

RESOLUTION 2012 - OB

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, APPROVING AND AUTHORIZING  
THE CITY MANAGER TO SIGN AGREEMENT WITH SUNNYSIDE'S PROMISE FOR  
YOUTH PROGRAMS and PARKS AND RECREATIONAL PROGRAMS**

**WHEREAS**, the City has historically provided recreational services and programs for youth within the City; and

**WHEREAS**, the City Council in public hearings and in appearances by citizens at Council meetings has heard testimony concerning gang activity, gang violence and related crimes and their seriously adverse impact upon the health, safety and welfare of residents of the City; and

**WHEREAS**, Sunnyside's Promise is a Washington nonprofit corporation and by Resolution No. 2003-40, adopted by the City Council on May 5, 2003, was recognized by the City as the City's Official Comprehensive Youth and Family Resources Coordinating Agency; and

**WHEREAS**, Sunnyside's Promise is recognized by residents of the City for its afterschool, gang diversion and youth recreational programs, including but not limited to Lucky 7 Bike Program (anti-gang program coordinated and supported by Sunnyside's Promise that involves youth assembling and repairing donated bikes under adult supervision for use and benefit of participants), soccer fields (coordination, support and development of soccer leagues and fields at City's Law and Justice Center), Community Center (operation of City's Community Center providing youth activities and a safe place for youth after school and in the evenings), and administration of grant from Children's Justice Task Force (assistance to victims of minor sex trafficking) and like programs serving the youth of the City [hereinafter referred to collectively as "Youth Programs"]; and

**WHEREAS**, Sunnyside's Promise has been successful in applying for and receiving grants for Youth Programs; and

**WHEREAS**, the City lacks funding resources for a comprehensive recreational and diversion program to address gang activity and violence and youth crimes; and

**WHEREAS**, the City recognizes that the Youth Programs supported, coordinated and operated by Sunnyside's Promise are a needed means of addressing gang activity and violence and related crime in addition to law enforcement; and

**WHEREAS**, the City for the period March through December, 2011, provided funding to Sunnyside's Promise for the purpose of Sunnyside's Promise continuing its Youth Programs and for grant writing to obtain additional grants and to procure additional funding sources to continue and expand its Youth Programs within the City; and

**WHEREAS**, Sunnyside's Promise has proposed to provide parks and recreational programs within the City [hereinafter referred to collectively as "Parks and Recreational Programs"]; and

**WHEREAS**, Sunnyside's Promise is in need of funding for its Youth Programs for calendar year 2012 and has estimated that the addition of Parks and Recreational Programs will require additional funding in the amount of \$30,000; and

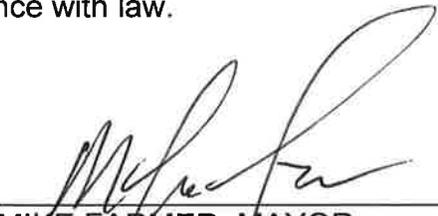
**WHEREAS**, the City finds that it is in the best interest of the City and the health, safety and welfare of the City's residents that Sunnyside's Promise's Youth Programs continue and that Sunnyside's Promise also provide Parks and Recreational Programs within the City;

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

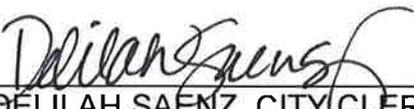
**SECTION 1.** That the Sunnyside City Council hereby approves the Agreement with Sunnyside's Promise for Youth Programs and Parks and Recreation Programs in the form attached Exhibit "A;" and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and 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 9<sup>th</sup> 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

**AGREEMENT**  
**by and between the**  
**CITY of Sunnyside, Washington**  
**and**  
**Sunnyside's Promise**

**THIS AGREEMENT**, is made and entered into this 9th day of January, 2012, by and between the CITY OF SUNNYSIDE, a Washington municipal corporation (herein called "CITY"), and SUNNYSIDE'S PROMISE (herein called "PROMISE"), a Washington nonprofit corporation.

**WITNESSETH:**

**WHEREAS**, the CITY has historically provided recreational services and programs for youth within the CITY; and

**WHEREAS**, the CITY Council in public hearings and in appearances by citizens at Council meetings has heard testimony concerning gang activity, gang violence and related crimes and their seriously adverse impact upon the health, safety and welfare of residents of the CITY; and

**WHEREAS**, PROMISE is a Washington nonprofit corporation and by Resolution No. 2003-40, adopted by the CITY Council on May 5, 2003, was recognized by the CITY as the CITY'S Official Comprehensive Youth and Family Resources Coordinating Agency; and

**WHEREAS**, PROMISE is recognized by residents of the CITY for its afterschool, gang diversion and youth recreational programs, including but not limited to Lucky 7 Bike Program (anti-gang program coordinated and supported by PROMISE that involves youth assembling and repairing donated bikes under adult supervision for use and benefit of participants), soccer fields (coordination, support and development of soccer leagues and fields at CITY'S Law and Justice Center), Community Center (operation of CITY'S Community Center providing youth activities and a safe place for youth after school and in the evenings), and administration of grant from Children's Justice Task Force (assistance to victims of minor sex trafficking) and like programs serving the youth of the CITY [hereinafter referred to collectively as "YOUTH PROGRAMS"]; and

**WHEREAS**, PROMISE has been successful in applying for and receiving grants for YOUTH PROGRAMS; and

**WHEREAS**, the CITY lacks funding resources for a comprehensive recreational and diversion program to address gang activity and violence and youth crimes; and

EXHIBIT "A"

**WHEREAS**, the CITY recognizes that the YOUTH PROGRAMS supported, coordinated and operated by PROMISE are a needed means of addressing gang activity and violence and related crime in addition to law enforcement; and

**WHEREAS**, the CITY for the period March through December, 2011, provided funding to PROMISE for the purpose of PROMISE continuing its YOUTH PROGRAMS and for grant writing to obtain additional grants and to procure additional funding sources to continue and expand its YOUTH PROGRAMS within the CITY; and

**WHEREAS**, PROMISE has proposed to provide parks and recreational programs within the CITY [hereinafter referred to collectively as "PARKS AND RECREATIONAL PROGRAMS"]; and

**WHEREAS**, PROMISE is in need of funding for its YOUTH PROGRAMS for calendar year 2012 and has estimated that the addition of PARKS AND RECREATIONAL PROGRAMS will require additional funding in the amount of \$30,000; and

**WHEREAS**, the CITY finds that it is in the best interest of the CITY and the health, safety and welfare of the CITY'S residents that Promise's YOUTH PROGRAMS continue and that PROMISE also provide PARKS AND RECREATIONAL PROGRAMS within the CITY;

**NOW, THEREFORE, the parties agree as follows:**

**1. Responsibilities of CITY.**

The CITY will provide the following funds to PROMISE for the purpose of PROMISE continuing its YOUTH PROGRAMS and for grant writing to obtain additional grants and to procure additional funding sources to continue and expand its YOUTH PROGRAMS within the CITY. The funds shall be disbursed to PROMISE as follows:

<u>Date</u>	<u>Amount</u>
01/31/2012	\$4,166.67
02/29/2012	4,166.67
03/31/2012	4,166.67
04/30/2012	4,166.67
05/31/2012	4,166.67
06/30/2012	4,166.67
07/31/2012	4,166.67
08/32/2012	4,166.66
09/30/2012	4,166.66
10/31/2012	4,166.66
11/30/2012	4,166.66

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12/31/2012	4,166.66
<u>TOTAL</u>	<u>\$50,000.00</u>

The CITY will also provide the following funds to PROMISE for the purpose of PROMISE providing PARKS AND RECREATIONAL PROGRAMS, to include but not be limited to the programs listed in Exhibit A attached hereto and incorporated herein by reference. The funds shall be disbursed to PROMISE as follows:

<u>Date</u>	<u>Amount</u>
01/31/2012	\$2,500.00
02/29/2012	2,500.00
03/31/2012	2,500.00
04/30/2012	2,500.00
05/31/2012	2,500.00
06/30/2012	2,500.00
07/31/2012	2,500.00
08/32/2012	2,500.00
09/30/2012	2,500.00
10/31/2012	2,500.00
11/30/2012	2,500.00
12/31/2012	2,500.00
<u>TOTAL</u>	<u>\$30,000.00</u>

**2. Responsibilities of PROMISE.**

PROMISE agrees to continue its support, coordination and operation of its YOUTH PROGRAMS within the CITY and shall use its best efforts in grant writing to obtain additional grants and to procure additional funding sources to continue and expand its YOUTH PROGRAMS within the CITY.

PROMISE shall also provide PARK AND RECREATION PROGRAMS within the CITY, including but not limited to the programs listed in Exhibit A attached hereto. PROMISE will collect a fee from each participant in a PARK AND RECREATION PROGRAM in an amount approved by the CITY Manager or the CITY Manager's designee. Fees collected shall be accounted for within fifteen days of the end of each calendar month and remitted to the CITY to defray its funding expense under this Agreement.

PROMISE shall provide staffing personnel necessary and appropriate to support, coordinate, operate and provide the YOUTH PROGRAMS and the PARK AND RECREATION PROGRAMS. PROMISE shall be responsible for obtaining 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 of the YOUTH PROGRAMS and the PARK AND RECREATION PROGRAMS. 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.

**3. Term of Agreement.**

Unless terminated in accordance with the provision below, the term of this Agreement shall commence on the date that this Agreement is executed by the party last party to sign following approval by the CITY'S Council and terminating at midnight December 31, 2012. In the event the CITY determines that PROMISE is not carrying out its responsibilities pursuant to this Agreement, the CITY shall provide PROMISE with written notice specifying the nature and extent of PROMISE'S failure to comply with its responsibilities under this Agreement. If PROMISE does not cure its failure to carry out its responsibilities within thirty (30) days from PROMISE'S receipt of such written notice, this Agreement shall be terminated without further notice and all further responsibility of the CITY to provide funding to PROMISE as provided herein shall cease, and any funds received by PROMISE that have not been obligated shall be refunded to the CITY.

**4. Assignment.**

PROMISE shall not assign this Agreement or the rights or obligations hereunder, without the prior written consent of the CITY.

**5. Indemnity.**

PROMISE agrees to protect, defend, indemnify and hold the CITY, its officers, elected officials, agents and employees, harmless from and against any and all claims, demands, damages, or causes of action, including attorney's fees, of any nature what so ever, for injury or death of persons or loss of or damage to property arising or resulting from PROMISE's performance under this Agreement, except as any such arises or occurs out of the sole negligence of the CITY. PROMISE also agrees to protect, defend, indemnify and hold the CITY, its officers, elected officials, agents and employees, harmless from and against any and all claims, demands, damages, or causes of action, including attorney's fees, for expenses, costs and obligations of PROMISE related to or arising out of this Agreement.

**6. Liability Insurance.**

On or before the effective date of this Agreement, PROMISE shall provide the CITY with a Certificate of Insurance naming the City of Sunnyside as an Additional Insured, on a policy of liability insurance in the amount of Three Million Dollars (\$3,000,000.00), that clearly states who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name PROMISE and the CITY and their officers, elected officials, agents and employees as Additional Insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the CITY ten (10) days prior written notice. The insurance shall be with a responsible insurance company or companies, and a copy of all such policies shall be filed with the CITY.

**7. Reports.**

On or before the following dates during the term of this Agreement, PROMISE shall deliver to the CITY a written report describing in reasonable detail for the prior period during the term of this Agreement, the YOUTH PROGRAMS supported, coordinated and operated by PROMISE and the PARK AND RECREATION PROGRAMS provided by PROMISE: MARCH 31, 2012, June 30, 2012, September 30, 2012 and December 31, 2012. Included in such reports will be statistical and other data sufficient to allow the CITY to ascertain the efficacy of the YOUTH PROGRAMS in addressing gang activity and violence and youth crime, demographic information regarding participants served, and an evaluation by service participants regarding the quality and quantity of service delivery and other such data as the CITY deems helpful in allowing the CITY to determine the effectiveness of the YOUTH PROGRAMS and the PARK AND RECREATION PROGRAMS. Along with such reports, PROMISE shall provide to the CITY copies of (a) any grant applications submitted by PROMISE during the term of this Agreement for the YOUTH PROGRAMS and (b) any reports or information required during the term of this Agreement to be provided by PROMISE to grant and funding sources for the YOUTH PROGRAMS.

**8. Non-Discrimination.**

During the performance of this Agreement, PROMISE shall not discriminate on the basis of race, creed, color, national origin, religion, marital status, age, or the presence of any sensory, mental, or physical disability. This nondiscrimination provision shall include, but not be limited to, the following:

- A. Certifications by PROMISE: PROMISE, by signature below, certifies and agrees to the above non-discrimination clause, and with regard to all operations and services offered and sponsored, agrees and certifies that it will comply with the following:
  - i. Title VI of the Civil Rights Act of 1964: Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or

EXHIBIT "A"

national origin, be excluded from participation, denied program benefits, or subjected to discrimination under any program or activity receiving federal financial assistance.

- ii. Section 504 of the Rehabilitation Act of 1973, as amended: No otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds (29.U.S.C. 794).
- iii. Section 109 of the Housing and Community Development Act of 1974, as amended: No person shall, on the grounds of race, color, or national origin, be excluded from participation, denied program benefits, or subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
- iv. Age Discrimination Act of 1975, as amended: No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance (42 U.S.C. 610 et seq.).
- v. Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act.

B. Operations and non-discrimination. PROMISE will comply with the nondiscrimination provisions above in the YOUTH PROGRAMS and the PARK AND RECREATION PROGRAMS supported, coordinated or operated by PROMISE, including but limited to, the following:

- i. The benefits or services provided by the PROMISE.
- ii. The rules, regulations, and/or practices established by the PROMISE; and
- iii. The employment practices of PROMISE, including but limited to, employment, promotion, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, compensation, and selection for training.

**9. Independent Contractor.**

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.

**10. Governing Law.**

This Agreement shall be governed and construed in accordance with the law of the State of Washington. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court for Yakima County, Washington.

**11. Severability and Validity.**

If this Agreement or any portion of this Agreement, or its application to any party or circumstances, is invalid or declared invalid, the remainder of this Agreement or its application to the other party or circumstances shall not be affected. The parties shall have no liability of any nature to the other party or to any third party as a result of such invalidity or declaration of invalidity, except any enforceable rights or obligations accruing prior to such invalidity or declaration of invalidity.

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

**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

**EXHIBIT A**

Sunnyside's Promise will add a third element to our agreement with the addition of a Parks and Recreational style of programming which includes programming both inside and outside youth organized sports programs to include:

1. Baseball (6 week program)
  - *T-Ball/parent pitch*
  - *Ages 5-8*
2. Soccer (6 week program)
  - *Ages 5-8*
3. Basketball (6 week program)
  - *Ages 5-12*
4. Flag Football (6 week program)
  - *Ages 5-12*
5. Tennis (6 week program)
  - *Ages 8-13*
6. Cheer Camp (August)
7. Indoor Hockey (6 week program)
  - *Ages 8-12*
8. (2) Three On Three Tournaments (Summer)
9. Ping Pong Tournament (1 week program)
10. Monthly Teen Dances (One Friday per month)
  - *Middle School*
11. Volley Ball (6 week program)
  - *Ages To be determined*
12. Zumba (weekly)
13. Line Dancing (4 week program)
  - *Families*
14. Silver Sneakers (Weekly)
  - *Senior Citizens*

## EXHIBIT "A"

These programs will have costs attached i.e. staffing, equipment, supplies etc... During our presentation to City Council, Promise provided a document (Attachment A ) listing program details to include individual programming estimated costs. The information also provided additional details for each program activity to include length of program, age requirements and date range for each program. Promise will provide the above programming for a total cost not to exceed \$30,000.

Each "recreational program" will need upfront funding from the city to hire staff and purchase equipment/supplies.

Promise will collect a fee from each youth participating in a recreational program. The fee collected will be reimbursed to the city in the amount provided by the city to run each program