

**AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
SAN JOSE PUNE SISTER CITY ORGANIZATION
FOR FY 2021 - 2022**

THIS AGREEMENT is made and entered into this 22nd day of July, 2021, by and between the CITY OF SAN JOSE, a municipal corporation (“City”) and SAN JOSE PUNE SISTER CITY ORGANIZATION, a nonprofit corporation of the State of California (“Agency”).

RECITALS

- A. The City Council has found that the development and implementation of a Sister City Program (“Program”) between City and Pune, India (“Sister City”) promotes cultural and economic relations, civic engagement and benefits the City.
- B. In particular, the Program fosters and promotes:
- (1) the exchange of information and ideas for the cultural betterment of the City and its people;
 - (2) the knowledge, understanding, and education of the City and of its people;
 - (3) mutual understanding and goodwill between the City and its Sister City; and
 - (4) trade and investment opportunities to foster economic development with Sister City.
- C. City desires to secure the services of Agency for the purpose of implementing a program of Sister City activities with Pune, India involving San Jose residents.

D. City's Director of Economic Development is charged with the responsibility of administering this Agreement on City's behalf ("City's Director" or alternatively, the "Director").

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, City and Agency hereby agree as follows:

SECTION 1. TERM OF AGREEMENT.

The term of this Agreement shall be the date of execution ("Commencement Date") and shall end on June 30, 2022, subject to the termination provisions set forth in this Agreement. Regardless of the date of execution of this Agreement, this Agreement is effective as of the Commencement Date.

SECTION 2. SISTER CITY PROGRAM.

The Sister City affiliation is unique to the City and Pune, India. The City recognizes that the Sister City relationship requires active participation by San Jose community members. The Sister City relationship should include diverse programs and activities to promote the arts, culture, music, education, sport, civic affairs, economic development and other initiatives. As such, the Sister City affiliation with Pune shall be led by a Committee ("Sister City Committee") that works to enhance the Sister City relationship through ongoing activities. As written in the City's Sister City Guidelines and approved by the City Council, each Sister City Committee is required to have a minimum of twenty (20) active members. Agency represents City program in the community and works to promote positive relations with Pune, India. As such, membership in Agency should be available to community members and San Jose residents should be encouraged to participate in Agency programs to advance sister city relationship.

Agency shall perform the services consistent with the goals of the Program, and as further set forth in EXHIBIT A, entitled "SISTER CITY PROGRAM". The parties agree that the broad goals of the Program include advancing international

understanding and cooperation, exchanging ideas and information, and establishing goodwill and positive relations in the community and with citizens of Pune, India.

So long as this Agreement is in full force and effect, the Agency may represent that it is an official sister city affiliate of the City and may use the official sister city logo of Sister Cities International and the Agency is permitted to access the benefits attained through the City's membership in Sister Cities International.

SECTION 3. PAYMENT.

City agrees to pay the amount not to exceed TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) to Agency pursuant to the terms and conditions of this Agreement. The rate and schedule of payment is set out in EXHIBIT B, entitled "COMPENSATION" which is attached hereto and incorporated herein.

SECTION 4. COORDINATION.

All functions and activities performed by Agency in connection with the Program, whether or not funded by City, must be consistent with the mission and goals of the City of San José's Sister City Program. City's Director will monitor Agency's compliance with this Section.

SECTION 5. NONDISCRIMINATION.

In the performance of the activities permitted by this Agreement, Agency or its contractors will not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person, with respect to his or her compensation, terms, conditions or privileges of employment, because of such person's race, color, religion, national origin, ethnicity, sex, sexual orientation, actual or perceived gender identity, disability or age.

SECTION 6. INDEPENDENT CONTRACTOR.

Agency and its employees (if any), volunteers and agents, are independent contractors and are not agents or employees of City. This Agreement shall not in any

way be construed to create a partnership, association, or any kind of joint undertaking or venture between City and Agency.

SECTION 7. **COMPLIANCE WITH LAWS.**

A. Agency shall comply with all applicable laws, ordinances, code and regulations of the federal, state and local governments, including but not limited to any laws specifically referenced in this Agreement.

B. Agency shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of Agency's business.

C. Agency shall maintain its status as a nonprofit corporation of the State of California in good standing, at all times during the term of this Agreement. If Agency is suspended by the State of California, this agreement will be suspended until the status of the Agency has been changed to "Active."

SECTION 8. **ASSIGNMENT.**

This Agreement may not be assigned by Agency without City's prior written consent. Unless specifically authorized by this Agreement, Agency may not assign the performance of any obligation under this Agreement and may not assign any interest under this Agreement without City's prior written consent.

SECTION 9. **HOLD HARMLESS.**

Agency agrees to defend, indemnify and hold harmless City, its officers and employees, from and against any and all liability, claims, suits, losses, damages, costs and expenses arising out of or resulting from any acts, errors, or omissions of Agency, its contractors, officers, agents, members or subcontractors arising or resulting from the doing by Agency of any or all things permitted by this Agreement, or because of or arising or resulting from any negligence of Agency, its agents, employees (if any) or subcontractors.

SECTION 10. **RIGHT TO AUDIT.**

A. If requested by City, Agency agrees to furnish the City complete statements of its income from all sources and its expenditures for all purposes during the term of this Agreement. Agency further agrees to make available for examination or audit by City, all ledgers, invoices, vouchers, canceled checks or other documents representing Agency's financial transactions related to this Agreement.

B. In the event that upon examination or audit of Agency's records, City determines that Agency has failed to conform its expenditure of all or any portion of City's funds with the terms and provisions of this Agreement, Agency shall return to City such funds within sixty (60) days of City's written notification.

SECTION 11. **REPORTS.**

A. At the time of execution of this Agreement and prior to the disbursements of City funding, Agency shall provide a one-page outline of sister city programs and projects planned for 2021-22.

B. At the time of execution of this Agreement, Agency shall provide the City with a roster of Agency's members and officers.

C. During the term of this Agreement, Agency shall provide the City with an agenda of Agency's board meetings with at least three (3) days advance notice. Agency shall provide City with minutes of monthly or quarterly committee meetings.

SECTION 12. **PERFORMANCE REVIEW.**

Agency's performance during the term of this Agreement may be evaluated at the end of the Agreement. Agency shall cooperate with any and all City requests for information and material for Agency's evaluation.

SECTION 13. TERMINATION.

A. This Agreement may be terminated by either party upon giving to the other party thirty (30) days written notice of termination.

B. Agency's performance of this Agreement and meeting the required number of members of the organization is an integral part of the consideration for City to enter into future agreements. Agency's failure to perform any of the provisions of this Agreement shall constitute a material breach for which City, in addition to any other rights or remedies available to City, may immediately terminate this Agreement upon written notice to Agency.

C. The Director is authorized to decide on the part of City, that this Agreement is to be terminated and to furnish written notice of termination.

SECTION 14. NOTICES.

Any notices or communications shall be sent in writing to the respective parties at the following addresses:

To City: City of San Jose
Office of Economic Development
Attention: Joseph Hedges
200 East Santa Clara Street, 17th Floor
San Jose, California 95113-1905

To Agency: President
San Jose Pune Sister City Organization
1340 Pomeroy Avenue, Apartment 508
Santa Clara, California 95051

SECTION 15. INSURANCE REQUIREMENTS.

Agency agrees to have and maintain the policies set forth in the attached EXHIBIT C, entitled "INSURANCE REQUIREMENTS." All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") as to form and content. These

requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Agency agrees to provide City with a copy of the required policies, certificates and/or endorsements before work commences under this Agreement.

SECTION 16. **MISCELLANEOUS.**

A. Captions and sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.

B. This Agreement shall be governed exclusively by its provisions and by the laws of the State of California as the same from time to time exist. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

C. If a court of competent jurisdiction rules that any provision of this Agreement is void or unenforceable, the remaining provisions shall not be affected and shall remain in full force and effect.

D. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.

E. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either party shall include the imposition on such party of the obligation to pay all costs and expenses necessary to perform such obligation.

F. This Agreement, including the exhibits attached thereto, contains the entire Agreement of the parties and supersedes all prior understandings or representations of the parties, whether written or oral. Any subsequent modification of this Agreement must be made in writing and signed by the parties' authorized representatives.

JH
7/21

WITNESS THE EXECUTION HEREOF the day and year first hereinabove written.

CITY OF SAN JOSE, a municipal corporation

Sarah Zarate
Sarah Zarate (7/22/2021)
Email: sarah.zarate@sanjoseca.gov

By: _____
City of San Jose

SAN JOSE PUNE SISTER CITY ORGANIZATION, a California nonprofit corporation

Suneel Kelkar
suneelkelkar@gmail.com (7/20/2021)
Email: suneelkelkar@gmail.com

By: _____
Name: Suneel Kelkar
President

Form of Agreement Approved by
the Office of the City Attorney

EXHIBIT A
SISTER CITY PROGRAM

The services to be provided by the Agency shall include, but are not limited to, the services set forth below consistent with the goals of the Sister City Program:

1. Plan and implement activities to meet the goals and objectives of the Sister Cities Program and to build support in San Jose to enhance positive relations with Pune, India.
2. Arrange cultural programs for official Pune, India representatives who visit the City as official delegations of the Program. An “official delegation” is defined as a group of one or more individuals, which may include government officials, educators, residents of Pune, India that are associated and endorsed by the Sister City Program, and may include representatives of community organizations, schools or government agencies.
3. Facilitate Pune, India Sister City visitor greetings, including welcoming meals or receptions. Costs of facilities, food, beverages and hotel accommodations for hosting official visitors may be selectively approved by the City on a case-by-case basis. Local attendees and members of the Sister City Committee are responsible for their own expenses.
4. Support official Sister City trips to Pune, India. Such trips shall be approved in advance by the City. Participants on Sister City trips do so at their own expense. An official San Jose Sister City delegation shall be defined as a group of individuals, which may include government officials, members of the Sister City Committee, representatives of local business, community organizations, schools and individuals sponsored by Agency. The purpose of such official trips shall be in accordance with the goals and objectives of the Sister City Program and to enhance the Sister City relationship.

5. Provide souvenirs to visiting delegations. Costs shall not exceed Forty Dollars (\$40) per member of an official delegation.
6. Plan, arrange and sponsor Sister Cities events at which official representatives of Pune, India may be formally received by representatives of the City and residents of San Jose. Members of the public, including Agency, who attend such public events, shall do so at their own expense. The costs and expenses of such functions, lodging accommodations and transportation costs for official Pune, India delegations, including members of the Sister City Committee, shall not be borne by the City.
7. Prepare exhibits at community events and functions to inform the public about the City's Sister City Program with Pune, India and to promote Pune, India and its goals before school and community groups. Reimbursable expenses for such events include sponsor fees, site rentals and booths, banners and other decorations and publicity. Entertainment expense reimbursements will be considered by the City on a case-by-case basis. The entertainment expense should be at events free of charge and open to the public.
8. Develop, print and distribute brochures, flyers and other material to promote the Sister City Program and relationship with Pune.
9. Design and maintain a website to promote the Sister City Program with Pune, India.
10. Help to facilitate the sponsorship of exchange students designated by Pune, India.
11. Furnish the City with advance notice of at least thirty (30) days, when feasible, of the arrival of official Pune, India representatives.

In addition, the Agency may apply City funds of up to \$500 under this Agreement to provide assistance to charitable, non-profit organizations or schools in San Jose or Pune, India if the following conditions are met:

- A. the charitable, non-profit organization, or school receiving the funds is engaged in Sister City related project with the Agency; and
- B. there is substantial involvement in the project by members of the Agency; and
- C. the funds from the City are not the sole source of the funding for the project.

In performance of this Agreement, Agency is encouraged to purchase goods and services from San Jose businesses.

EXHIBIT B
COMPENSATION

A. Maximum Compensation

City agrees to reimburse Agency the maximum amount of compensation pursuant to this Agreement in an amount not to exceed TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500).

B. Statements

City shall pay all sums to Agency on a reimbursement basis for eligible costs actually incurred by and paid by Agency pursuant to this Agreement, including but not limited to any premiums for insurance required under this Agreement, and other expenses specified in EXHIBIT A. No sum shall be paid until City receives a statement in a form approved by City specifying in detail the reimbursable costs incurred and paid by Agency. Agency' president or authorized designee shall submit such a statement and shall provide City with supporting documentation and/or receipts for all reimbursable costs.

Any requests from Agency for advance payments will be handled on a case-by-case basis.

Agency shall receive prior approval from City for any single expenditure of FIVE HUNDRED DOLLARS (\$500) or more.

The Agency shall be eligible to receive reimbursement of up to SIX HUNDRED DOLLARS (\$600) for general liability insurance coverage.

The Agency shall not receive funds from City for any travel-related expenses.

City shall initiate payment to Agency within thirty (30) days of City's approval of the statements submitted pursuant to this Agreement.

EXHIBIT C

INSURANCE REQUIREMENTS

Agency, at Agency's cost and expense shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Agency, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Form Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "nonowned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

Agency shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Agency shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Agency; products and completed operations of Agency; premises owned, leased or used by Agency; and automobiles owned, leased, hired or borrowed by Agency. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
 - b. Agency's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Agency's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by Agency shall not affect coverage provided City, its officers, employees, agents, or contractors.
 - d. Coverage shall state that Agency'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.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten

(10) days prior written notice shall apply in the event of cancellation for nonpayment of premium.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City's Risk Manager.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. Verification of Coverage

Agency shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: joe.hedges@sanjoseca.gov, or mailed to the following address:

City of San Jose
Office of Economic Development
200 East Santa Clara Street, 17th Floor
San Jose, California 95113

G. Subcontractors

Agency shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.