's Reuse Plan, HAP and disposition strategy or other  
8 LRA-approved agreement to compensate LRA costs to relocate Agency Programs),  
9 contingent upon the sufficiency of the City's Housing Assistance Fund balance and at the  
10 Agencies' close of escrow on LRA-approved Land.

11  
12 1.1.3.3 If the LRA elects Option 1, no later than ninety  
13 (90) days following the LRA Election Date, the LRA shall place the Financial  
14 Contribution into an escrow account ("**Escrow Account**") to be disbursed to the  
15 Agencies pursuant to terms and conditions as set forth in the Escrow Agreement  
16 attached hereto as Exhibit A.

17  
18 1.1.3.4 In the event that the LRA selects Option 1 and the  
19 LRA provides the Financial Contribution to the Agencies, then a portion of the  
20 proceeds from the sale of the AFS Property will be used to reimburse the LRA for  
21 the Financial Contributions made under Section 1.1.3.2, above. If the proceeds  
22 from the sale are not sufficient to reimburse the LRA in full for such Financial  
23 Contributions, then one-half (½) the unreimbursed portions of such Financial  
24 Contribution to each Agency shall become a loan payable from each Agency to the  
25 LRA.

26  
27 1.1.3.5 In the event that the LRA selects Option 1, prior  
28 to the LRA providing the Agencies with a Financial Contribution, the LRA and  
29 each Agency shall enter into a Development Agreement in substantially the same  
30 form as attached hereto as Exhibit B.

31  
32 1.1.3.6 The Parties agree and understand that Option 1,  
33 including the Financial Contribution, is an option that may be selected at the sole  
34 discretion of the LRA, notwithstanding any agreement reached between the LRA  
35 and the VA and/or the Air Force.

36  
37 1.1.4 Disposal Without VA Withdrawal Option. In the event that the LRA  
38 and the Air Force agree on the terms for the sale of the AFS Property, but the VA does not  
39 agree to withdraw its EOI and find alternative property geographically removed from the  
40 AFS, then the LRA, at its sole discretion, may opt to arrange for implementation of the  
41 Programs under the terms and conditions set forth below ("**Option 2**").  
42

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1                                   1.1.4.1     Under Option 2, the LRA will provide each  
2 Agency with the Financial Contribution to implement each Agency's Project, under  
3 the terms and in the amounts set forth in Section 1.1.3.2, above.  
4

5                                   1.1.4.2     If the LRA elects Option 2, no later than ninety  
6 (90) days following the LRA Election Date, the LRA shall place the Financial  
7 Contribution into the Escrow Account to be disbursed to the Agencies pursuant to  
8 terms and conditions as set forth in the Escrow Agreement attached hereto as  
9 Exhibit A.

10                                  1.1.4.3     In the event that the LRA selects Option 2 and the  
11 LRA provides the Financial Contribution to the Agencies, then a portion of the  
12 proceeds from the sale of the AFS Property will be used to reimburse the LRA for  
13 the Financial Contributions made under Section 1.1.3.2, above. If the proceeds  
14 from the sale are not sufficient to reimburse the LRA in full for such Financial  
15 Contributions, then one-half (1/2) the unreimbursed portions of such Financial  
16 Contribution to each Agency shall become a loan payable from each Agency to the  
17 LRA.

18                                  1.1.4.4     In the event that the LRA selects Option 2, prior  
19 to the LRA providing the Agencies with a Financial Contribution, the LRA and  
20 each Agency shall enter into a Development Agreement in substantially the same  
21 form as attached hereto as Exhibit B.

22                                  1.1.4.5     The Parties agree and understand that Option 2,  
23 including the Financial Contribution, is an option that may be selected at the sole  
24 discretion of the LRA, notwithstanding any agreement reached between the LRA  
25 and the VA and/or the Air Force.  
26

27                                  1.1.5     Disposal Without Air Force Compensation Option. In the event that  
28 the VA withdraws its EOI in exchange for funds to find alternative property geographically  
29 removed from the AFS Property, but the Air Force does not agree to use the proceeds from a  
30 sale of the AFS Property to fund the VA's relocation to such alternative property, then the  
31 LRA, at its sole discretion, may opt to arrange for implementation of the Programs under the  
32 terms and conditions set forth below ("Option 3").  
33

34                                   1.1.5.1     Under Option 3, the LRA will provide each  
35 Agency with the Financial Contribution to implement each Agency's Project, under  
36 the terms and in the amounts set forth in Section 1.1.3.2, above.  
37

38                                   1.1.5.2     If the LRA elects Option 3, then no later than  
39 ninety (90) days following the LRA Election Date, the LRA shall place the  
40 Financial Contribution into an escrow account ("**Escrow Account**") to be disbursed  
41 to the Agencies pursuant to terms and conditions as set forth in the Escrow  
42 Agreement attached hereto as Exhibit A.  
43

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1 1.1.5.3 In the event that the LRA selects Option 3, prior  
2 to the LRA providing the Agencies with a Financial Contribution, the LRA and  
3 each Agency shall enter into a Development Agreement in substantially the same  
4 form as attached hereto as Exhibit B.

5  
6 1.1.5.4 The Parties agree and understand that Option 3,  
7 including the Financial Contribution, is an option that may be selected at the  
8 discretion of the LRA, notwithstanding any agreement reached between the LRA  
9 and the VA and/or the Air Force.

10  
11 1.1.6 AFS Property Option. The Parties agree and understand that the LRA  
12 is in no way obliged under this Agreement to undertake a Program Implementation Option  
13 that involves a Financial Contribution and that the LRA may elect at the LRA Election Date  
14 to accommodate each Agency's NOI by approving such NOI for use of a portion or portions  
15 of the AFS Property to carry out each Agency's Program ("**Option 4**"). Notwithstanding the  
16 foregoing, if the LRA is unable to reach agreement with the AF and/or VA regarding reuse of  
17 the AFS Property and does not undertake a Program Implementation Option that involves a  
18 Financial Contribution, then the LRA shall be deemed to have approved each Agency's NOI  
19 such that each Agency may implement its Program on the AFS Property.

20  
21 **ARTICLE 2. AGENCY OBLIGATIONS.**

22  
23 **2.1 Consent to NOI Objectives.** In consideration for the Financial Contribution  
24 by the LRA, whether under the Option 1, Option 2 or Option 3, the Agencies shall acquire or  
25 obtain suitable, LRA-approved alternative real property upon which each Agency will  
26 establish the Program set forth in each Agency's NOI.

27  
28 **2.2 Release of Accommodation Rights.** Simultaneously with the LRA Election  
29 and placement of the Financial Contribution in the Escrow Account, the Agencies shall  
30 release all of their rights in and to the AFS Property by executing a release ("**Release**")  
31 substantially in the form set forth in Exhibit C, attached hereto.

32  
33 **2.3 Implementation Documents.** If the LRA undertakes a Program  
34 Implementation Option that involves a Financial Contribution, then on or about the execution  
35 date of this Agreement, each Agency shall enter into an Escrow Agreement with the LRA in  
36 substantially the same form as attached in Exhibit A and on or about ninety (90) days after the  
37 LRA Election Date, each Agency shall enter into a Development Agreement with the LRA in  
38 substantially the same form as attached in Exhibit B.

39  
40 **2.4 AFS Property Accommodation.** The Agencies hereby agree that if the LRA  
41 does not select a Program Implementation Option that involves a Financial Contribution and  
42 instead approves each Agency's NOI through Option 4, then the LRA is under no obligation  
43 to provide the Agencies with a Financial Contribution.

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1  
2           **2.5 Communication to Agencies.** If any Agency makes any written comments,  
3 or engages in any written communications, with any local, state, or federal agency regarding  
4 the approval or implementation of any future development proposals, applications, approvals  
5 or permits (including any related environmental documentation) relating to the AFS Property,  
6 or any proposed, approved, or existing uses to the AFS Property or alternative real estate  
7 purchased by an Agency pursuant to the terms of this Agreement, such Agency shall  
8 immediately provide complete copies of such written comments or communications to the  
9 LRA.

10  
11           **2.6 Reversion.** The Agencies hereby agree that if at any time an Agency's  
12 Program, whether operated on AFS Property or at an LRA-approved alternative location, is  
13 inconsistent with the homeless assistance program approved by HUD for each Agency, then  
14 the land, buildings or property being utilized by such Agency to operate its Program shall  
15 revert to the LRA or the City.

16  
17           **2.7 Environmental Analysis.** In the event that the environmental analysis  
18 conducted under P586.45(b) indicates that any property selected for the operation of an  
19 Agency's Program (whether on AFS Property or at an alternative location) is not suitable for  
20 its intended purpose, then the Parties agree to negotiate an alternative arrangement.

21  
22 **ARTICLE 3. CONTINGENCIES.**

23  
24           **3.1 Contingencies.** The obligations of the Parties under this Agreement are  
25 contingent upon certain events occurring with respect to the Program Implementation  
26 Options, as set forth below.

27  
28                   3.1.1 Program Implementation Options.

29  
30                                   3.1.1.1 Option 1. The obligations set forth in Article 1  
31 and Article 2 of this Agreement with respect to the Option 1 are contingent upon  
32 the following events occurring:

- 33  
34                                   (a) Approval of this Agreement by HUD;  
35  
36                                   (b) Approval of the HAP and Reuse Plan by HUD;  
37  
38                                   (c) Agreement between the LRA and the Air Force to select Option  
39  
40                                   (d) Agreement between the LRA and the VA to select Option 1;  
41  
42                                   (e) The closure and disposal of the AFS Property by the United States  
43 in a manner consistent with such federally approved Reuse Plan;

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1  
2 (f) The availability of the funds necessary for the LRA to provide the  
3 Agencies with the Financial Contribution; and  
4

5 (g) The execution of a Release by each Agency.  
6

7 3.1.1.2 Option 2. The obligations set forth in Article 1  
8 and Article 2 of this Agreement with respect to Option 2 are contingent upon the  
9 following events occurring:  
10

11 (a) Approval of this Agreement by HUD;  
12

13 (b) Approval of the HAP and Reuse Plan by HUD;  
14

15 (c) Agreement between the LRA and the Air Force to select Option 2;  
16

17 (d) The closure and disposal of the AFS Property by the United States  
18 in a manner consistent with such federally approved Reuse Plan;  
19

20 (e) The availability of the funds necessary for the LRA to provide the  
21 Agencies with the Financial Contribution; and  
22

23 (f) The execution of a Release by each Agency.  
24

25 3.1.1.3 Option 3. The obligations set forth in Article 1  
26 and Article 2 of this Agreement with respect to Option 3 are contingent upon the  
27 following events occurring:  
28

29 (a) Approval of this Agreement by HUD;  
30

31 (b) Approval of the HAP and Reuse Plan by HUD;  
32

33 (c) Agreement between the LRA and the VA to select Option 3;  
34

35 (d) The closure and disposal of the AFS Property by the United States  
36 in a manner consistent with such federally approved Reuse Plan;  
37

38 (e) The availability of the funds necessary for the LRA to provide the  
39 Agencies with the Financial Contribution; and  
40

41 (f) The execution of a Release by each Agency.  
42



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With a copy to: George R. Schlossberg, Esq.  
Kutak Rock, LLP  
1101 Connecticut Ave, NW, Suite 1000  
Washington, DC 20036

If to the Coalition:

With a copy to:

If to the Partnership: **Charities Housing Development Corporation**  
**465 S. First St.**  
**San Jose, CA 95113**  
**Attention: Kathy Robinson**

With a copy to:

**ARTICLE 6. MISCELLANEOUS.**

**6.1 Survival and Benefit.** All representations, warranties, agreements, obligations and indemnities of the Parties shall, notwithstanding any investigation made by any party hereto, survive closing and the same shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties.

**6.2 Assignment.** Without written consent of the LRA, this Agreement is not assignable by an Agency, either in whole or in part. The LRA may, in its reasonable discretion, assign this Agreement to another public entity provided that such public entity assumes and agrees to perform the LRA's obligations hereunder.

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

**6.4 Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1 affected thereby, and each such term and provision of this Agreement shall be valid and be  
2 enforced to the fullest extent permitted by law.

3  
4 **6.5 Entire Understanding of the Parties.** This Agreement, along with any  
5 agreement reached between the LRA and the Air Force and/or the VA with respect to a  
6 Program Implementation Alternative, constitutes the entire understanding and agreement of  
7 the Parties with respect to implementation of those portions of the Reuse Plan related to  
8 homeless needs and facilities pursuant to the Redevelopment Act and Base Closure Act.

9  
10 **6.6 Title of Parts and Sections.** Any titles of the sections or subsections of this  
11 Agreement are inserted for convenience of reference only and shall be disregarded in  
12 interpreting any part of the Agreement's provisions.

13  
14 **6.7 Time is of the Essence.** In the performance of this Agreement, time is of the  
15 essence.

16  
17 **6.8 Multiple Originals; Counterparts.** This Agreement may be executed in  
18 multiple originals, each of which is deemed to be an original, and may be signed in  
19 counterparts.

20  
21 **ARTICLE 7. EXHIBIT LIST.**

22  
23 **7.1** The following exhibits are attached hereto and made a part of this Agreement:

24  
25 **Exhibit A Escrow Agreement**  
26 **Exhibit B Development Agreement**  
27 **Exhibit C Release**

28  
29 [Signature Page Follows]

ONIZUKA AIR FORCE STATION LEGALLY BINDING AGREEMENT

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1 IN WITNESS WHEREOF, the Parties have approved this Legally Binding Agreement on  
2 the \_\_\_\_ day of \_\_\_\_\_, 2008.  
3  
4  
5  
6

7 **SUNNYVALE LOCAL REDEVELOPMENT AUTHORITY**  
8  
9 \_\_\_\_\_

10 **By:**  
11 **Date:**  
12  
13  
14

15 **MID-PENINSULA HOUSING COALITION**  
16  
17 \_\_\_\_\_

18 **By:** *Matthew O. Franklin*  
19 **Date:** *10/22/2008*  
20  
21  
22

23 **THE COLLABORATIVE ON AFFORDABLE HOUSING AND HOMELESS ISSUES**  
24 **D.B.A. THE ONIZUKA PARTNERSHIP**  
25  
26 \_\_\_\_\_

27 *Chris Block*  
28 **By: Chris Block**  
29 **Date: 9/2/08**  
30

**DRAFT EXHIBIT "A"**

Immediately following the LRA's Election of the Program Implementation Option, as more fully described in the Legally Binding Agreement, an appropriate implementing Escrow Agreement will be mutually developed and executed by the Parties to the Legally Binding Agreement, substantially in the form set forth below.

**ESCROW AGREEMENT**

This Escrow Agreement (the "Agreement") is made as on \_\_\_\_\_, 2009, by and between the Sunnyvale Local Redevelopment Authority (the "LRA"), and \_\_\_\_\_ (the "Agency").

**RECITALS**

A. The Agency submitted a Notice of Interest ("NOI") to the LRA to use portions of the Onizuka Air Force Station Property within the City of Sunnyvale, California for homeless assistance purposes.

B. The LRA and the Agency have entered into a Legally Binding Agreement ("LBA") to implement the LRA's Reuse Plan and to allow the Agency to accomplish its homeless assistance purposes.

C. The United States Department of Housing and Urban Development ("HUD") has approved the LRA's Reuse Plan for the Onizuka Air Force Station.

D. The LRA has selected a Program Implementation Option ("**LRA Election**") in which the Agency shall develop property in an alternative off-site location located within the City of Sunnyvale, California, to accomplish its homeless assistance purposes.

E. The LRA has agreed to assist the Agency in the location, option, predevelopment, entitlement and acquisition of land at such alternative location in the City.

F. The purpose of this Agreement is to provide the terms and conditions under which the LRA shall disburse its financial contribution to the Agency to accomplish the homeless assistance purposes identified in its NOI ("Project") at such alternate location within the City.

**AGREEMENT**

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1 ESCROW TERMS

1.1 Funding. The LRA will provide the Agency with a total financial contribution in an amount not to exceed \$4.1 million dollars (“**Financial Contribution**”), to be used for the location, option, predevelopment, entitlement and acquisition of land at an alternative location in the City which is geographically removed from the AFS Property (“**Land**”) and the construction and/or rehabilitation of suitable facilities (“**Facilities**”). Collectively, the Land and Facilities are referred to as the “**Project**.”

1.2 Deposit. The LRA shall create a separate account with the Financial Contribution of \$4.1 million dollars. This deposit shall form the Escrow Account; the name of the Escrow Account shall reflect that it is for the benefit of the Agency.

1.3 Disbursement of Funds. The City is obligated to disburse the funds in the following manner:

(a) Not more than ninety (90) days after the LRA Election Date, up to a \$50,000.00 contribution to the Agency to reimburse eligible administrative and out-of-pocket costs associated with identifying, optioning and acquiring the Land; and

(b) Up to a \$200,000.00 contribution to the Agency to reimburse eligible real estate option monies and predevelopment costs to entitle Land approved by the LRA (such sum of money to be available to the Agency not more than ninety (90) days after the Election Date subject to DoD approving the LRA’s Reuse Plan, HAP and disposition strategy or other LRA-approved agreement to compensate LRA costs to relocate Agency Programs), and subject to an LRA-approved site concept and submission to the LRA of a valid option agreement; and

(c) After identification of a suitable site, up to \$3,850,000.00 to the Agency to reimburse eligible LRA approved Land acquisition costs and construction and/or rehabilitation of Facilities, (such sum of money to be available to the Agency after the Department of Defense issues a Final Record of Decision approving the LRA’s Reuse Plan, Housing Assistance Program and disposition strategy or other LRA-approved agreement to compensate LRA costs to relocate Agency Programs). These funds shall be disbursed in the following manner:

Upon written request of the Agency in a form approved by the City, City will disburse funds not more than once per month, contingent upon the LRA’s review of the appraisal, preliminary development plans, pro formas, and financing plan to confirm that the project is feasible and meets the defined program requirements for homeless housing; and

(d) After the LRA provides the Financial Contribution to the Agencies, then a portion of the proceeds from the sale of the AFS Property will be used to reimburse the LRA for the Financial Contributions. If the proceeds from the sale are not sufficient to reimburse the LRA in full for such Financial Contributions, then one-half (½) the unreimbursed portions of such Financial Contribution to each Agency shall become a

loan payable from each Agency to the LRA (attached in substantially the same form as Exhibit A); and

(e) All disbursements shall be made by \_\_\_\_\_ transfer within \_\_\_\_ ( ) business days of receipt of written instructions by the LRA.

1.4 Term of Escrow. The term of this Agreement shall commence upon the date of execution herewith and remain in full force and effect through the completion of the Project, unless terminated earlier pursuant to the terms of this Agreement.

1.5 Use of Funds.

(a) The Borrower shall use the Funds for the costs incurred for a Project located in Sunnyvale, California. All aspects of the Agency's Project shall comply with the terms and conditions contained in the Development Agreement, to be executed at a later date in time. In the event the City and the Agency do not execute a Development Agreement by \_\_\_\_\_, the City shall not be obligated to disburse the Financial Contribution.

(b) The Agency agrees to be additionally liable for repayment of any disbursed proceeds subsequently determined to be disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. The City of Sunnyvale shall make the final determination of disallowed costs subject to the provisions of applicable regulations.

**ARTICLE 2 DEFAULT AND REMEDIES**

2.1 Event of Default. Any use that is inconsistent with the Development Agreement or the homeless assistance program approved by HUD for the Agency shall constitute a material breach. Any material breach by the Agency of any representation, warranty or covenant hereunder, which is not cured within thirty days (30) after notice thereof given by the City or, where cure is not possible within thirty days, whose cure is not commenced within thirty days and diligently prosecuted to completion shall constitute an Event of Default.

2.2 City's Remedies. Upon the happening of an Event of Default, the City may pursue any remedy allowed at law or in equity, including but not limited to, the reversion of the Land, buildings or property being utilized by such Agency to the LRA or the repayment of any Financial Contribution, unless those costs are determined to be allowable costs within the terms of the Program.

2.2 Agency's Remedies. Any material breach by the City that is not cured within thirty days after notice thereof shall constitute a Default and the Agency may pursue any remedy allowed at law or in equity.

**ARTICLE 3 MISCELLANEOUS PROVISIONS**

3.1 Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of the LRA or City has or may obtain a personal or financial interest in or benefit from the Agency or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project either for themselves or for those with whom they have family or business ties, during their tenure or one year thereafter.

3.2 Nondiscrimination. The Agency shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Agency shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

3.3 Corporate Status. At all times during the term of this Agreement, Borrower shall maintain its corporate existence and shall comply with all provisions of the California Non-Profit Corporation Law (Corporations Code Section 5000, et. seq.). Borrower shall immediately report to the City any changes, subsequent to the date of this Agreement, including, without limitations, in Articles of Incorporation, Bylaws, Board of Directors, personnel policies and procedures, affirmative action plan, or tax exempt status.

3.4 Hold Harmless.

(a) The Agency hereby agrees to, and shall, hold the LRA and the City, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Agency's operations under this Agreement, whether such operations be by the Agency or subcontractor, or by any one of more persons directly or indirectly employed by, or acting as agent for, the Agency or any subcontractor. The Agency agrees to, and shall, hold the City, its elective and appointive boards, officers, agents and employees harmless from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations.

(b) The Agency agrees to provide all costs of any necessary legal defense and all attorney's fees incurred in defending any claim, whether or not actually filed in any court.

3.5 Amendment. This Agreement may be amended only by a writing signed by authorized representatives of the City and the Borrower; the City Administrator, or designee of the City shall be authorized to act on behalf of the City.

3.6 Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or

certified mail, to the party in question at the address shown below:

City:  
City of Sunnyvale  
City Manager  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

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

Agency:

3.7 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

3.8 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

3.9 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

3.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.11 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

IN WITNESS WHEREOF, the Local Redevelopment Authority and the Agency have executed this Agreement as of the date first set forth above.

**Sunnyvale Local Redevelopment Authority:**

**AGENCY:**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

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

**The City of Sunnyvale hereby consents to and agrees to be bound by the provisions of this Agreement.**

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

LOAN AGREEMENT

**DRAFT EXHIBIT "B"**

Immediately following the LRA's Election of the Program Implementation Option, as more fully described in the Legally Binding Agreement, an appropriate implementing Development Agreement will be mutually developed and executed by the Parties to the Legally Binding Agreement, substantially in the form set forth below.

**DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT is entered into as of \_\_\_\_\_, ("Effective Date"), by and between the Onizuka Local Redevelopment Authority ("LRA"), and \_\_\_\_\_ ("Agency").

**RECITALS**

A. The Agency submitted a Notice of Interest ("NOI") to the LRA to use portions of the Onizuka Air Force Station Property within the City of Sunnyvale, California for homeless assistance purposes.

B. The LRA and the Agency have entered into a Legally Binding Agreement ("LBA") to implement the LRA's Reuse Plan and to allow the Agency to accomplish its homeless assistance purposes.

C. The United States Department of Housing and Urban Development ("HUD") has approved the LRA's Reuse Plan for the Onizuka Air Force Station.

D. The LRA and the Agency have identified an alternate site within the City of Sunnyvale for the Agency to accomplish the homeless assistance purposes identified in its NOI ("project"), which real property is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"). The Property is further depicted on the site plan attached hereto as part of Exhibit B and made a part hereof.

E. The purpose of this Agreement is to provide the terms and conditions under which the Agency shall develop the Property to carry out the Project.

**AGREEMENT**

NOW, THEREFORE, the parties agree as follows:

1. **Recitals.** The parties hereby confirm the accuracy of the foregoing Recitals which are incorporated herein by this reference.

2. **Agency Pre-Approval Requirements.** The provisions of this Section 2 set forth the conditions precedent to the Agency's commencement of construction of the Project, as defined below. Agency acknowledges that no extensions of any applicable dates or time limits set forth in this Section 2 shall be effective unless such date or time limit is extended by the LRA at the discretion of the Sunnyvale City Manager or designee.

2.1 **Approval of Site Plan, Elevations and Preliminary Budget.** Prior to the execution of this Agreement, Agency submitted to the LRA through the appropriate departments of the City of Sunnyvale, the preliminary site plan, building elevations and construction budget for the Project, collectively attached hereto as Exhibit C and collectively referred to herein as the "Preliminary Plans". By execution of this Agreement, the City hereby approves the Preliminary Plans. The Preliminary Plans call for the construction of \_\_\_\_\_ . Agency will make its best effort to achieve the concept and unit count proposed in their original proposal to the LRA, to the greatest extent feasible.

2.2 **Construction Plans.** Not later than \_\_\_\_\_ ( ) days after the Effective Date, Agency shall submit to the LRA through the appropriate department of the City of Sunnyvale ("City") its Construction Plans for the City's review and approval. As used herein, Construction Plans means all construction documentation upon which the Agency and Agency's contractor(s) shall use in constructing the Project and shall include, but not necessarily be limited to, final engineering drawings and landscaping plans and specifications and a time schedule for construction of the Project.

3. **Construction of Improvements and Other Requirements**

3.1 **Building Construction Plans.** The Building Construction Plans submitted to the City pursuant to Section 2.2 above, or any proposed material change, modification, revision or alteration thereto or therefrom, as well as any related updates to the Construction Budget, shall be approved or disapproved by the City within a thirty (30) day period. If the City does not approve or disapprove within said thirty (30) day period, it shall be deemed approved. For the purposes of this Section 3.1, a "material change" or "deviation" in the Construction Plans shall mean any increase or decrease of ten percent (10%) or greater in the number of square feet of the Building or a material change in the location of the Building from that shown in the Preliminary Plans. In addition, the term "Final Construction Budget" shall mean the Construction Budget, as revised or updated by Agency pursuant to Section 2.2 above, and approved by the City.

3.2 **City Approval.** At the time Agency submits its Building Construction Plans to the City, it shall apply to the City for, diligently pursue and obtain all permits necessary for the construction of the Building. Agency acknowledges that execution of this Agreement by

the City does not constitute approval by the City, does not limit in any manner the discretion of the City in the approval process, and does not relieve Agency from the obligation to obtain all necessary permits, including building permits. Agency shall promptly pay when due all customary and reasonable fees and charges of the City in connection with the processing and consideration of the City permits and approvals contemplated by this section.

3.3 Construction Pursuant to Plans and Budget. Unless modified in accordance with the provisions of this Agreement, all works of construction and development on the Property shall be done in accordance with the Construction Plans and the Final Construction Budget approved pursuant to Section 2.2 above.

3.4 Change in Plans or Budget. If Agency desires to make any material change in the Construction Plans or the Final Construction Budget, Agency shall submit the proposed change to the City for its approval within thirty (30) days, which approval shall not be unreasonably withheld. If rejected, the previously approved Construction Plans and/or Final Construction Budget shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such changes do not substantially nor materially change the architecture, design or other amenities of the Project as shown on the latest approved Construction Plans.

3.5 Progress Reports. Until construction of the Project has been completed, Agency authorizes the City to have full access to all building inspection reports and other information at the City to assist the City in reviewing the actual progress of construction. Agency shall allow the City to review construction documents and records maintained by Agency in the ordinary course of the construction as may be reasonably requested by the City. Agency shall prepare and deliver to City, on a monthly basis, a written progress report summarizing the monthly progress and identifying any issues related to the project.

3.6 Equal Opportunity. During the construction of the Project, Agency shall not discriminate on the basis of race, religion, sex, or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work and shall require its contractors and subcontractors to refrain from discrimination on such basis.

3.7 Prevailing Wages. If applicable, Agency shall pay, or cause to be paid, prevailing rates of wages for construction work done in connection with the Improvements, and shall comply to the extent practicable, with California Health and Safety Code Section 33422.1. Agency shall indemnify, defend and hold the City, and its officers and employees, harmless against all claims made against Agency which arise out of or in connection with any failure or purported failure to pay prevailing wages.

3.8 City Approval. Unless specifically provided to the contrary herein, to the extent that the consent or approval of the City is required with respect to any matter set forth herein, the City Manager or his or her designee, shall have the authority to act for the City.

#### **4. No Assignments**

4.1 Changes Only Pursuant To This Agreement. Agency may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the City

which shall not be unreasonably withheld, but in no event, may the Agency assign its rights or obligations hereunder to any entity for any purposes other than to accomplish the homeless program described in the LBA.

**5. Default and Remedies.**

5.1 Fault of City. The following event shall constitute a basis for Agency to take action against the City:

(a) The City fails to provide the financing referenced in the Escrow Agreement.

(b) The City materially breaches any of the provisions of this Agreement.

Upon the happening of the above described event, Agency shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure or if the nature of the breach or failure is such that it cannot reasonably be cured in thirty (30) days, then giving the City such longer period as reasonably may be required for such cure provided that City commences action to cure the breach or default within said thirty (30) day period and thereafter diligently pursues the cure to completion. In the event City does not then so cure or commence to cure within said thirty (30) days, then the Agency thereafter shall have the right to terminate this Agreement, and any other rights afforded it by law or in equity.

5.2 Fault of Agency. The following events each constitute a basis for the City to take action against Agency:

(a) Agency fails to commence construction of the Project or to complete the Project within the agreed upon time limits;

(b) Agency engages in any use that is inconsistent with this Agreement or the homeless assistance program approved by HUD

Upon the happening of any of the above described events, the City shall first notify the Agency in writing of its purported breach, failure or act above described, giving the Agency thirty (30) days from receipt of such notice to cure such breach, failure, or act, or if the nature of the breach or failure is such that it cannot reasonably be cured in thirty (30) days, then giving the Agency such longer period as reasonably may be required for such cure or action provided that Agency commences action to cure the breach or default within said thirty (30) day period and thereafter diligently pursues the cure to completion. In the event Agency does not then so cure within said thirty (30) days, or in the event that Agency does not commence curing a default which is not curable within said thirty (30) days, the City thereafter shall be afforded the right to terminate this Agreement and any other rights afforded it by law or equity including the reversion of the Land, buildings or property being utilized by such Agency to the LRA or the repayment of any Financial Contribution, unless those costs are determined to be allowable costs within the terms of the Project.

5.3 Allowable Reimbursement. The Agency shall be reimbursed for all allowable costs in the event the City ceases to fund the project and the Agency is not in default.

**6. General Provisions**

6.1 Notices, Demands and Communications. Formal notices, demands, and communications between the City and Agency shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally, to the principal office of the City and Agency as follows:

City: City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707  
Attn: City Manager

City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707  
Attn: Housing Officer

**DEVELOPER:**

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 9.1.

6.2 Conflict of Interests. No member, official or employee of the LRA or City shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

6.3 Non Liability of LRA, City Officials, Employees and Agents. No member, official, employee, representative or agent of the LRA or City shall be personally liable to the Agency, or any successor in interest, in connection with or under the terms of this Agreement.

6.4 Enforced Delay. The performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions (excluding those imposed by the City or the City); litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which will necessitate delays; inability to secure necessary labor, materials or tools; delays of any contractor, sub contractor or supplier; acts of the other party; acts or failure to act of any public or governmental City or entity (other than the acts or failure to act of the City); or any other causes beyond the

control or without the fault of the party claiming an extension of time to perform. The party claiming such extension shall send written notice of the extension to the other within thirty (30) days from the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the City and Agency by mutual agreement of Agency and the City Manager unless the City Manager, in his or her discretion, refers the matter of extension to the City Council.

6.5 Inspection of Books and Records. The City has the right at all reasonable times to inspect on a confidential basis the books, records and all other documentation of Agency pertaining to its obligations under this Agreement.

6.6 Indemnity by Agency.

(a) Except as provided in subsection (c) below, Agency shall defend, indemnify, and hold harmless the City for any claim ("Claim") against the City of any nature whatsoever arising out of or in connection with Agency's purported acts or omissions on or about, or Agency's occupancy, use or operation of, the Property or Agency's performance or non performance under or with respect to this Agreement. If any Claim is attributable to an action or omission of Agency's construction contractor, such contractor shall also defend, indemnify and hold harmless the City against the Claim arising out of or in connection with Agency's construction contractor's purported acts or omissions on or about, or Agency's construction contractor's occupancy or use of, the Property or Agency's construction contractor's performance or non performance under or with respect to this Agreement.

(b) Upon knowledge of any Claim, the City shall promptly notify Agency and its construction contractor thereof in writing. Upon receipt of such written notice, Agency, and, if applicable, its construction contractor, shall defend at their own expense any suit based on the Claim. Such defense shall include provision of separate and independent counsel for the City where the City requires such counsel. The City shall have the right to choose such independent counsel. If any judgment or claims against the City shall be allowed, Agency and, if applicable, its construction contractor, shall pay or satisfy such judgment or claims and pay all costs and expenses in connection therewith.

(c) Agency, the City, and Agency's construction contractor shall have an affirmative duty to cooperate with one another in the conduct of any suit arising from this Agreement or from development of the Property pursuant to this Agreement; provided, however, that such duty to cooperate shall be limited by any conflict of interest which arises during the course of any such suit.

(d) The foregoing provisions for Agency's indemnification of the City shall not apply to the extent that a Claim arises out of the gross negligence or willful misconduct of the City with respect to the Property.

6.7 Liability Insurance.

(a) Agency shall maintain in force during the term of this Agreement public liability and property damage insurance, including personal injury, contractual, and owned and non owned automobiles, with such coverage and limits as may be reasonably requested by

the City from time to time, but in no event for less than the sum of three million dollars (\$3,000,000) combined single limit.

(b) Public liability insurance policy or policies shall name the City as an additional insured if applicable, and any policy or policies shall contain cross liability endorsements. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under this coverage.

(c) A certificate evidencing such insurance coverage or coverages shall be filed with the City prior to the commencement of the term of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days' prior written notice to the City.

(d) If such coverage is to be canceled or reduced, Agency shall, not later than thirty (30) days prior thereto, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Agency shall promptly reimburse the City for such expense upon receipt of billing from the City.

6.8 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default.

6.9 Real Estate Commissions. Neither party shall be responsible to the other for any real estate commissions or brokerage fees which may arise from this Agreement or otherwise be incurred by the other party.

6.10 Reasonable Approvals. Unless the context indicates otherwise, where an action under this Agreement requires approval of a party, such approval shall not be unreasonably withheld.

6.11 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

6.12 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

6.13 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney's fees and costs incurred in such action.

6.14 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

6.15 Relationship of Parties . Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

6.16 Time is of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

6.17 Complete Understandings of the Parties. This Agreement consists of the text of the Agreement and the attached Exhibits and constitutes the entire understanding and agreement of the parties.

6.18 Good Faith. The parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the parties hereby agree that it is their intention that this Agreement shall operate fairly between them and without detriment to the interests of either of them, and that, if during the term of this Agreement either party believes that this Agreement is operating unfairly, the parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness. Without limiting the generality of the foregoing, to the extent that various materials may require the consent of the City and revision and resubmission by Developer, each party agrees to act diligently and in good faith in fulfilling such obligations hereunder.

WHEREFORE, the parties have executed this Agreement as of the date first above written.

**CITY OF SUNNYVALE,**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AGENCY:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

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

The City hereby consents to and agrees to be bound by the provisions of this Agreement.

By: \_\_\_\_\_  
Name:  
Title:

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