

RESOLUTION 2012 - 02

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING AND AUTHORIZING
THE CITY MANAGER TO SIGN THE SECOND AMENDMENT OF AGREEMENT
WITH SUNNYSIDE'S PROMISE REGARDING COMMUNITY CENTER**

WHEREAS, by Agreement dated February 22, 2010, (hereinafter "Agreement"), the City of Sunnyside (hereinafter "City"), entered into an Agreement for Sunnyside's Promise (hereinafter "Promise") to manage, operate and maintain the City's Community Center (hereinafter "Community Center"), as a community facility in order to meet the social, cultural, educational and recreational needs and desires of members of the public, all in accordance with the provisions, terms and conditions of the Agreement;

WHEREAS, the Community Center managed and operated by Promise provides social, cultural, educational and recreational programs for residents of the City, including but not limited to, youth activities and a safe place for youth after school and in the evenings;

WHEREAS, Promise lacks funding and resources for calendar year 2012 to provide a coordinator for the Community Center and janitorial services to maintain the Community Center, which is necessary for its continued management, operation and maintenance; and

WHEREAS, continued operation of the Community Center by Promise is in the best interest of the City and the health, safety and welfare of the City's residents;

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

SECTION 1. That the Sunnyside City Council hereby approves the Second Amendment of Agreement with Sunnyside's Promise modifying the Agreement and specifically providing \$51,700.97 of funding during calendar year 2012 as more fully detailed in the attached Exhibit "A;" and the City Manager is hereby authorized to execute such amendment of agreement for and on behalf of the City of Sunnyside and to take all actions reasonable and necessary to administer performance of such agreement.

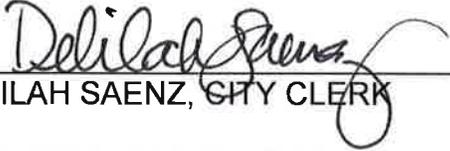
SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 9th day of January, 2012.



MIKE FARMER, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys for the City of Sunnyside

**SECOND AMENDMENT OF
PARTNERSHIP AGREEMENT
("OPERATIONS AGREEMENT")
between the
City of Sunnyside, Washington
and
Sunnyside's Promise**

THIS AMENDMENT, made this 9th day of January, 2012, amends that certain Partnership Agreement by and between the **CITY OF SUNNYSIDE**, a Washington municipal corporation (herein called "City"), and **SUNNYSIDE'S PROMISE** (herein called "Promise"), a nonprofit organization.

WITNESSETH:

WHEREAS, by Partnership Agreement dated February 22, 2010 (herein called "Operations Agreement"), the parties entered into an Operations Agreement for Promise to manage, operate and maintain the City's Community Center (herein called "Community Center"), as a community facility in order to meet the social, cultural, educational and recreational needs and desires of members of the public, all in accordance with the provisions, terms and conditions of the Operations Agreement;

WHEREAS, due to Promise's lack of funding and resources in 2011 to provide a coordinator for the Community Center and janitorial services to maintain the Community Center, the City and Promise amended the Operations Agreement for the City to provide funding for continued management, operation and maintenance of the Community Center from April 2011, through December 2011; and

WHEREAS, Promise continues to lack funding and resources for 2012 to provide a coordinator for the Community Center and janitorial services to maintain the Community Center, which is necessary for its continued management, operation and maintenance; and

WHEREAS, the Community Center managed and operated by Promise provides social, cultural, educational and Community Center recreational programs for residents of the City, including but not limited to, youth activities and a safe place for youth after school and in the evenings;

WHEREAS, continued operation of the Community Center by Promise is in the best interest of the City and the health, safety and welfare of the City's residents;

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Section 1, General Responsibilities of Promise, is amended to read as follows:

It is the intention of Promise to develop funding and services for the Community Center. Promise will seek grant opportunities to provide the means to fund the Community Center as well as bring valuable services to the community at large. It is

EXHIBIT "A"

Promise's intention to focus but not limit its efforts to bringing youth opportunities to the Community Center.

Promise shall manage, operate and maintain the Community Center consistent with City policies and with the general concepts of community action in order to meet the social, cultural, educational and recreational needs and desires of the community, and in such other fields as are consistent with this Agreement and the general uses of a nonprofit community facility. Promise will maintain the following minimum Community Center hours of operation: weekdays from 1:30 p.m. until 8:00 p.m., and Saturday from 10:00 a.m. until 6:00 p. m. (a minimum of 40.5 hours per week), or as such hours of operation may be modified with approval of the City Manager; provided, however, that the Community Center may be closed on legal holidays. Promise, at its option, may also keep the Community Center open to serve the public during evening hours and weekends. On Sunday through Thursday, no event shall occur or continue past 11:00 p.m. On Friday's and Saturday's, no event shall occur or continue past 1:00 a.m.

Promise shall provide staffing personnel necessary and appropriate to insure the safety and security of the Community Center and program participants. Promise shall be responsible for obtaining, and for requiring tenants and licensees to obtain and provide to Promise, any necessary background checks of paid personnel and volunteers in accordance with applicable provisions of state law, including but not limited to, background checks of persons with unsupervised access to children or vulnerable persons (RCW 43.43.830 et seq.).

Promise shall, at its sole expense and cost, promptly pay all costs of administration, operation and staffing expenses, with exception of those services and expenses to be provided or paid by the City as specifically provided in this Agreement. All services provided by Promise under this Agreement shall be provided by persons employed by Promise or by independent contractors retained by Promise.

Promise agrees to perform the services contemplated by this Agreement in consideration of the community action benefits to be derived hereunder. Except as provided herein, the City shall have no obligation to pay Promise for such services. Any funds received by Promise from the City under this Agreement shall be used exclusively by Promise to provide the services contemplated by this Agreement.

2. Section 2, General Responsibilities of City, is amended to read as follows:

City will provide for IT technical assistance within the Community Center to troubleshoot third party vendor connection problems (phone, fiber optics or internet connectivity issues). The City shall provide the following services to the Community Center: all utilities at no cost to Promise. The City will cover the cost of local phone service, alarm, and internet connections for 2012. City shall endeavor to provide facility maintenance and/or capital improvements anticipated and funded in the annual budget, except to the extent that funds have been re-appropriated by the Sunnyside City Council and specifically withheld for disbursement by the City Manager or his designee. Such appropriations involve the legislative prerogative of the City Council, and no assurance can be given that appropriated funds will be available in any particular year. In addition, the City will provide the following funds to Promise for the management, operation and maintenance of the Community Center:

<u>Date</u>	<u>Amount</u>
01/31/2012	\$4,308.45
02/29/2012	4,308.41

EXHIBIT "A"

03/31/2012	4,308.41
04/30/2012	4,308.41
05/31/2012	4,308.41
06/30/2012	4,308.41
07/31/2012	4,308.41
08/32/2012	4,308.41
09/30/2012	4,308.41
10/31/2012	4,308.41
11/30/2012	4,308.41
12/31/2012	4,308.41
<u>TOTAL</u>	<u>\$51,700.97</u>

3. Section 3, Term of Agreement, is amended to read as follow:

Unless terminated in accordance with Section 23, the term of this Agreement shall be for a period of approximately three (3) years, commencing upon date of execution of this Agreement and terminating at midnight December 31, 2012; provided, however, that the parties may, by mutual agreement, extend this Agreement for an additional three-year term or terms. In the event Promise desires to extend such Agreement for any such additional term, it will so notify the City, in writing, at least six months prior to the day of termination. Either Promise or City may exercise the option of providing a written 30-day notice of termination from this agreement. In the event Promise is deemed by the City to be performing its responsibilities hereunder in a satisfactory manner, then consideration will be given by the City to such requested extension of the term of this Agreement.

4. Section 20, Independent Contractor, is amended to read as follows:

The term partnership as used in this Agreement is not intended to create a legal relationship between the City and Promise but is instead used by the parties to express their intent to cooperate to benefit the youth of Sunnyside and the community in general. It is agreed and understood that Promise is an independent contractor and not a joint venturer with or employee or agent of the City. Throughout the term of this Agreement, Promise shall provide and maintain for its employees workers' compensation insurance, Social Security, Federal Income Tax deductions, and any other taxes or payroll deductions required by law. It is further understood and agreed that the Promise is not a tenant of the City.

5. Confirmation and Ratification of Agreement.

Except as amended herein, the Operations Agreement is hereby confirmed and ratified in all respects.

WHEREFORE, this Amendment is deemed executed on the date first referenced above, being the date this Amendment was executed by the last party to sign.

EXHIBIT "A"

CITY OF SUNNYSIDE

SUNNYSIDE'S PROMISE

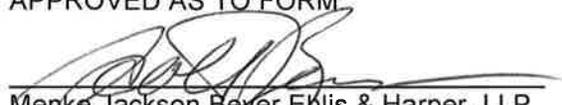
By: _____
Mark Gervasi, City Manager

By: _____
Mark Baysinger, Executive Director

ATTEST:

Delilah Saenz, City Clerk

APPROVED AS TO FORM:



Menke Jackson Beyer Ehlis & Harper, LLP
Attorneys for the City of Sunnyside