

**Council Meeting: December 17, 2013**

SUBJECT: Discussion and Possible Action Regarding Revised Request from Sunnyvale Community Services for Modification of 2003 Community Development Block Grant (CDBG) Loan Terms

BACKGROUND

This report is provided in response to the Council direction provided at the hearing on RTC 13-206 held on August 27, 2013. That report discussed a request for immediate forgiveness of \$525,000 in outstanding CDBG debt owed by Sunnyvale Community Services (SCS) under a 2003 loan provided by the City to assist the acquisition of SCS' current office and services facility. Relevant portions of the minutes of that meeting are provided in **Attachment A**. Following that meeting, staff met with SCS to discuss the direction provided by Council in response to its request. Following those discussions, SCS has revised its request and is no longer requesting that the CDBG loan be forgiven outright, but rather that it be modified in several ways, as explained in the attached letter (**Attachment B**) and below in the Discussion section.

EXISTING POLICY**Housing Element of the General Plan, Goal E, Policy 5.6:**

Support local service providers that offer facilities and support services to homeless individuals and families, and persons at risk of homelessness.

2010-2015 HUD Consolidated Plan, Goal C:

Community Development - Objective: Support provision of essential human services, particularly for special needs populations.

CEQA REVIEW

N/A

DISCUSSION

On August 27th, Council passed the following motion directing staff to:

"Bring back a modified version of Alternative 1: Forgive the debt now, including principal and interest accrued to date (\$525,000) as requested, leaving the City's use restriction and reversion of assets requirements in place on the property until transferred to a replacement property or until 2043, whichever occurs first, subject to staff researching and coming back

with modification of the language to include terms that in the unlikely event Sunnyvale Community Services should cease to provide those services, the City would be entitled to and have priority to the equity remaining in that operation so that the City could have control over transferring it to some similar service.”

Staff worked with OCA to research possible language for an agreement to fulfill the Council direction, and found that state law (Corporations Code §6510-6519 and §6610-6618) provides the City with protections similar to those sought by Council in the event of a potential dissolution of SCS. Therefore it is not necessary to develop an agreement to address this possibility, because state law requires a process to occur prior to any non-profit dissolution that provides similar assurances that the agency’s assets would continue to be used for the same charitable purposes of the dissolving agency, consistent with the agency’s bylaws and mission statement. That process is overseen by the Attorney General and provides opportunities for any agency creditors, such as the City, to review and comment on the distribution of any remaining agency assets.

The bylaws of SCS describe its mission as “to prevent homelessness and hunger for low-income Sunnyvale residents facing temporary crises.” Therefore, in the unlikely event SCS were to dissolve at some point in the future, all of its assets would have to go to another non-profit agency with the same mission, and the City, as one of its creditors, would have opportunities to provide input to the Attorney General during that process. Also, in that unlikely event, SCS has noted that it would assume full responsibility for distributing its assets in accordance with its mission and with state law. The assets of the agency are now and are anticipated to be in the future far greater than the amount of the CDBG loan.

Since the August meeting, SCS has revised its original request for full forgiveness of the CDBG loan. The revised request is for a loan amendment, rather than immediate forgiveness of the entire loan balance. Staff and SCS discussed a number of options that would address the agency’s immediate concern about the short-term impacts to the agency of the monthly loan payments required beginning in April 2018, and the agency’s long-term concern about raising enough resources to move to a larger and more adequate facility at some point in the future. SCS also expressed its preference to use the funds it currently must budget for the loan payments to instead provide services for its clients, which provides a community benefit by preventing hunger and homelessness. Staff and SCS developed the following list of proposed options to address these concerns:

A. Short-term loan modifications:

1. Defer all required payments on the CDBG loan until the end of the loan term (2038).

2. Forgive \$125,000 in interest accrued to date and reduce interest rate to 0% for the remainder of the term.
3. Forgive entire loan balance at the end of the term (2038).

Of these options, Option 1 would resolve the short-term concern at least until 2033. At that time, SCS auditors would likely ask the agency to explain how it plans to pay off the loan balance at the end of the term, and to identify the source of funds for that payment. Option 2, waiving the interest, would reduce the financial impact to SCS of the deferred payment at the end of the term from \$820,000 to \$400,000, assuming no payments are made in the interim. This would leave SCS with slightly more resources to use toward acquisition of a larger facility or agency services. Option 3 would eliminate the financial impact at the end of the term from \$400,000 to \$0, while protecting the City's interest in the property for the duration of the term, providing an enforcement mechanism to ensure the property is used for the intended CDBG-eligible community services for the term, and to ensure payment of the "reversion of assets" amount required by CDBG regulations (24 CFR 570.503) in the event SCS decides to transfer the property prior to 2043.

B. Long-term request in the event of property transfer during loan term:

At the time of the initial request to the City in April of this year, SCS believed it might be able to move to a larger facility in a very short time frame, based on some properties listed for sale at that time. Since that time, those properties have been acquired by other parties, and it no longer appears that the agency would be able to move in the immediate future. However SCS would like to be prepared for an eventual opportunity to move to a larger facility that may arise during the remaining years of the City loan term.

As explained in RTC 13-206, if SCS decides to sell current property to acquire a new property at any time before 2043 (end of the "reversion of assets" period), SCS must pay the City its CDBG share (17%) of the property's then-current market value, based on federal CDBG regulations. If the City loan is not forgiven, any payment toward the City loan due at that time would also count toward the reversion of assets payment. However, if the City loan is forgiven, SCS still has to make the reversion of assets payment to the City, pursuant to federal regulations. If such a property transfer should occur, SCS would like the City to consider, at that time, re-using the CDBG funds from that reversion of assets payment (expected to be roughly similar in amount to the amount of the CDBG loan balance, if not forgiven), for one of several possible options: 1) a new loan to SCS for purchase of the new property; 2) a new grant to SCS for another CDBG-eligible activity, such as the Work First Sunnyvale program; or 3) a combination of both a loan and a grant.

Staff has worked with OCA to prepare draft loan amendment agreements (**Attachment C**) with the modifications described above for Council's

consideration and possible approval. These agreements would address both the short- and long-term concerns expressed by SCS. SCS has reviewed the proposed loan amendment agreements and would be willing to sign them if they are approved by Council.

FISCAL IMPACT

The impact of each loan modification option is shown in Table 1. If Council approves all three options, consistent with the drafts provided in Attachment C (Alternative 1), the impacts are cumulative, as shown in the bottom row of the table. The impact of all three options combined is a net reduction of up to \$820,000 in revenues projected to be received in the CDBG fund in 2038. However, if SCS were to make the monthly payments as required by the current loan terms, or any significant interim payments, the total amount of interest received would be slightly less than the \$420,000 shown below, because the amount of principal on which interest is accrued would be reduced to some degree.

Table 1: Fiscal Impact of Possible Loan Amendment Options

Option	Estimated Fiscal Impact Reduction in projected revenues to CDBG Fund
1. Defer Payments to end of Term.	No fiscal impact, only an impact to the timing of when revenues are received.
2. Forgive Interest and reduce rate to 0% going forward.	Reduction of \$125,000 in interest accrued to date, plus another \$295,000 that will accrue through the remainder of term (assuming loan is outstanding for entire term & no payments are made until the end of term), for a total of \$420,000 in interest.
3. Forgive Balance at Term	Reduction of \$820,000 in 2038, if interest not forgiven at this time; or a reduction of \$400,000, in 2038 if interest is forgiven now.
Cumulative Impact	Reduction of \$820,000, assuming no payments are made before end of term.

Any of these impacts would affect only the projected future revenues to the CDBG Fund ("program income"), and would not impact any part of the General Fund. CDBG program income may only be used for additional CDBG-eligible activities, otherwise it must be returned to the U.S. Treasury for deposit into the federal CDBG account.

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.

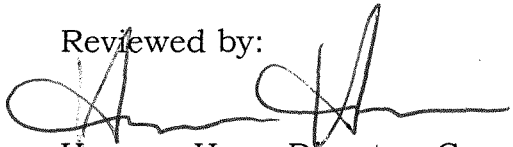
ALTERNATIVES

1. Approve Draft Agreement as provided in **Attachment C**.
2. Approve Draft Agreement with modifications as directed by Council.
3. Provide other direction to staff.
4. Take no action.

RECOMMENDATION

Staff recommends Alternative 1: Approve Draft Agreement as provided in **Attachment C**. Staff believes that these agreements address the concerns SCS has with the current repayment terms of the CDBG loan, and the concerns Council expressed regarding possible loan forgiveness, while complying with all of the federal CDBG requirements applicable to this loan and to the SCS property. Also, forgiving the accrued and future interest allows more funds to be committed to providing community services to assist Sunnyvale residents in need. If Council does not wish to approve all three options described above, staff could revise the agreement to include only one or two of those options, or some other variation, as an Alternative 2.

Reviewed by:



Hanson Hom, Director, Community Development Department

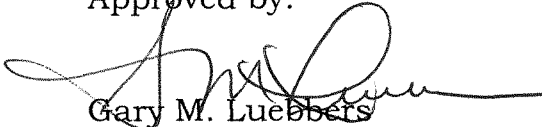
Prepared by: Suzanne Isé, Housing Officer

Reviewed by:



Grace Leung, Director, Finance Department

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Minutes of August 27, 2013
- B. Letter from Sunnyvale Community Services Dated November 4, 2013
- C. Draft Loan Amendment Agreements
 1. Amendment to Promissory Note
 2. Amendment to Loan Agreement

ATTACHMENT A

Minutes of the August 27, 2013 Council Meeting
Item 6

photos.

Applicant Jagdeep Sahni provided information regarding the proposed project.

Hamed Balazadeh, applicant's architect, provided additional information regarding the proposed project.

Appellant Roger Horton stated they are satisfied with the suggested changes to use frosted glass on the window and move it up a little, but they would prefer no windows.

Public Hearing closed at 10:07 p.m.

MOTION: Councilmember Moylan moved and Vice Mayor Griffith seconded the motion to approve Alternative 1: Deny the appeal and uphold the decision of the Planning Commission to approve the Design Review with the conditions in Attachment B to the report.

FRIENDLY AMENDMENT: Councilmember Meyering offered a friendly amendment to require a lattice on the last two-and-a-half feet of the balcony facing the appellant to the height of eight feet.

Councilmember Moylan declined to accept the friendly amendment.

VOTE: 6 - 1 (Councilmember Whittum dissented)

Council recessed at 10:11 p.m.

Council reconvened at 10:25 p.m. with all Councilmembers present.

6. RTC 13-206 Discussion and Possible Action Regarding Request from Sunnyvale Community Services for Forgiveness of Approximately \$525,000 in Outstanding Community Development Block Grant (CDBG) Loan Debt

Housing Officer Suzanne Isé presented the staff report.

Public Hearing opened at 10:36 p.m.

Mary Bradley spoke in support of the request.

Marie Bernard, Executive Director of Sunnyvale Community Services, requested forgiveness of the current CDBG loan and interest, and provided information regarding the request.

Debbie Owens, President of the Sunnyvale Community Services, requested immediate and complete forgiveness of the CDBG loan and provided information regarding the services provided by the organization.

Cindy McGown, Second Harvest Food Bank, spoke in support of Sunnyvale Community Services and forgiveness of the loan.

Isabella Karabed, Senior Case Manager, Downtown Streets Team, requested Council forgive the CDBG loan.

Cynthia White, client at Sunnyvale Community Services, provided information regarding services the program provides and in support of approval of the request.

Andy Frazer spoke in support Sunnyvale Community Services and forgiveness of the CDBG loan, and provided a PowerPoint presentation.

Gustav Larsson, member of the Planning Commission speaking for himself, spoke in support of and provided information regarding option 1.

Glenn Hendricks provided information regarding option 1.

Public Hearing closed at 11:11 p.m.

MOTION: Councilmember Davis moved and Councilmember Moylan seconded the motion to approve Alternative 2: Agree to forgive the debt at a later date when the property is to be sold, leaving the City's current use restrictions in place on the property until transferred to replacement property or until 2043, whichever occurs first.

FRIENDLY AMENDMENT: Councilmember Meyering offered a friendly amendment to include a provision concerning the forgiveness of current interest accrual. Councilmember Davis declined to accept the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Martin-Milius offered a friendly amendment to modify the motion to agree to review the forgiveness at a later date when the property needs to be sold. Councilmember Davis declined to accept the friendly amendment.

AMENDMENT: Councilmember Meyering moved to amend the motion and Mayor Spitaleri seconded the motion to include a provision to modify the loan agreement so that the accrual of interest ceases September 1, 2013.

VOTE on AMENDMENT: 3 - 4 (Vice Mayor Griffith, Councilmembers Moylan, Martin-Milius and Davis dissented)
Motion to amend failed.

VOTE on MAIN MOTION: 2 - 5 (Councilmember Meyering, Councilmember Whittum, Vice Mayor Griffith, Mayor Spitaleri and Councilmember Martin-Milius dissented)
Motion failed.

MOTION: Councilmember Meyering moved to amend the loan agreement between the City and the Sunnyvale Community Services as well as the promissory note to delete interest being owed on this loan beginning on September 1, 2013. Councilmember Davis raised a point of order and stated this motion as proposed has already been considered and voted on; it is improper to take it up again. Mayor Spitaleri ruled the motion out of order.

MOTION: Councilmember Meyering moved and Councilmember Whittum seconded the motion to amend the loan agreement between the City and Sunnyvale Community Services as well as the promissory note to delete the charging of interest and the accrual of interest starting September 16, 2013.

Councilmember Davis raised a point of order and objected on the same grounds.
Mayor Spitaleri ruled the motion in order.

VOTE: 2 - 5 (Vice Mayor Griffith, Mayor Spitaleri, Councilmembers Moylan, Martin-Milius and Davis dissented)
Motion failed.

MOTION: Councilmember Moylan moved and Mayor Spitaleri seconded the motion to approve Alternative 1: Forgive the debt now, including principal and interest accrued to date (\$525,000) as requested, leaving the City's use restriction and reversion of assets requirements in place on the property until transferred to a replacement property or until 2043, whichever occurs first.

VOTE: 3 - 4 (Councilmember Whittum, Vice Mayor Griffith, Councilmembers Martin-Milius and Davis dissented)
Motion failed.

MOTION: Councilmember Whittum moved and Moylan seconded the motion to bring back a modified version of Alternative 1: Forgive the debt now, including principal and interest accrued to date (\$525,000) as requested, leaving the City's use restriction and reversion of assets requirements in place on the property until transferred to a replacement property or until 2043, whichever occurs first, subject to staff researching and coming back with modification of the language to include terms that in the unlikely event Sunnyvale Community Services should cease to provide those services, the City would be entitled to and have priority to the equity remaining in that operation so that the City could have control over transferring it to some similar service.

VOTE: 5 - 2 (Vice Mayor Griffith and Councilmember Davis dissented)

MOTION: Councilmember Meyering moved to continue the remaining items on the agenda to the next Council meeting and make them number 1 and number 2 on the next Council meeting and this Council meeting be adjourned immediately.
Motion died for lack of a second.

7. RTC 13-201 Discussion and Possible Action to Adopt Resolutions to Initiate the Annexation Process for Two Island Areas Located within the City of Sunnyvale Urban Service Area but Currently under the County of Santa Clara's Jurisdiction (Central Expressway and Butcher's Corner)

Planning Officer Trudi Ryan presented the staff report.

Public Hearing opened at 12:12 a.m.

Don Haislet spoke in support of holding a hearing and the principle of the annexation.

Sameen Bhola spoke in support of a public hearing on the annexation.

ATTACHMENT B

Letter from Sunnyvale Community Services
dated November 4, 2013



Sunnyvale Community Services

725 Kifer Road, Sunnyvale, CA 94086 408.738.4321

Working to Prevent Homelessness and Hunger

November 4, 2013

Mr. Gary Luebbers
City Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086

Re: Request for CDBG Loan Forgiveness for Sunnyvale Community Services

Dear Mr. Luebbers,

I am writing to update the City of Sunnyvale on the request from Sunnyvale Community Services for forgiveness of our CDBG loan principal and interest. We originated our request to the City of Sunnyvale in April of this year, and have since spoken on the topic with City staff as well as with each of the City Council Members. The issue was presented to the City Council for consideration on August 27th (RTC 13-206). At that meeting, the following motion was approved, per the City Council meeting minutes:

MOTION: Councilmember Whittum moved and Moylan seconded the motion to bring back a modified version of Alternative 1: Forgive the debt now, including principal and interest accrued to date (\$525,000) as requested, leaving the City's use restriction and reversion of assets requirements in place on the property until transferred to a replacement property or until 2043, whichever occurs first, subject to staff researching and coming back with modification of the language to include terms that in the unlikely event Sunnyvale Community Services should cease to provide those services, the City would be entitled to and have priority to the equity remaining in that operation so that the City could have control over transferring it to some similar service.

VOTE: 5 - 2 (Vice Mayor Griffith and Councilmember Davis dissented)

The City of Sunnyvale staff has diligently worked with us to verify the requirements and terms necessary to meet all CDBG federal requirements from the Department of Housing and Human Services (HUD) as well as the requirements from members of the City Council.

Based on our understanding of federal regulations and the requests from the City Council cited above, we are amending our request for immediate forgiveness of the loan and interest as follows on pages two and three of this document.

Sunnyvale Community Services respectfully requests the following from the City of Sunnyvale:

- a) Defer all payments on Sunnyvale Community Services CDBG loan of \$400,000 to end of term (2038).
- b) Forgive all interest accrued to date and reduce interest rate to 0% for remainder of term.
- c) Forgive the entire loan balance due at end of term (April, 2038).

In addition, if Sunnyvale Community Services vacates the current property or sells and acquires new property before April, 2043:

- a. *CDBG reversion of assets payment will be due, based on approximately 17% of appraised value of 725 Kifer at that time. **
- b. At that time, we ask that the City of Sunnyvale will consider, at Sunnyvale Community Services' request, converting the reversion of assets payment to a new loan on the new property, subject to:
 - i. *Public hearing at the time property transfer is proposed.*
 - ii. *New loan secured by new property with term ending in 2038 (new CDBG use restriction and deed of trust).*
 - iii. Terms requested would be 0% interest and forgiveness at end of term in line with the original request to the City of Sunnyvale.
 - iv. *New property will also be subject to reversion of assets requirement for 5 years after end of term (total through 2043).*
 - v. With adequate notice (~60 days), both transactions (payment and new loan) could be handled in same escrow.
- c. If Sunnyvale Community Services does not need CDBG funds to acquire the new property due to other available resources, Sunnyvale Community Services may request a grant instead of a loan, which could be used for another CDBG eligible activity (i.e. CBDO activity, etc.). *Public hearing also required for grant approval. **

** Items above in italics are non-waivable HUD requirements.*

Our commitment to Sunnyvale:

1. The Board of Directors of Sunnyvale Community Services is firmly committed to continue our mission to prevent homelessness and hunger for low-income families and seniors in Sunnyvale, as noted in the agency's by-laws. *(A copy of the agency by-laws is attached.)*
2. If the loan and interest are forgiven, the Board of Directors that, in lieu of mortgage and interest payments, the agency would budget these funds to directly help low-income families and seniors. The Board would allocate, as of April,

- 2018, \$3,217 per month (\$38,604 per fiscal year) for direct financial assistance for low-income families and seniors in Sunnyvale, over the period of 240 months (20 years). These funds will be included in our annual budget for financial aid for rent, rental deposits, utility bills, and other emergency financial needs. 100% of this financial aid will be given for direct assistance, with no funds used for overhead or administration expenses. The amount will be noted in our annual budgets as part of the agency's annual emergency financial assistance.
3. Furthermore, if the CDBG mortgage and interest are forgiven, the Board of Directors will formally recognize that the City of Sunnyvale continues to have a vested interest in the agency's facilities at 725 Kifer Road, Sunnyvale, CA, 94086 equal to approximately 17% of the fair market value of the property, through April, 2043, complying with all HUD regulations.

Please let me know if you have any questions about this request.

Best Regards,



Marie Bernard
Executive Director

cc: Mayor Anthony Spitaleri, Mayor, City of Sunnyvale
Members of the City Council, City of Sunnyvale
Hanson Hom, Director of Community Development, City of Sunnyvale
Suzanne Ise, Housing Officer, City of Sunnyvale
Deborah Owens, Board President, Sunnyvale Community Services
Thomas McEvoy, Board Treasurer, Sunnyvale Community Services

BY-LAWS OF SUNNYVALE COMMUNITY SERVICES **updated 6/28/11**

ARTICLE I. OFFICES

SECTION 1. PRINCIPAL OFFICE

The principal office of the corporation for the transaction of its business is located in Santa Clara County, California.

SECTION 2. CHANGES OF ADDRESS

The county of the corporation's principal office can be changed only by amendment of these By-Laws. The Board of Directors may, however, change the principal office from one location to another within Santa Clara County. Such change of address shall not be deemed an amendment of these By-Laws.

SECTION 3. OTHER OFFICES

The corporation may also have offices at such other places, within or without the State of California, where it is qualified to do business, as its business may require and as the Board of Directors may, from time to time, designate.

ARTICLE II. PURPOSES

SECTION 1. OBJECTIVES AND PURPOSES

Mission

The mission of Sunnyvale Community Services is to prevent homelessness and hunger for low-income Sunnyvale residents facing temporary crises.

Programs

To fulfill the mission, the programs of the agency include:

- financial help to prevent evictions and utility disconnections, to pay medical and other critical bills
- emergency and monthly food distribution
- Community Christmas Center
- Other in-kind assistance

- information and referral services
- staff and volunteer provided translation services
- outreach education and information services

ARTICLE III. MEMBERS

SECTION 1. MEMBERSHIP

This corporation shall make no provision for members.

ARTICLE IV. DIRECTORS

SECTION 1. NUMBER AND COMPOSITION

The corporation shall have a minimum of fifteen and a maximum of twenty-one Directors and collectively they shall be known as the Board of Directors. A majority of the board must live or work in Sunnyvale, and all Directors, must live, work or have demonstrated interest in the City of Sunnyvale.

SECTION 2. POWERS

Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and any limitations in the Articles of Incorporation and By-Laws, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

SECTION 3. DUTIES

It shall be the duty of the Board of Directors to:

- a) Perform any and all duties imposed on it collectively or individually by law, by the Articles of Incorporation of Sunnyvale Community Services and by these By-Laws.
- b) Develop policies by which the objectives and purposes of this corporation will be fulfilled.
- c) Employ, discharge, prescribe the duties and fix the compensation of the Executive Director.
- d) Meet at such times and places as required by these By-Laws to fulfill its legal responsibilities as trustees of the corporation and to duly communicate any projected absence.

- e) Register addresses and contact information with the Secretary of the corporation.
- f) Serve on one of the standing committees formed by the Board.
- g) Actively participate in fundraising and fund development functions.

SECTION 4. ELECTION AND TERMS OF OFFICE

Nominations to the board will be reviewed by the Executive Committee. Nominations will be considered to fill seats being vacated during the year or during annual election time. Nominees recommended by the Executive Committee will be presented to the Board for vote. Annual election shall occur at the May or June Board meeting. Each Director shall cast one vote for each nominee, and candidates receiving a majority vote by the standing Board shall become members.

Typically, the terms of office shall begin July 1 following the election for a three-year term. Consecutive terms shall be limited to two full terms. After serving two consecutive terms, a Director may serve for up to two more terms after a one-year absence from the Board. A Director may only serve a maximum of twelve years. Tenure shall be arranged so that one-third of the terms expire annually.

SECTION 5. COMPENSATION

Directors shall serve without financial remuneration. Actual and necessary expenses may be reimbursable in accordance with established policies of the corporation.

SECTION 6. RESTRICTION REGARDING INTERESTED DIRECTORS

Notwithstanding any other provision of these By-Laws, not more than two of the Directors serving on the Board may be interested persons. For purposes of this Section, "interested persons" means either:

- a) any person currently being compensated by the corporation for services rendered it within the previous twelve (12) months, whether as a full or part-time employee, independent contractor, or otherwise.; or
- b) any sibling, parent, child, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

SECTION 7. PLACE OF MEETINGS

Meetings shall be held at the principal office of the corporation unless otherwise designated by the Board of Directors.

SECTION 8. REGULAR MEETINGS

Regular meetings of Directors shall be held monthly unless rescheduled or cancelled at a Board meeting or by the Executive Committee. The Board shall hold a regular meeting no less than quarterly.

SECTION 9. SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by the President, the Vice-President, the Secretary or by any two Directors. Such meetings shall be held as determined in Section 10.

SECTION 10. NOTICE OF MEETINGS

Board members will be notified of all Board meetings and of any special meetings with as much advance notice as possible. Whenever possible, meeting materials will be sent to Board members prior to any Board meeting.

SECTION 11. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board may be taken without a meeting, if two-thirds of the Board consent to such action. Such consent shall be filed with the minutes of the Board meeting following such action. Such action shall have the same force and effect as a majority vote of such Directors at an official meeting.

SECTION 12. QUORUM FOR MEETINGS

A quorum shall consist of a majority of the Board, not including vacant positions.

Except as otherwise provided in the Articles of Incorporation, in these By-Laws, or by law, every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board.

The Directors present at a meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum due to a withdrawal of Directors, provided that any action thereafter taken must be approved by at least a majority of the required quorum or such greater percentage as may be required by law.

SECTION 13. CONDUCT OF MEETINGS

Meetings of the Board of Directors shall be presided over by the President of the Board or, in the President's absence, by the Vice-President or in both their absences, by a Chairman chosen by a majority of the Directors present.

In the event of the Secretary's absence, the presiding officer shall appoint another person to act as Secretary of the meeting.

Meetings shall be governed by *Roberts' Rules of Order*, provided, however, that the Articles of Incorporation and these By-Laws shall govern in the event of a conflict.

SECTION 14. VACANCIES

Vacancies on the Board of Directors shall exist: (1) on the death, resignation or removal of any Director and (2) whenever the number of authorized Directors is increased.

Directors may be removed without cause by a vote of two-thirds of the Directors in office.

Any Director may resign upon giving written notice to the President or the Secretary of the Board. A Director may not resign if the corporation would then be left without a duly-elected Director in charge of its affairs, except upon compliance with the state and federal law.

Vacancies on the Board may be filled by a majority of Directors then in office, or by a sole remaining Director.

A Director elected to fill a vacancy as provided in this Section shall hold office until the expiration of the term of the vacancy.

SECTION 15. NON-LIABILITY OF DIRECTORS

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

ARTICLE V. OFFICERS

SECTION 1. NUMBER OF OFFICERS

The officers of this corporation shall be a President, a Vice-President, a Secretary and a Treasurer.

SECTION 2. QUALIFICATION, ELECTION, AND TERM OF OFFICE

Any Board member may serve as officer of this corporation. Officers shall be elected by the Board of Directors immediately following the Board election. Each officer shall hold office for one year or until he or she resigns or is removed or is otherwise disqualified to serve.

SECTION 3. SUBORDINATE OFFICERS

The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority and perform such duties as may be prescribed by the Board of Directors.

SECTION 4. REMOVAL AND RESIGNATION

Any officer may be removed, either with or without cause, by the Board of Directors at any time.

Any officer may resign at any time by giving written notice to the President or Secretary of the corporation.

SECTION 5. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the President until such time as the Board shall fill the vacancy. Vacancies occurring in offices appointed at the discretion of the Board may or may not be filled as the Board shall determine.

SECTION 6. DUTIES OF THE PRESIDENT

The President shall, subject to the control of the Board of Directors, supervise and control the affairs of the corporation and the activities of the officers. The President shall perform all duties incident to the office and such other duties as may be required by law or which may be prescribed from time to time by the Board of Directors.

The President shall have authority to act on behalf of the Board in the event of an emergency in which Board approval is required and the time constraints do not allow for compliance with the other meeting and approval options as contained within these By-Laws. Any such action taken by the President shall be submitted to the Board for ratification at its next regular meeting.

Whereas the Board of Directors shall designate most administrative responsibilities to the Executive Director, in the event of a vacancy in that position, the President shall assume the responsibilities of Chief Executive Officer of the corporation.

SECTION 7. DUTIES OF VICE-PRESIDENT

In the absence of the President, or in the event of the President's inability or refusal to act, the Vice-President shall perform all the duties of the President, and, when so acting, shall have all the powers of, and be subject to all the restrictions on, the President. The Vice-President shall have other powers and perform such other duties as may be prescribed by law or by the Board of Directors.

SECTION 8. DUTIES OF SECRETARY

The Secretary shall:

Certify and keep at the principal office of the corporation the original of these By-Laws and subsequent amendments.

Keep at the principal office of the corporation a book of minutes of all meetings of the Directors, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof and the names, addresses and terms of office for

each member of the Board.

See that all notices are duly given in accordance with the provisions of these By-Laws or as required by law.

See that the seal is affixed to all duly executed documents.

Exhibit at all reasonable times to any Director of the corporation, or to the Director's agent or attorney on request, the By-Laws, and the minutes or the proceedings of the Board of Directors.

In general perform all duties incident to the office of Secretary, and such other duties as may be required by law, by Articles of Incorporation, or by the By-Laws, or which may be assigned to the Secretary by the Board of Directors.

SECTION 9. DUTIES OF TREASURER

Subject to the provisions of these By-Laws relating to the "Execution of Instruments, Deposits and Funds" (Article VII, Sections 1 and 3), the Treasurer shall:

Verify deposits of all funds made in the name of the corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

Verify receipts for monies due and payable to the corporation from any source.

Verify disbursement of funds of the corporation and proper recording for such disbursements.

Oversee the maintenance of adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

Exhibit at all reasonable times the books of account and financial records to any Director, or to the Director's agent or attorney upon request.

Render to the President and Directors, whenever requested, at all reasonable times, an account of the financial condition of the corporation.

Prepare, or cause to be prepared, the financial statements to be included in any required reports.

In general, perform all duties incident to the office of Treasurer, and such other duties as may be required by law, the Articles of Incorporation, or the By-Laws, or which may be assigned to the Treasurer by the Board of Directors.

ARTICLE VI. COMMITTEES

SECTION 1. EXECUTIVE COMMITTEE

The Executive Committee shall be comprised of the President, Vice-President, Secretary, Treasurer and immediate past-President of the Board. The Board may delegate to such Committee any of its powers and authority in the management of the business and affairs of the corporation, except with respect to:

- a) The approval of any action which, under law or the provisions of these By-Laws, requires the approval of the members or of a majority of all of the members.
- b) The filling of vacancies on the Board of Directors.
- c) The amendment or repeal of By-Laws or the adoption of new By-Laws.
- d) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable.
- e) The approval of any transaction to which this corporation is a party and in which one or more of the Directors has a material financial interest.

By a majority vote, the Board of Directors may at any time revoke or modify any or all of the authority so delegated, increase or decrease, but not below two (2), the number of its members, and fill vacancies therein from the members of the Board. The Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report to the Board as required.

SECTION 2. STANDING COMMITTEES

The Board of Directors shall designate standing committees to oversee matters essential to the welfare of the corporation. Duties of these standing committees shall include, but not be limited to, the following responsibilities:

- a) Budget formulation, financial accounting and auditing, fund development, and financial planning.
- b) Program development, program evaluation, and long-range planning.
- c) Public relations, community relations, and special events.

The President shall appoint the Chairman of each standing committee. Other members shall be appointed by the Executive Committee. Standing committees shall be comprised of three or more members of the Board and may additionally include persons who are not members of the Board. The President and the Executive Director shall be ex-officio members of each standing

committee.

Standing committees shall serve for one year concurrent with the Corporation fiscal year.

All decisions of standing committees shall be by majority vote. A vacancy in any standing committee shall be filled by the appointer.

SECTION 3. OTHER COMMITTEES

The Board of Directors may designate other committees. Such other committees may consist of persons who are not also members of the Board. These additional committees shall act in an advisory capacity.

ARTICLE VII. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

SECTION 1. EXECUTION OF INSTRUMENTS

The Board of Directors, except as otherwise provided in these By-Laws, may authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

SECTION 2. CHECKS AND NOTES

Except as otherwise determined by the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by two members of the Executive Committee.

SECTION 3. DEPOSITS

All funds of the corporation shall be deposited to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

SECTION 4. GIFTS

The Board of Directors may accept on behalf of the corporation any contribution, gift or bequest for the charitable or public purposes of this corporation.

ARTICLE VIII. CORPORATE RECORDS, REPORTS AND SEAL

SECTION 1. MAINTENANCE OF CORPORATE RECORDS

The corporation shall keep at its principal office in the State of California:

- a) minutes of all meetings of Directors, indicating the time and place of holdings such meeting, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof.
- b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses.
- c) A copy of the corporation's Articles of Incorporation and By-Laws as amended to date.

SECTION 2. CORPORATE SEAL

The Board of Directors may adopt, use and, at will, alter, a corporate seal. Such seal shall be kept at the principal office of the corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

SECTION 3. DIRECTORS' INSPECTION RIGHTS

Every Director shall have the right at any reasonable time to inspect the corporation's books, records and documents, except those excluded by law, and to inspect the physical properties of the corporation.

SECTION 4. ANNUAL REPORT

The Board shall cause an annual audit to be furnished by an independent accountant, according to generally accepted auditing standards, to all Directors of the Corporation.

ARTICLE IX. FISCAL YEAR

SECTION 1. FISCAL YEAR OF THE CORPORATION

The fiscal year of the corporation shall consist of the twelve (12) months beginning on the first day of July and ending on the 30th day of June.

ARTICLE X. BY-LAWS

SECTION 1. AMENDMENT

Subject to any provision of law applicable to the amendment of By-Laws of public benefit, non-profit corporations, these By-Laws, or any of them, may be altered, amended or repealed, and new By-Laws adopted by approval of a two-thirds majority of the Board of Directors, provided that the proposed amendment has been submitted in writing to each Director at least ten (10)

days before the action is taken.

ARTICLE XI. ARTICLES OF INCORPORATION

SECTION 1. AMENDMENT OF ARTICLES

Amendment of the Articles of Incorporation may be adopted by the approval of a two-thirds majority of the Board of Directors, provided that the proposed amendment has been submitted in writing to each Director at least ten (10) days before the action is taken. Such amendments must meet state and federal laws and be reported as required.

This is to certify that the foregoing is a true and correct copy of the By-Laws of Sunnyvale Community Services, and that such By-Laws were duly adopted by the Board of Directors of Sunnyvale Community Services at the regularly scheduled meeting on the date below.

June 28, 2011

ATTACHMENT C

Draft Loan Amendment Agreements:

1. Amendment to Promissory Note
2. Amendment to Loan Agreement

**AMENDMENT TO
CITY OF SUNNYVALE DEVELOPMENT BLOCK GRANT LOAN
PROMISSORY NOTE
FOR SUNNYVALE COMMUNITY SERVICES
AT 725 KIFER ROAD, SUNNYVALE, CALIFORNIA**

This Amended Promissory Note ("Amendment") dated December ___, 2013, is by the undersigned Sunnyvale Community Services, a California nonprofit public benefit corporation (the "Borrower"), to modify certain terms of the Four Hundred Thousand Dollar (\$400,000.00) Promissory Note issued to the City of Sunnyvale ("City") dated April 15, 2003, using federal Community Development Block Grant ("CDBG") funds to assist Borrower's acquisition of the property located at 725 Kifer Road in Sunnyvale, California (the "Property").

RECITALS

WHEREAS, on April 15, 2003, Borrower executed a Promissory Note ("Note") of \$400,000 in CDBG funds at 3% simple interest, partially deferred to assist Borrower's acquisition of the Property; and

WHEREAS, the Note requires Borrower to begin making monthly loan payments of \$3,217, for an annual total of \$38,604, to Lender beginning May 1, 2018, and continuing through May 1, 2038, to fully pay off the Note ("Note Term"); and

WHEREAS, Borrower has asked the City to eliminate the Note interest, defer the required Note payments and forgive the Note balance at the end of the Note Term so that Borrower may use the funds required for such payments to provide needy families with emergency financial assistance to prevent homelessness; and

WHEREAS, the parties now agree that this Amendment to the Note is advisable.

NOW, THEREFORE, THE BORROWER EXECUTES THIS AMENDMENT TO THE NOTE:

1. Section 1 shall be amended as follows:

1. Interest.

All interest accrued to this date shall be forgiven and the interest rate is reduced to 0% for the remainder of the Note Term.

2. Section 2.2 shall be amended as follows:

2.2. The Note shall be paid as follows:

No monthly installment payments shall be due and the entire Loan amount shall be forgiven at the end of the Note Term if all other terms and conditions are satisfied. In exchange for this benefit, Borrower agrees that beginning April 1, 2018, an additional \$3,217.00 per month (\$38,604 annually) and over the period of 240 months (20 years) shall be committed for low-income families and seniors in Sunnyvale. 100% of this financial assistance shall be used for

direct assistance for rent, rental deposits, utility bills and other emergency financial needs, and will not be used for any Borrower overhead or administrative expenses.

3. Section 5 shall be amended as follows:

5. Intended Use.

This property must be used for the purpose of providing comprehensive emergency assistance for the initial Note period of thirty-five (35) years, unless otherwise approved by the City of Sunnyvale. Additionally, in accordance with the CDBG requirements in 24 CFR 570.503, the reversion of assets clause requires the Property to be used for CDBG-eligible activities for an additional five (5) year period following the end of the Note Term. This reversion of assets period ("ROA Period") ends on April 15, 2043. If for any reason Borrower transfers the Property, or ceases to use the Property for the primary purpose of providing CDBG-eligible services to Sunnyvale residents at any time prior to the end of the ROA Period, Borrower shall pay City a reversion of assets payment in an amount equal to seventeen percent (17%) of the then-current appraised fair market value of the Property upon transfer or cessation of use for CDBG-eligible activities, in accordance with 24 CFR 570.503.

All other terms and conditions of the Note not expressly modified herein shall remain in full force and effect.

Executed by Borrower on December ____, 2013

SUNNYVALE COMMUNITY SERVICES,
A non-profit benefit corporation

By _____
Marie Bernard
Executive Director

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

**No fee for recording pursuant to
Government Code Section 27383**

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**AMENDMENT TO LOAN AGREEMENT FOR
THE PROVISION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS
FOR SUNNYVALE COMMUNITY SERVICES
AT 725 KIFER ROAD, SUNNYVALE, CALIFORNIA**

This Amended Loan Agreement ("Amendment") is entered into on December ____, 2013, by and between the City of Sunnyvale (the "City") and Sunnyvale Community Services, a California nonprofit public benefit corporation (the "Borrower"), to modify certain terms of the Loan Agreement between the City and the Borrower dated April 15, 2003, using federal Community Development Block Grant ("CDBG") funds to assist Borrower's acquisition of the property located at 725 Kifer Road in Sunnyvale, California (the "Property").

RECITALS

WHEREAS, on April 15, 2003, the City provided a loan of \$400,000 in CDBG funds at 3% simple interest, partially deferred, (the "Loan") to Borrower to assist Borrower's acquisition of the Property in accordance with the Loan Agreement dated April 15, 2003, and recorded in the Official Records of the County of Santa Clara as Recorder's Document Number 16972135; and

WHEREAS, the Loan Agreement requires Borrower to begin making monthly loan payments of \$3,217, for an annual total of \$38,604, to Lender beginning May 1, 2018, and continuing through April 1, 2038, to fully pay off the Loan ("Loan Term"); and

WHEREAS, Borrower has asked the City to eliminate the loan interest, defer the required loan payments and forgive the Loan balance at the end of the Loan Term so that Borrower may use the funds required for such payments to provide needy families with emergency financial assistance to prevent homelessness; and

WHEREAS, the parties now agree that this Amendment to the Loan Agreement is advisable.

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO THE LOAN AGREEMENT:

1. Section 1.02 (a) shall be amended as follows:

Section 1.02 Loan Repayment.

a. Loan Amount. The total Loan amount disbursed to Borrower is Four Hundred Thousand Dollars (\$400,000.00). The interest accrued to date is forgiven and the interest rate is reduced to 0% for the remainder of the Loan Term. No monthly installment payments shall be due and the entire Loan amount shall be forgiven at the end of the Loan Term if all other terms and conditions are satisfied. In exchange for this benefit, Borrower agrees that beginning April 1, 2018, an additional \$3,217.00 per month (\$38,604 annually) and over the period of 240 months (20 years) shall be committed for low-income families and seniors in Sunnyvale. 100% of this financial assistance shall be used for direct assistance for rent, rental deposits, utility bills and other emergency financial needs, and will not be used for any Borrower overhead or administrative expenses.

2. Section 2.04 (b) shall be amended as follows:

Section 2.04 Project Requirements.

b. Intended Use. This property must be used for the purpose of providing comprehensive emergency assistance for the initial loan period of thirty-five (35) years, unless otherwise approved by the City of Sunnyvale. Additionally, in accordance with the CDBG requirements in 24 CFR 570.503, the reversion of assets clause requires the Property to be used for CDBG-eligible activities for an additional five (5) year period following the end of the Loan Term. This reversion of assets period ("ROA Period") ends on April 15, 2043. If for any reason Borrower transfers the Property, or ceases to use the Property for the primary purpose of providing CDBG-eligible services to Sunnyvale residents at any time prior to the end of the ROA Period, Borrower shall pay City a reversion of assets payment in an amount equal to seventeen percent (17%) of the then-current appraised fair market value of the Property upon transfer or cessation of use for CDBG-eligible activities, in accordance with 24 CFR 570.503.

3. Section 2.04 (c) shall be added as follows:

c. Acquisition of New Property. If the Borrower sells the Property and acquires a new property before the expiration of the ROA period, Borrower may request that City re-use any reversion of assets payment it may receive from Borrower to make a new loan secured against the new property or a grant to be used for another CDBG eligible activity. City has full discretion over whether or not to grant any future request subject to all applicable laws and regulations, including the requirement of a full public hearing in front of the City Council to adopt such request.

All other terms and conditions of the Loan Agreement not expressly modified herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Loan Agreement.

[Signatures on following page]

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

SUNNYVALE COMMUNITY SERVICES
("BORROWER")

By _____
City Attorney

By _____
Marie Bernard
Executive Director

[Attach notary pages]