

# Independent Contractor Agreement

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This is an Independent Contractor Agreement (“Agreement”) effective upon execution between **The City of Sunnyvale** (“City”), a California chartered municipal corporation and City of San José (“Partner Organization”), a California chartered municipal corporation.

## Recitals

1. The City of Sunnyvale, in partnership with the City of San José, Stanford Health Care, and Asian Americans for Community Involvement (AACI) applied for and received Title III-D grant funds for disease prevention and health promotion programs through Sourcewise. Sourcewise is the local area agency on aging that provides agencies grant funding for services critical to the lives of seniors and caregivers throughout Santa Clara County
2. The City of Sunnyvale has agreed to serve as the fiscal agent and overall grant manager of these grant funds in partnership with the above organizations, which will provide administrative support along with direct programming.

Now, therefore, the Parties agree as follows:

## 1. Basic Agreement

1.1 **Services.** Partner Organization and City may from time to time prepare and sign one or more Statements of Work (each an “SOW”) in the form of **Exhibit A**, which will describe the services Partner Organization will provide (the “Services”). This Agreement is not an exclusive arrangement. Either party is free to do business with others.

1.2 **Compensation.** The fees specified in the applicable SOW will be the sole compensation for the Services. Partner Organization is responsible for its own expenses unless otherwise specified in the SOW. Partner Organization will submit invoices as specified in the SOW and will include in each invoice sufficient information to support the invoiced work and any other data requested. Unless otherwise provided in the SOW, City will pay undisputed invoices within 30 days of receipt of the final invoice.

## 2. Working Relationship

2.1 **Method of Work.** Partner Organization will perform the Services in a timely and professional manner consistent with industry standards and applicable law. Partner Organization will have sole discretion over, and sole responsibility for, the planning, method, means, sequencing, time, and place of the work performed in connection with the Services. Partner Organization will provide its own equipment, tools, and materials. Partner Organization may not subcontract any part of the Services without City’s prior written consent. Partner Organization nor its employees or contract personnel will receive any training from the City in the skills necessary to perform the Services required by this Agreement.

**2.2 Ownership of Work Product.** Partner Organization and City intend that the City will have full and exclusive rights to any work product, including, without limitation, all research, analyses, presentations and reports prepared by Partner Organization, and any intellectual property (including, without limitation, any trade secret, copyright, patent or trademark) that Partner Organization created or help create in performing the Services under this Agreement. Accordingly, Partner Organization: (i) assigns to City all rights, title, and interest worldwide in the work product; (ii) grants to City an irrevocable, exclusive, royalty-free, perpetual, and worldwide license to any rights in the work product that cannot be assigned to City, and (iii) waives enforcement against City of any rights in the work product that cannot be assigned or licensed to City. Partner Organization will assist the City in obtaining and enforcing these rights in the work product.

**2.3 Confidentiality.** Partner Organization will use Confidential Information (defined below) only in connection with the activities under this Agreement and will keep it confidential, using at least the same degree of care as it uses to prevent the unauthorized use or disclosure of its own confidential information, but in no case, less than a reasonable degree of care. "Confidential Information" means information relating to City and furnished to or obtained by Partner during Partner's activities under this Agreement. It does not include information which: (i) is or becomes generally available to the public other than as a result of a disclosure by Partner Organization; (ii) was known by Partner Organization prior to its being furnished to it by the City; or (iii) is or becomes available to Partner Organization on a non-confidential basis from a source other than the City. All Confidential Information furnished under this Agreement is and will remain the property of the City.

**2.4 Relationship.** Partner Organization is and will be an independent contractor. Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Partner Organization and the City for any purpose. Partner Organization will not be entitled to or eligible for any benefits that the City makes available to its employees, including, without limitation, coverage under any City medical, dental, liability, automobile or other insurance policies. Partner Organization waives any rights or claims to those benefits.

**2.5 Publicity.** Partner Organization will not use any of the City's trademarks or identify City as a client in any promotional, advertising, or other material, or in any website, press release, or public communication, without obtaining City's prior written approval.

**2.6 Recordkeeping.** Partner Organization will maintain its books and records in a manner that provides City with sufficient detail to review activities and compliance with this Agreement and make them available for review by City on reasonable notice.

### 3. **Compliance, Insurance, and Indemnification**

**3.1 Taxes, Contributions, and Workers' Compensation.** Partner Organization will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority in connection with performance of the Services and receipt of fees under this Agreement. Partner Organization will have sole responsibility for paying all disability, unemployment insurance and workers' compensation contributions and expenses, and any other contributions and expenses, in connection with performance of the Services and receipt of fees. Partner Organization understands that the City will not withhold income, social security, or Medicare taxes, make unemployment or disability insurance contributions, or obtain workers' compensation or other insurance on its behalf.

**3.2 Licensing and Legal Compliance.** Partner Organization will comply with all federal, state and local laws relating to performance of the Services and its other obligations under this Agreement, including applicable licensing laws and regulations. Partner Organization will ensure that the work product and other activities under this Agreement will not infringe or otherwise violate the intellectual property rights, rights of publicity, or rights of privacy of any third party.

**3.3 Insurance.** Partner Organization 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 and endorsements as specified in "Exhibit B." Partner Organization is self-insured covering third-party claims arising out of general operations, and is self-insured covering workers' compensation claims.

**3.4 Indemnification.** Except as to the sole negligence or willful misconduct of the indemnified party, Partner Organization shall defend, indemnify and hold the City and its officers, employees, agents, and volunteers harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees which arise out of or is in any way connected with the Partner Organization's performance of services under this Agreement or any of its employees, agents, subcontractors, or volunteers, and from all claims by its employees, subcontractors, agents, or volunteers for compensation for services rendered in the performance of this Agreement, notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on Partner Organization's part or on the part of its employees, subcontractors, agents, or volunteers.

### 4. **Term and Termination**

**4.1 Term.** This Agreement becomes effective on the date it is executed by the last to sign and shall expire on June 30, 2022. It may be extended for up to three, one-year periods by mutual written agreement of the parties.

**4.2 Termination.** Partner Organization and City may terminate this Agreement or any SOW at any time. Such termination will be effective 30 days after delivery of a notice by the terminating party to the other. In addition, Partner Organization and City may terminate this Agreement upon a material breach by the other. Such a termination will be effective seven (7) days after delivery of a written notice to that effect.

**4.3 Consequences of Termination.** If this Agreement is terminated before the Services described in all SOWs are complete, all SOWs will terminate, and City will pay for work completed to our satisfaction under any open SOWs and will not be liable for any further payment. In the case of termination of an individual SOW rather than the entire Agreement, the Agreement and the other non-terminated SOW(s) remain in effect, City will pay for work completed to City's satisfaction under that SOW and will not be liable for payment of any Services not yet performed. City will pay undisputed fees within 30 days after the later of receiving Partner Organization's invoice or the effective date of termination. Upon termination of this Agreement, Partner Organization will return, if applicable, all Confidential Information. The provisions of Sections 2.3, 2.4, 2.5, 3.1, 3.3, 3.4, 4.3, and 5 will remain effective after termination. All City rights, powers, and remedies under this Agreement, including its right to terminate this Agreement, are cumulative and not alternative and will be in addition to all rights, powers, and remedies given to City at law or in equity. The exercise of one or more of these rights or remedies will not impair City's right to exercise any other right or remedy.

## **5. General Provisions**

**5.1 Entire Agreement; Amendment.** This Agreement, together with all SOWs, is the entire agreement between Partner Organization and City and supersedes prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between Partner Organization and City relating to the same subject matter. City rejects any term or condition in any invoice, letter, e-mail, or other document of Partner Organization that conflicts with or adds to this Agreement. This Agreement may be amended only as stated in a writing signed by both Partner Organization and City which recites that it is an amendment to this Agreement. If there are any inconsistencies between any SOW and this Agreement, this Agreement will control.

**5.2 Severability.** If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

**5.3 Assignment.** Partner Organization may not assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of City.

5.4 **Waiver.** Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

5.5 **No Third-Party Beneficiaries.** Except as specifically provided in Section 3.4, this Agreement is for the exclusive benefit of Partner Organization and City and not for the benefit of any third party including, without limitation, any employee, affiliate, or vendor of Partner Organization or City.

5.6 **Notices.** Notices and consents under this Agreement must be in writing and delivered by mail, courier, or fax to the addresses set out on the signature page of this Agreement. These addresses may be changed by written notice to the other party. Notices given in the manner provided by this Section 5.6 will be considered given two business days after deposit in the mail, or the first business day after delivery to a courier or delivery by fax. Any communication or notice that either party is required to send to the other, or that either party desires to send to the other, shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, to the respective parties addressed as follows:

**PARTNER ORGANIZATION:**

City of San José  
Parks, Recreation and Neighborhood Services  
200 E. Santa Clara Street, 9th Floor  
San José, CA 95113-1905

**CITY:**

Cherise Brandell, Director of Library and Community Services  
665 W. Olive Avenue  
Sunnyvale, CA 94086

Either party may change its address by sending notice of the new address to the other party, pursuant to this Section.

5.7 **Governing Law.** This Agreement is governed by California law. Partner Organization consents to the exclusive jurisdiction of the state and federal courts of Santa Clara County, California.

5.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

5.9 **Electronic Signatures.** Each party agrees that this Agreement and any related documents may be electronically signed, and that any electronic

signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

\* \* \* \* \*

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT

APPROVED AS TO FORM:

Melissa Tronquet Sep 13, 2021  
Melissa Tronquet (Sep 13, 2021 16:28 PDT)  
City Attorney Date

CITY OF SUNNYVALE

Cherise Brandell Sep 14, 2021  
Cherise Brandell (Sep 14, 2021 09:28 PDT)  
Cherise Brandell Date  
Dir. of Library and Community Services  
665 W. Olive Avenue  
Sunnyvale, CA 94086

PARTNER ORGANIZATION

Aaron Yu  
Aaron Yu  
Deputy City Attorney

Jon Cicirelli On behalf of 9/9/2021  
Jon Cicirelli Date  
Director of Parks, Recreation  
and Neighborhood Services

## Statement of Work

This document is a Statement of Work (“SOW”) contemplated by the Independent Contractor Agreement, through June 30, 2022 between City of Sunnyvale (City) and City of San José (Partner Organization). It describes the services Partner Organization will perform.

### Basic Project Data:

SOW Date:	Upon Execution of Contract-June 30, 2022
Project Start Date:	Upon Execution of Contract
Project End Date:	June 30, 2022
Client Supervisor:	
Contract Budget:	\$5,200 <b>City of Sunnyvale has no obligation to pay any fees that exceed this budget.</b>

### Description of Services:

1. Coordination and implementation of Evidenced-Based Programs in Santa Clara County (these services will be charged in the Milestone Basis Compensation Category for a total fee of up to \$5,200)

- a. Complete up to three sessions of SAIL Fitness by June 30, 2022.
- b. Submit the following supporting documents at the conclusion of each program: Roster of registered participants; Demographic data including zip codes, sex and birth year; attendance sheet clearly noting number of attendees for each class session; and program evaluation forms for each completed program.

### Compensation:

**Milestone Basis:** We will pay Partner Organization for completion of these milestones:

Date	Milestone	Payment at Milestone
6/30/2022	Completion of three (3) SAIL Fitness classes	\$5,200

Partner Organization will invoice City upon completion of milestones. Upon termination, Partner Organization will issue a final invoice for deliverables accepted by City through the effective date of termination.

Upon termination, Partner Organization will deliver all work-in-progress to City. City will make a final payment to Partner Organization based on services completed, as determined by City in its sole discretion.



**Insurance:**

**EXHIBIT B  
INSURANCE REQUIREMENTS FOR PARTNER ORGANIZATION  
(8/20/2020)**

Partner Organization 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 Partner Organization, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Partner Organization 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.
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 \$1,000,000 per occurrence and \$2,000,000 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 Partner Organization 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 Partner Organization; products and completed operations of the Partner Organization; premises owned, occupied or used by the Partner Organization; or automobiles owned, leased, hired or borrowed by the Partner Organization. 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 Partner Organization'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 Partner Organization'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 Partner Organization'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 PARTNER ORGANIZATION'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

Partner Organization 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

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

August 20, 2021

Attn: The City of Sunnyvale  
Christine Pham  
455 W. Olive Avenue  
Sunnyvale, CA 94086

Re: Statement of City of San José Self-Insurance for a Grant Fund Agreement between City of Sunnyvale for coordination and implementation of Evidence-Based Programs upon execution to 6/30/2022.

To Christine Pham

The City of San José is self-insured covering third party claims arising out of its general operations (by way of example, commercial general liability and automobile liability insurance). Further, the City is self-insured covering workers' compensation claims and has received the necessary consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the City appropriates funds specifically for the purposes of satisfying valid third-party and workers' compensation claims, which may potentially be brought against the City. Information concerning these appropriations is a matter of public record and can be obtained from visiting the following website <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/budget/budget-documents>.

Should you need any additional information regarding this letter, please feel free to direct those inquires through the Risk Management Office.

Sincerely,

By *Mina Kim*  
Mina Kim  
Risk Management

# City of San José Contract/Agreement Transmittal Form

## Route Order

## Attached / Completed

## Electronically Signed

TO:  City Attorney  
 City Manager  
 City Clerk **OR** Return to  
 Dept. (circle one)

Insurance Certificates / Waivers  Electronically Signed: Yes  
Business Tax Certificate  Audit Trail Attached (if applicable)  
 Contacted Clerk re: Form 700  Scanned Signature Authorization  
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Grant Applications/Agreements

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667124-000

Contractor: City of Sunnyvale

Address: 456 W. Olive Ave. Sunnyvale, CA 94086

Phone: (408) 730-7365

Email: CPham@sunnyvale.ca.gov

Contract Description: The purpose of this Agreement is for Sunnyvale to provide grant funds to San Jose for staffing costs related to the coordination and implementation of three Evidenced-Based Programs (SAIL Fitness) at CSJ community centers.

Term Start Date: Upon Execution Term End Date: June 30, 2022 Extension: No

Method of Procurement: N/A RFB, RFP or RFQ No.: n/a Date Conducted: \_\_\_\_\_

Agenda Date (if applicable): 6/22/2021

Agenda Item No.: 2.18

Resolution No.: 80104

Ordinance No.: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_

Amount of Increase/Decrease: \_\_\_\_\_

Option #: \_\_\_\_\_ of \_\_\_\_\_ Option Amount: \_\_\_\_\_

NTE/Updated Contract Amount: \$5,200

Fund/Appropriation: 001/R090

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: Select one

Tax Certificate No.: n/a

Expiration Date: \_\_\_\_\_

Department: PRNS (64)

Department Contact: Alex Niles (408) 793-5592

Customer (Finance Only): \_\_\_\_\_

Notes: PRNS DB# 646949  
PRNSContracts@sanjoseca.gov - add'l PRNS contact.

Department Director Signature:  On behalf of Jon Cicirelli

9/9/2021  
Date

Office of the City Manager Signature: \_\_\_\_\_  
Date