AGREEMENT BETWEEN CITY OF SUNNYVALE AND SUNNYVALE COMMUNITY SERVICES FOR SUPPORT IN THE DELIVERY OF RECREATIONAL SERVICES

THIS AGREEMENT dated June 1, 2004, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SUNNYVALE COMMUNITY SERVICES ("SCS").

WHEREAS the CITY desires to support independent organizations providing services beneficial to the Community; and

WHEREAS CITY is committed to providing recreational services at a reduced cost to those who can not reasonably afford market costs; and

WHEREAS SCS provides non-profit services to assist Sunnyvale's economically disadvantaged; and

WHEREAS SCS and CITY believe each can further its core services to the public through a mutually beneficial arrangement related to the provision of recreational services to the public;

NOW THEREFORE, in accordance with the City's Relationships with Outside Groups Policy and City Council's actions of November 11, 2003 relative to the Dorolou P. Swirsky Trust Fund, the City and Sunnyvale Community Services enter into this agreement.

1. Obligations of City

CITY shall provide SCS a one-time payment of $10,000 to cover SCS costs to provide fee waiver services described in section 2 paragraphs c- 3, 4, 5 and 6 below through June 30, 2005.

CITY shall provide SCS one-third of the interest generated annually by the Dorolou P. Swirsky Trust Fund for the express purpose of supplying recreational equipment and supplies (e.g., sports equipment, games, art supplies) to disadvantaged youth from 6 to 12 years of age, of families qualifying for aid from SCS.

For this Agreement, recreational equipment and supplies shall consist of items a child can use to recreate at home or in settings such as public recreation classes held at local schools or parks. Clothing, such as tennis shoes, jerseys, and pads do not qualify as "recreational equipment" unless directly related to the safety of the child, such as a bicycle helmet.

2. Obligations of SCS

a) SCS shall provide proof of non-profit status, and shall remain non-profit during the life of this agreement.

b) SCS shall comply with all Federal, State and local laws.

c) SCS shall help administer the CITY's recreational fee waiver program by providing the following services at no cost to CITY:

1) Verify applicant income, residence and number of dependents claimed;
2) Qualify applicant to receive a fee waiver according to established criteria;

SCS shall help administer the CITY's recreational fee waiver program by providing the following services through June 30, 2005 for a fee of $10,000 to be paid by CITY. SCS will invoice CITY for these services between July 1 and August 1, 2004. After June 30, 2005, CITY will assume these responsibilities and/or this agreement will be adjusted accordingly:

3) Explain the fee waiver program, the authorization process, and the activities available;
4) Record the activities and fees used by each person;
5) Credit any person's "fee waiver account" for cancelled activities or when the person drops an activity; and
6) Report to the CITY the number of persons qualified for fee waivers and the number of waivers authorized each quarter.

d) SCS shall administer a portion of the CITY's Dorolou P. Swirsky Trust Fund by providing the following services at no charge to CITY:

- SCS shall provide equipment and supplies purchased with monies from the Dorolou P. Swirsky Trust Fund only to youth residing in Sunnyvale.
- Youth receiving equipment and supplies purchased with monies from the Dorolou P. Swirsky Trust Fund shall incur no fees or charges.
- Equipment and supplies provided to youth through the Dorolou P. Swirsky Trust Fund shall become the property of those receiving it (i.e. the equipment and/or supplies is gifted as opposed to loaned).
- SCS shall maintain a record of the number of youth receiving support via the Dorolou Swirsky Trust Fund each year.

3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement "SCS" shall not accept employment or an obligation which is inconsistent or incompatible with "SCS"' obligations under this Agreement.

4. Compliance with Laws

a) "SCS" shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.

b) "SCS" shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement.

5. Independent Contractor

SCS is acting as an independent contractor in furnishing any services or materials and performing work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and SCS. SCS is responsible for paying all required state and federal taxes.

6. Indemnity

SCS agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of SCS, its officers, employees, agents, or any officer, agent or employee thereof in relation to SCS'S performance under this Agreement.

7. Insurance

SCS shall and will, at own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

(a) Combined single limit coverage applying to bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million Dollars ($1,000,000) providing

coverage on an "occurrence" basis and not an "accident" basis; provided, however, as follows:

(1) CITY shall be named as an additional insured in all insurance policies;

(2) A contractual liability endorsement shall be included in each insurance policy extending coverage to include liability assumed under paragraph 6 above.

(b) Worker's compensation insurance and employer's liability insurance for all employees of Licensee.

8. CITY Representative

Director of Parks and Recreation or such other person as may be designated by the Director, shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

9. "SCS" Representative

Director of Sunnyvale Community Services shall represent "SCS" in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of "SCS" pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the "SCS" representative.

10. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:

City Manager
CITY OF SUNNYVALE
P. 0. Box 3707
Sunnyvale, CA 94088-3707
(408) 730-7480

To "SCS":

Executive Director
SUNNYVALE COMMUNITY SERVICES
725 Kifer Road
Sunnyvale, CA 94086
(408) 738-4321

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation or a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand- delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

11. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

12. Duration of Agreement

This Agreement shall continue from the date of execution for a period of five (5) years, unless otherwise terminated in accordance with section 13 below.

13. Termination

(a) If "SCS" defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to "SCS".

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party. If CITY terminates the Agreement; CITY shall reimburse "SCS" for out-of-pocket expenses to administer the terms of this agreement up to the date the termination notice was received. A reimbursement for any additional purchases made during the 90 day notice period can only be made with prior written permission of the City. As a condition to such reimbursement of expenses, "SCS" shall furnish to CITY annually a financial audit of his operations under this Agreement.

14. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

15. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This

Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

_____
City Clerk

CITY OF SUNNYVALE (CITY)

By_____
City Manager

APPROVED AS TO FORM:

_____
City Attorney

SUNNYVALE COMMUNITY SERVICES (SCS)

By_____
Executive Director, Sunnyvale Community Services