

**EQUITY SHARING AGREEMENT  
BETWEEN CITY OF SUNNYVALE  
AND SUNNYVALE COMMUNITY SERVICES**

This Agreement (the "Agreement") is made as of \_\_\_\_\_, 2023 by and between the CITY OF SUNNYVALE, a California chartered municipal corporation ("City") and SUNNYVALE COMMUNITY SERVICES, a California non-profit benefit corporation ("SCS"), collectively referred to as "the Parties".

**RECITALS**

A. SCS acquired that certain real property ("the Property") located at 1160 Kern Avenue in Sunnyvale, California as further described in Exhibit "A" (APN: 205-24-002) and has completed relocation of its headquarters to expand SCS operations providing food distribution and social services to vulnerable populations within the City of Sunnyvale ("the Services"); and

B. To purchase the Property, SCS combined various sources of funding, including but not limited to a loan in the amount of \$5,040,000 (the "Existing Loan"); and the loan is through a private market lender where the market is experiencing volatility and uncertainty.; and

C. SCS requested that the City provide \$4,000,000 (the "City Contribution"), which SCS would use to pay off the Existing Loan to help stabilize the funding source for the Property, and reduce SCS' exposure to increasingly volatile markets for banking services and interest rates; and

D. City is willing to make the City Contribution of \$4,000,000 in exchange for valuable consideration and to support the work of SCS in serving vulnerable residents of the City of Sunnyvale; and

E. City and SCS now desire and have mutually agreed to enter into this Agreement to provide SCS with a City Contribution of \$4,000,000, to be used by SCS to pay off the Existing Loan, in exchange for SCS granting City a proportional equity share in the Property.

NOW THEREFORE, in consideration of the mutual agreements, obligations, and representations, and in further consideration for making the Contribution, the City and SCS hereby agree as follows:

**ARTICLE 1  
TERMS OF CITY CONTRIBUTION AND EQUITY SHARE IN PROPERTY**

**1.1 City Contribution.** City agrees to contribute a one-time payment of Four Million Dollars (\$4,000,000) of Sunnyvale general funds (the "City Contribution") to SCS subject to the conditions and terms of this Agreement.

**1.2 Required Use of City Contribution.** SCS shall use the City Contribution only to pay off its Existing Loan of \$5,040,000 used for the purchase of the Property at 1160 Kern Ave. SCS shall combine the City Contribution with its own funds to pay off the Existing Loan no later than ninety days from the date the City transfers the City Contribution to SCS (the "Required Use of City Contribution Funds").

**1.3 City's Equity Share.** In exchange for City making the City Contribution, City and SCS shall record a deed showing the City's proportional interest in the Property as 16.19%, which percentage represents

the percentage of the Property's current value of \$24,700,000.00 as determined by an appraisal prepared by Valbridge Property Advisors dated July 17, 2023. Improvements that increase the base value of the property will trigger a new calculation of the Equity Share at the time of sale, as set forth in sections 2.5 and 3.3 of this Agreement.

**1.4 No Partnership.** Nothing herein shall be construed as creating a partnership or other joint venture between SCS and the City. The Parties agree that they are not partners and did not intend by entering into this Agreement to form a partnership, or otherwise to have the relationship of partners to one another.

**1.5 Title to Property.** The Property will be held by SCS and City as tenants-in-common, with the City owning a proportional undivided interest of 16.19% and SCS owning a proportional undivided interest of 83.81%. SCS will have the exclusive right to occupy the Property.

**1.6 Required Use of Property by SCS.** SCS shall continuously use the Property to provide substantially the same or a greater types and level of service to vulnerable residents of Sunnyvale as it provided on the date this Agreement becomes effective, and for no other purpose without the written consent of the City Manager.

**1.7 Restrictions on Sale, Encumbrance, and Other Transfers of Interest in Property Without Consent.**

- (a) Neither party may sell its interest in the Property separate from the other and each party agrees to cooperate in the sale of its interest in the Property, as provided in Article 3 of this Agreement.
- (b) SCS shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, lease, or transfer in any form of the Property or of any its interest therein (a "Transfer"), except as otherwise permitted herein or except with the prior written approval of the City Manager.
- (c) Notwithstanding the foregoing, SCS may Transfer the Property to a wholly-controlled affiliate of Sunnyvale Community Services, provided such wholly controlled affiliate assumes, in a written agreement, all of SCS's obligations under this Agreement, a copy of which shall be provided to the City.
- (d) SCS shall not permit the use of the Property for any purpose other than that permitted by this Agreement without the prior written approval of the City Manager. The City Manager may approve a Transfer or alternate use provided that SCS provides advance written notice to the City sufficient for the City to evaluate whether all of the following conditions are met:
  - (1) SCS is in compliance with this Agreement;
  - (2) the transferee agrees to assume all obligations of SCS pursuant to this Agreement; and
  - (3) any transferee demonstrates to the City's satisfaction that it has the management and financial capacity to own and operate the Property for the uses set forth in this Agreement.

**1.8 Execution of Documents.** City and SCS will cooperate in the preparation and execution of all documents reasonably necessary to conform the equity ownership interests in the Property to the provisions of this Agreement, in a form mutually agreed to by SCS and the City Attorney.

**1.9 No additional mortgages or liens.** Except for loans existing at the date of the execution of this agreement, SCS shall not cause any lien or mortgage to be recorded against the Property except as expressly authorized in writing by the City Manager. The City Manager shall not unreasonably withhold permission for refinancing or equity loans that do not in any way impair City's security interest or Equity Ownership Interest in the Property.

## **ARTICLE 2 GENERAL REQUIREMENTS**

**2.1 Property Management; Compliance with Laws.** During the term of this Agreement, SCS shall maintain the Property in good repair and in a neat, clean and orderly condition at its own cost and in compliance with all applicable laws and City requirements as set forth in this Agreement, and shall not cause or allow the Property to be in violation of any federal, state or local laws, ordinances or regulations. Notwithstanding the proportional equity ownership interests in the Property, SCS shall be solely responsible for all maintenance and repair costs, including deductibles and repair and restoration of uninsured losses.

**2.2 Hazard and Liability Insurance.** SCS shall pay for all insurance on the property and at all times cause the Property to be insured against loss by fire, flood, if in a flood zone, and such other hazards, casualties, liabilities and contingencies. Property insurance policies shall name the City as an additional insured, as approved by the City. The foregoing shall not limit the obligations of SCS pursuant to this Agreement.

**(a) Minimum Scope and Limits of Insurance.** SCS shall maintain limits no less than:

1. Commercial General Liability: \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required. The minimum coverage limits can be met by aggregation of limits from multiple insurance policies.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. Workers' Compensation Statutory Limits and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

**2.3 Taxes.** Notwithstanding the proportional equity ownership interests in the Property, SCS shall pay all property taxes assessed on the Property in full, without reimbursement or right to reimbursement from the City.

**2.4 Other Charges and Fees.** Notwithstanding the proportional equity ownership interests in the Property, SCS shall be solely responsible for timely payment of any charges and fees related to the property, including utilities.

**2.5 Improvements.** SCS, at its sole expense and discretion, may make improvements to the Property provided such improvements are not reasonably likely to make the value of the property decline. With the advance written agreement of the City Manager, the actual documented cost of a capital improvement, defined for purposes of this agreement as the addition of a permanent structural improvement or renovation/restoration of some aspect of the Property that either increases the Property's resale value or its useful life, with a cost of Twenty Five Thousand Dollars (\$25,000) or more

may be treated as an addition to SCS' Contribution and used to reallocate Equity Ownership Interests at the time of sale, as provided in Articles 1 and 3, in such amount(s) as the parties may mutually agree. City's agreement, when sought for a capital improvement that will result in the reallocation of Equity Ownership Interests, must be obtained in writing from the City Manager prior to the initiation of the capital improvement and may be withheld in the City Manager's sole discretion. For example, if SCS makes a capital improvement that the parties agree in writing costs \$2,000,000.00, the agreed upon value of that improvement would be added to the appraised value used to calculate the City's initial equity share, so that the City's new equity share at the time of sale would be \$4,000,000 divided by \$26,700,000.00, or 14.98%

**2.6 Indemnity and Hold Harmless.** SCS and its successors in interest agree to indemnify, defend, and hold harmless the City and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney's fees) arising from or in connection with SCS's construction, management, maintenance or operations on the Property; provided, however, SCS's obligations to indemnify and hold harmless shall not apply in the event of the City's gross negligence or willful misconduct. SCS agrees to provide all costs of any necessary legal defense and all attorneys' fees incurred in defending any claim, whether or not actually filed in any court.

**2.7 Annual Audit.** If the City requires, SCS shall file with the City an annual financial report no later than 180 days following the end of each fiscal year. Such financial statement shall be prepared in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. The City may require that the financial statement be audited subsequent to submittal at SCS's expense by an independent certified public accountant.

**2.8 City Review and Inspections.**

(a) Upon not less than 2 business days' notice to SCS, the City may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the Property.

(b) The City may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by SCS.

(c) SCS shall preserve and make available its records related to receipt and use of Contribution proceeds until the expiration of five years from the date of the final disbursement of Repayable Contribution proceeds, or for such longer period, if any, as is required by law.

**2.9 Assignment of City Rights.** The City retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of SCS's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

**2.10 Environmentally Impaired.** In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the City's rights and remedies, the City may elect to exercise its rights under California Code of Civil Procedure Section

726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against SCS to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), SCS shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and SCS knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by this Agreement and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

### **ARTICLE 3**

#### **SALE OF THE PROPERTY**

**3.1 Sale of the Property.** The sale of the Property will occur on the following conditions:

- (a) At the option of SCS, subject to the provisions of this Article;
- (b) At the option of City, upon the occurrence of any default by SCS with respect to any of the terms of any transaction document related to purchase, financing or holding of the Property, including this Agreement, including but not limited to SCS' failure to comply with the requirements of Section 1.6 of this Agreement;
- (c) Upon mutual agreement of the parties.

**3.2 Brokerage.** The sale of the Property shall be brokered by a qualified licensed commercial real estate agent.

**3.3 Proceeds On Sale.** Upon sale of the Property, the proceeds of sale shall be divided between the Parties as follows:

- (a) The costs of sale, including, but not limited to seller-initiated appraisals, inspection, and escrow fees, real estate broker's fees, and related expenses shall first be deducted from the gross sales price to reach a net sales price (the "Net Sales Price");and
- (b) Each Party's share of the sale proceeds will be equal to its Equity Ownership Interest as set forth in section 1.3 (as modified, if applicable, by any recalculation of equity share due to capital improvements agreed upon pursuant to Section 2.5 above), multiplied by the Net Sales Price.

**3.4 SCS' Right to Purchase City's Interest.** SCS may choose to purchase the City's Equity Ownership Interest at any time. If SCS exercises this option, the value of the Property will be determined by an appraisal conducted by a qualified real estate appraiser acceptable to both parties. Except as otherwise provided in this subsection, SCS shall pay for the appraisal. If the parties are unable to agree on an

appraiser, each party may hire and pay for its own appraiser. The value of the Property will be the average of the two appraisals

#### ARTICLE 4

##### MISCELLANEOUS PROVISIONS

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

**4.2 Nondiscrimination.** SCS shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, gender identity, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

**4.3 Amendment.** This Agreement may be amended only by a written instrument signed by authorized representatives of the City and SCS. The City Manager or his/her designee shall be authorized to act on behalf of the City.

**4.4 Notice.** Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

City: City of Sunnyvale  
Attn: Finance Director  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

With a copy to: City of Sunnyvale  
Attn: City Attorney  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

SCS: Sunnyvale Community Services  
1160 Kern Avenue, Sunnyvale, CA 94085  
Attn: Marie Bernard, Executive Director

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

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

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

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

**4.9 Attorneys' Fees.** The prevailing party shall bear its own legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

**4.10 No Third-Party Beneficiary.** This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

**4.11 No Pledging of City's Credit.** Under no circumstances shall SCS have the authority or power to pledge the credit of City or incur any obligation in the name of City. SCS shall save and hold harmless City, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

**4.12 Venue.** In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

**4.13 Signatures.** This Agreement may be signed electronically and in multiple counterparts each of which shall be deemed to be an original but all of which shall constitute a single agreement.

IN WITNESS WHEREOF, the City and SCS have executed this Agreement as of the date first set forth above.

**SCS:**

SUNNYVALE COMMUNITY SERVICES, a California non-profit benefit corporation

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By: Marie Bernard  
Its: Executive Director

**CITY:**

City of Sunnyvale, a municipal corporation

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By: Kent Steffens  
Its: City Manager

**ATTEST:**

\_\_\_\_\_  
By: City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
By: John Nagel  
Its: City Attorney

**"A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."**

**STATE OF CALIFORNIA )**

**COUNTY OF SANTA CLARA )**

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

**"A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."**



STATE OF CALIFORNIA )

COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

**EXHIBIT A**

**Legal Description**

**1160 Kern Avenue, Sunnyvale, CA**

**APN: 205-24-002**