

**DRAFT SERVICE AGREEMENT BETWEEN THE CITY OF SUNNYVALE
AND SPORTZANIA INC. DBA SKYHAWKS SPORTS
TO PROVIDE YOUTH SPORTS RECREATION CLASSES AND CAMPS**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SPORTZANIA, INC. DBA SKYHAWKS SPORTS, a California corporation ("CONTRACTOR").

WHEREAS, the CITY is in need of services to provide youth sports recreation classes and camps; and

WHEREAS, CONTRACTOR has the skill and ability to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Scope of Services

CONTRACTOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference (the "Services"). CONTRACTOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be two (2) years, commencing on the date of execution and continuing through June 15, 2020 unless otherwise terminated. At the option of the City the agreement may be renewed for an additional one year period provided services and pricing remain acceptable to the City. CONTRACTOR shall deliver the agreed upon services to CITY as specified in Exhibit "A".

3. Duties of CITY

CITY shall provide a facility within CONTRACTOR shall perform the Services, include a listing provided by Contractor for each of CONTRACTOR's classes and camps in each Sunnyvale Recreation Activity Guide published during the term of this Agreement, and provide class and camp registration services.

4. Compensation

CITY agrees to pay CONTRACTOR as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "A".

5. Conflict of Interest

CONTRACTOR shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONTRACTOR is aware of the prohibition that no officer of CITY shall have any

interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR'S obligations under this Agreement.

Pursuant to CITY'S Standard Conflict of Interest Code, Council Policy 7.3.7, CITY has determined that any individual performing services under this Agreement is required to file a Statement of Economic Interest (Form 700), Disclosure Category 1. See www.fppc.ca.gov for Form 700.

6. Compliance with Laws

- (a) CONTRACTOR shall not discriminate against any participant, student, employee or applicant for employment under this Agreement because of race, religion, creed, color, gender, age, disability, national origin or any other basis to the extent prohibited by federal, state or local law.
- (b) During the term of this Agreement CONTRACTOR shall comply with all applicable federal, state and local laws and regulations relating to the provision of the Services. CONTRACTOR shall also comply with all City policies, including but not limited to the Library and Community Services Division Contractor Handbook, unless, taking into consideration all of the surrounding facts and circumstances, a policy or policies or a portion of a policy does not reasonably apply to CONTRACTOR. CONTRACTOR shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA) including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation. CONTRACTOR hereby acknowledges and agrees that it accepts all risks and responsibilities for its failure to comply with any law, regulation, or applicable policy and shall indemnify City under the provisions of section 10 (Indemnification) of this Agreement for all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of CONTRACTOR'S failure to comply with such laws, regulations or policies.

7. Background Checks (boxes not checked do not apply to this agreement):

- Individual Contractors: CONTRACTOR authorizes CITY to conduct a criminal background check of CONTRACTOR including fingerprints and subsequent arrest notification. CONTRACTOR shall cooperate with the procedures established by City for such background checks and understands and agrees that he/she shall not be permitted to provide service if he/she has been a violation or attempted violation of any offense specified in Penal Code 11105.3 or Public Resources Code 5164.
- Business Entities/Contractors with Employees: CONTRACTOR shall not permit any employee to provide services to CITY under this Agreement until such employee has undergone criminal background screening through the California Department of Justice as provided in Penal Code 11105.3. No person who has been convicted of a violation or attempted violation of any offense specified in Penal Code 11105.3 or Public Resources Code 5164 shall be permitted to provide services to CITY under this Agreement. CONTRACTOR shall provide CITY, upon request, a current list of all employees or other persons acting on CONTRACTOR'S behalf. Notwithstanding the restrictions on sharing and destroying criminal background check information, CONTRACTOR, upon demand, shall

make available to CITY evidence of a successful criminal background check clearance and enrollment in subsequent arrest notice service, as provided, for each owner, operator, and employee.

8. Tuberculosis Testing Requirement

CONTRACTOR shall comply with all applicable federal, state, and local regulations, ordinances, policies, and procedures regarding employee health and safety. Contractor shall ensure that no person paid or unpaid by Contractor shall be permitted to provide services requiring contact with children unless CONTRACTOR has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code, verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than 2 (two) years old (if newly hired) or within 4 (four) years (if current employee) of the date of execution of this Agreement. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. CONTRACTOR shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to City, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association, which indicates freedom from active tuberculosis.

9. Mandated Abuse Reporting

Contractor shall ensure that no person paid or unpaid by Contractor shall be permitted to provide services requiring contact with children or dependent adults until CONTRACTOR has trained that person on mandated child or dependent adult abuse reporting laws, as applicable, and shall maintain documentation, signed by each staff member receiving such training. CONTRACTOR agrees that its obligations to report incidents of abuse or neglect are in addition to, and not in lieu of, CONTRACTOR's obligation to immediately report suspected abuse or neglect to the appropriate public authorities pursuant to applicable provisions of state law. CONTRACTOR shall maintain confidential records of any report of suspected abuse and shall inform the City in writing within 24 hours of becoming aware of circumstances including, but not limited to allegations of abuse involving an employee, volunteer or agent.

10. Independent Contractor

This Agreement is by and between two independent entities that have an independent contractual relationship. CONTRACTOR shall provide all services under this Agreement as an independent contractor, and neither party shall have the authority to bind or make any commitment on behalf of the other. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee between the City and CONTRACTOR and any of their employees, agents, affiliates or other representatives, or between the City and any individual assigned by CONTRACTOR to perform any services for the City. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same.

10. Indemnity

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, including claims related to suspected child abuse, in connection with use of a city facility for Contractor's Services, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

11. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "B" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "B."

12. CITY Representative

Gary Brown, as City Manager's authorized representative, shall represent CITY 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.

13. CONTRACTOR Representative

Kia Mirkia, shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

14. Notices

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

To CITY: Gary Brown
Department of Library and Community Services
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: Kia Mirkia
SPORTZANIA, INC. DBA SKYHAWKS SPORTS
PO Box 3021
Redwood City, CA 94064

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 of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or 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.

15. Assignment and Subcontracting

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

16. Termination

- A. If CONTRACTOR 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 CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

17. 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 in writing signed by all parties.

18. Miscellaneous

- A. 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.
- B. This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue shall be Santa Clara County, California.
- C. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

SPORTZANIA, INC. DBA SKYHAWKS SPORTS
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

Exhibits:

- A. Scope of Work/Compensation
- B. Insurance Requirements

EXHIBIT "A"
SCOPE OF SERVICES

CONTRACTOR shall:

- Provide various youth sports classes and camps at various CITY facilities.
- Use City's facilities only during allotted class time and for pre-approved staff training, meetings and classroom maintenance. Additional use of City's facilities, if any, shall be on a rental basis, per City's current Facility Rental Rate Schedule.
- Determine the method, details and means of performing the services.
- Provide any necessary instruments or equipment.
- Throughout the term of this Agreement, comply with the requirements of CITY's Handbook for Independent Contract Instructors, latest publication and/or as amended.
- Adjust schedules each term in response to Sunnyvale student needs/desires as determined by coordinator. Classes that are cancelled three terms consecutively may not be offered again in that time slot. Classes where all sections are cancelled three terms consecutively may not be offered again. Time slots where classes are cancelled six months consecutively will be made available to other contractors.
- Staff classes with qualified instructors, schedule adequate breaks for employees, provide emergency backup coverage with a qualified instructor who can respond within half hour in case scheduled teacher does not show.

CONTRACTOR shall not solicit business in class nor use the class roster or other information obtained in class to create a mailing list or for any other business purpose.

COMPENSATION

CONTRACTOR shall be compensated 71% for seasonal classes per registered student minus any refunds and will be made after the conclusion of each 2-month session. Payment for summer camps is also 71% per resident fees minus any refunds and will be made after the conclusion of each camp.

EXHIBIT B
INSURANCE REQUIREMENTS FOR CONSULTANTS/CONTRACTORS

Consultant/Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits no less than:

1. **Commercial General Liability**: \$3,000,000 per occurrence and \$6,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
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.

Industry Specific Coverages. If checked below, the following insurance is also required:

- Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- If working directly with children, the Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$3,000,000 per occurrence and \$6,000,000 aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.
- Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.

2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

Subcontractors

CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit B. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.