

**OPERATING GRANT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
OUR CITY FOREST
(FY 2009-2010)**

This Operating Grant Agreement ("Agreement") is made and entered into this _____ day of _____, 2009, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City") and OUR CITY FOREST, a California nonprofit corporation ("Grantee").

RECITALS

WHEREAS, Grantee, as a nonprofit corporation, is involved in Community Forest programs in the City of San José; and

WHEREAS, City wishes to award a grant to Grantee for the support of Community Forest programs in the City of San José; and

WHEREAS, City also desires to make certain office space and equipment available to Grantee from which to operate Grantee's Community Forest programs; and

WHEREAS, City also desires for Grantee to perform community forestry services; and

WHEREAS, City also desires for Grantee to actively solicit and obtain community forestry grants from other agencies; and

WHEREAS, City's Director of Transportation (the "Director") is charged with the responsibility of administering this Agreement on City's behalf;

NOW, THEREFORE, the parties agree as follows:

SECTION 1. AUTHORITY AND STATUS OF GRANTEE.

Grantee represents and warrants that the information contained in this Agreement is true and accurate to the best of its knowledge; and that it is a duly organized validly existing nonprofit corporation in good standing under the laws of its place of incorporation; that its signatory to this Agreement is authorized by resolution, by laws, or constitution of the nonprofit corporation, currently, in full force and effect, to execute this Agreement on Grantee's behalf.

SECTION 2. TERM OF AGREEMENT.

This Agreement shall be for a term commencing on October 16, 2009 and expiring on October 15, 2010, unless otherwise terminated earlier as provided for in this Agreement. Regardless of the date of execution of this Agreement, this Agreement is effective as of October 16, 2009.

SECTION 3. RELATIONSHIP OF PARTIES.

Under no circumstances will this Agreement be construed as one of agency, partnership, joint venture or employment between Grantee and City. Each party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other party in any way.

SECTION 4. PAYMENT AND EXPENDITURE OF GRANT AWARD.

A. City agrees to pay Grantee a total grant ("Grant Award") in an amount not to exceed Two Hundred Seventy-Five Thousand Dollars (\$275,000). City will pay the Grant Award to Grantee in six (6) installments: the first, in the amount of One Hundred Thousand Dollars (\$100,000), the second, in the amount of Twenty Thousand Dollars (\$20,000), the third in the amount of Twenty Thousand Dollars (\$20,000), the fourth in the amount of Forty-Nine Thousand Dollars (\$49,000), the fifth in the amount of Twenty Thousand Dollars (\$20,000), and the sixth in the amount of Sixty-Six Thousand Dollars (\$66,000).

1. As a condition precedent to the City's payment of the first installment of the Grant Award, immediately upon execution of this Agreement, Grantee shall submit to the City evidence of the insurance coverage required by Section 18 of this Agreement.
2. As a condition precedent to the City's payment of the second installment of the Grant Award, Grantee shall submit to the City, for review and approval, the first draft of the Community Forest Best Management Practices (BMP) Manual as specified in Exhibit E.
3. As a condition precedent to the City's payment of the third installment of the Grant Award, Grantee shall submit to the City, for review and approval, the second draft of the Community Forest BMP Manual as specified in Exhibit E.
4. As a condition precedent to the City's payment of the fourth installment of the Grant Award, on or before February 1, 2010, Grantee shall submit to the City, for review and approval, a Mid-Year Report consisting of a summary of monthly Financial Reports and a Mid-Year Performance Report as specified below in Sections 6, 7, and 9.
5. As a condition precedent to the City's payment of the fifth installment of the Grant Award, Grantee shall submit to the City, for review and approval, the print-ready version of the Community Forest BMP Manual as specified in Exhibit E.
6. As a condition precedent to the City's payment of the sixth installment of the Grant Award, Grantee shall submit to the City, for review and approval, the inventory data from four (4) Pavement Maintenance Zones (PMZ) as specified in Exhibit A.

B. Grantee shall expend the Grant Award on the program set forth in the attached Exhibit A ("Grant Program") and in accordance with the budget set forth in the attached Exhibit D ("Grant Budget"). Grantee shall not adjust the amount specified for any expense category listed in the Grant Budget by a percentage greater than twenty

percent (20%) without the prior written approval of City's Director. Any adjustment to the Grant Budget not requiring City's advance approval may only be expended for categories of expenditures identified in the Grant Budget. Any expenditure of the Grant Award that is not in compliance with this Section constitutes a disallowed cost ("Disallowed Cost") for purposes of Section 12, below.

C. If any of the Grant Award remains unexpended at the expiration of this Agreement, the Director may, at the Director's sole option, extend the term of this Agreement, or alternatively, require Grantee to repay any amounts remaining unexpended.

SECTION 5. WITHHOLDING OR CANCELLATION OF PAYMENTS.

City may elect to suspend or to cancel payment to Grantee, in whole or in part, in the event of any of the following occurrences:

1. If the Grantee is in default under any provisions of this Agreement.
2. If the Grantee makes ineffective or improper use of any City funds in the provision of programs and services.
3. If Grantee fails to comply with any of the terms and conditions of this Agreement.
4. If Grantee submits to City any report that in any material respect is incorrect, incomplete or misrepresents information.
5. If Grantee loses its nonprofit status.

SECTION 6. ACCOUNTING AND FINANCIAL RECORDS.

Grantee shall establish and maintain at all times, on a current basis in connection with the provision of the Grant Program, an adequate accounting system in accordance with generally accepted accounting principles and standards and acceptable to Director covering all revenues, costs, and expenditures with respect to Grantee's performance under this Agreement.

SECTION 7. FINANCIAL REPORTS.

A. Grantee shall submit reports of all financial transactions related to Grantee's performance under this Agreement ("Financial Reports") in accordance with the schedule specified in this Section: February 1, 2010 and October 15, 2010. The Financial Reports shall be submitted in duplicate to the Director. The format of the Financial Reports shall be as directed by the Director. In lieu of generating a consolidated quarterly report, the Grantee may instead submit, in strict accordance with the above schedule, a report covering each of the months in the reporting period, which includes a Standard Balance Sheet and Standard Income and Expense Statement for each of the months in the reporting period. The Financial Reports must be prepared in accordance with generally accepted accounting principles.

B. Grantee shall also submit a final report of all financial transactions related to this Agreement no later than October 15, 2010 ("Final Report"). The Final Report must be prepared and certified by a certified public accountant in accordance with generally accepted auditing principles.

C. Grantee shall submit a copy of their Federal Internal Revenue tax return for the fiscal year 2009 verifying the Grantee's 501c (3) status no later than October 15, 2010.

SECTION 8. Grantee's FINANCIALS.

A. City Council requires that each non-profit organization receiving \$200,000 or more in funds from the CITY or Redevelopment Agency (in the aggregate) during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and make available for public view on the internet, annual audited financial statements. The audited financial statements must be made available for view within six (6) months from the end of the non-profit's fiscal year (which period may be extended by the City Manager based upon a showing of hardship or other good cause) and must be viewable by the public at no cost. All audits must be performed by a certified public accountant

currently licensed to practice in the State of California, must conform to generally accepted auditing standards and otherwise be in a form acceptable to the City Manager.

B. Non-profits shall be required to comply with this requirement at the time that the non-profit has entered into one or more grant agreements or subsidy agreements with the CITY and/or Redevelopment Agency, which provide for the payment of an aggregate amount that equals or exceeds \$200,000 in grant and/or subsidy funds in any one fiscal year. Non-profits covered by this requirement must exert due diligence in determining when they have reached the aggregate funding threshold of \$200,000. The provisions of the financial posting requirements shall be interpreted broadly to effectuate the purpose of making available to the public information on recipients of substantial CITY and/or Redevelopment Agency funds. These provisions shall apply not only to grant agreements or operating agreements but shall also apply, without limitation, if any amendments to such agreements brings the total annual funding to equal or exceed \$200,000, and also to any other agreements with the CITY and/or Redevelopment Agency that are equivalent in purpose to a grant agreement or an operating subsidy agreement, regardless of the title of the agreement.

C. This posting requirement shall remain in effect until an entire fiscal year passes in which the non-profit does not have contracts with the CITY and/or Redevelopment Agency which provide for grants and/or subsidies from the CITY and/or Redevelopment Agency in an aggregate amount equaling or exceeding \$200,000. Without limitation of any other remedy, Grantee's failure to comply with this requirement may be taken into consideration when evaluating Grantee's request for future grant funds or subsidies.

SECTION 9. PERFORMANCE REPORTS.

In addition to the Financial Reports required by Section 7, Grantee shall also submit to the Director a report that documents Grantee's performance ("Performance Measures"), as measured by the performance measures set forth in Exhibit A. The dates for submission of Performance Reports shall be the same as those established for

Financial Reports specified in Section 7.

SECTION 10. RIGHT OF EXAMINATION AND AUDIT.

Grantee agrees that the City's Manager, Auditor, Attorney or the Director, or any of their duly authorized representatives, shall have access to and the right to examine all facilities and activities of Grantee related to Grantee's performance of this Agreement, including the right to audit, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this Agreement at any time. Grantee further agrees that such right of City to examine or audit shall continue for three (3) years after the expiration or termination of this Agreement, or for such longer period, if any, as is required by applicable law.

SECTION 11. PRESERVATION OF RECORDS.

Grantee shall preserve and make available its records related to its performance of this Agreement (a) until the expiration of three (3) years from the date of final payment to Grantee under this Agreement, or (b) for such longer period, if any, as is required by applicable law.

SECTION 12. REIMBURSEMENT TO CITY.

Grantee agrees to pay to City, within fifteen (15) days after City's written notice to Grantee, any portion of the Grant Award paid by the City to Grantee which the Director has determined is a Disallowed Cost.

SECTION 13. EQUIPMENT.

City agrees to make available to Grantee for Grantee's use in performance under the provisions of this Agreement, all that equipment specified on the inventory attached as Exhibit C ("Equipment List"). The parties acknowledge that the equipment listed in Exhibit C has been made available to Grantee. Grantee agrees to maintain all equipment used by Grantee in performance under the provisions of this Agreement in good condition and working order and not to permit use of any such equipment unless

the same is in good and safe working condition at the time of use. Grantee further agrees to return all equipment specified in Exhibit C to City at the expiration or termination of this Agreement in a usable condition at least as good as when it was received by Grantee, reasonable wear and tear excepted. Grantee agrees to reimburse City for any and all costs to City for repairs made necessary to any of City's equipment except by reason of such wear and tear.

SECTION 14. INDEPENDENT CONTRACTOR.

A. The parties agree that Grantee and Grantee's employees and agents shall be at all times independent contractors and not employees or agents of the City, and that Grantee and Grantee's employees and agents shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sick leave, insurance or any other benefit or right connected with employment by the City of San José, or any compensation other than as prescribed herein, and Grantee and Grantee's employees and agents expressly waive any claim it/they may have to any such rights.

B. Under no circumstances shall this Agreement be construed as one of partnership, joint venture or employment between Grantee and City. Each party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other party in any way.

SECTION 15. ASSIGNMENT BY Grantee.

Any assignment or attempt to assign this Agreement by Grantee without Director's written authorization shall constitute a material breach for which City may automatically terminate this Agreement without prior notice.

SECTION 16. INDEMNIFICATION AND HOLD HARMLESS.

Grantee shall protect, defend, indemnify and hold harmless City, its officers, employees and agents against any loss, liability, damage, suits, actions or claims arising out of or relating in any way to Grantee's performance under this Agreement due to the willful or negligent acts (active or passive) or omissions by Grantee's officers, employees,

volunteers or agents. The acceptance of Grantee's performance under this Agreement by City shall not operate as a waiver of such right of indemnification. This Section shall survive expiration or sooner termination of this Agreement.

SECTION 17. INSURANCE REQUIREMENTS.

At Grantee's sole cost and expense, and for the entire term of this Agreement, Grantee shall obtain and maintain in full force all of the insurance requirements set forth in the attached Exhibit B. All policies, endorsements, certificates and/or binders will be subject to approval by the Director of Human Resources or the Director's authorized designee ("Risk Manager") as to form or content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Grantee agrees to provide City with a copy of said policies, certificates and/or endorsements upon execution of this Agreement as a condition of the City's first installment of the grant award.

SECTION 18. NONDISCRIMINATION BY Grantee.

In the performance of this Agreement, Grantee shall not discriminate, in any way, against any employee or applicant for employment because of race, sex, color, age, religion, sexual orientation, disability, actual or perceived gender identity, ethnicity or national origin, nor shall Grantee, in the providing of service hereunder, discriminate against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, actual or perceived gender identity, ethnicity or national origin.

SECTION 19. COMPLIANCE WITH ALL LAWS.

A. Grantee shall comply with all applicable City, state and federal laws, regulations and rules related to the operation of Program, including but not limited to laws, regulations and rules applicable to health, safety and equal opportunity employment.

SECTION 20. EFFECT OF WAIVER.

The waiver by City of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act by Grantee requiring City's approval or consent shall not be deemed to waive provisions for City's approval or consent or any subsequent acts by Grantee.

SECTION 21. BREACH.

A. Grantee's performance of each and every provision of this Agreement is an integral part of the consideration for City to enter into this Agreement. Grantee'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 Grantee.

B. City, at City's sole option, may elect to provide written notice of the breach of this Agreement and a time period in which Grantee may cure the specified breach. In the event that Grantee fails to cure the specified breach within the time period specified, City may terminate this Agreement.

SECTION 22. TERMINATION WITHOUT CAUSE.

A. This Agreement may be terminated by either party upon giving to the other party seven (7) days written notice of termination. In the event such notice of termination is given, this Agreement shall be deemed terminated and at end seven (7) days after written notice is given.

B. The Director is authorized to decide on the part of City, that this Agreement is to be terminated and to furnish written notice thereof, either under this section or Section 21.

C. No later than thirty (30) days of Grantee's receipt of City's termination notice under this Section or Section 21, Grantee shall refund the unused portion of the Grant Award to City; except that Grantee shall have no obligation to refund to City any

portion of the grant award that the City determines was spent in accordance with the terms of the Agreement. Additionally, Grantee shall provide City with an accounting of its expenditure of the Grant Award as set forth in Section 7.

SECTION 23. NOTICE.

A. Any and all notice which either party desires or is required by this Agreement to give or furnish to the other party shall be personally delivered or deposited in the United States mail, postage prepaid, addressed as follows:

CITY: City of San José—Department of Transportation
Attention: Our City Forest – Project Manager
200 East Santa Clara Street, 8th Floor Tower
San José, CA 95113-1905

Grantee: Our City Forest
151 W. Mission Street
San José, CA 95110

B. The parties may change their respective addresses for purposes of delivering notice by sending notice of such change pursuant to this section.

C. Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

D. Grantee's primary contact with City shall be the project manager appointed by the Director. Grantee shall submit all correspondence and communication regarding this Agreement to City through the project manager.

SECTION 24. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

A. Grantee agrees that, in the performance of this Agreement, Grantee shall perform its obligations under the Agreement in conformance with City Council Policy 4-6,

Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>.

- B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:
1. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
 2. Use of Energy Star Compliant equipment.
 3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
 4. Internal waste reduction and reuse protocol(s).
 5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 25. NO RELIGIOUS OR POLITICAL ADVOCACY.

- A. Grantee shall not expend any portion of the compensation hereunder to inhibit or promote religion and the services funded by this Agreement must not be used to convey a religious message. Any portion of the compensation used in contradiction to the provisions of this Section, shall be deemed a Disallowed Cost.
- B. Grantee shall not expend any portion of the compensation hereunder for political advocacy efforts, whether for or against a political candidate, ballot measure or bill.

SECTION 26. ACKNOWLEDGEMENT OF CITY

Grantee will acknowledge the support of City, where appropriate, in written documents and informational material regarding the grant project.

SECTION 27. MISCELLANEOUS PROVISIONS.

A. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit is brought by either party to this Agreement, the parties agree that venue will 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 José, California.

B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.

C. The waiver by any party to this Agreement of a breach of any provision of this Agreement will not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

D. Any and all exhibits that are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement. This Agreement may only be amended by formal written agreement executed by both parties.

E. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

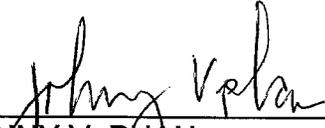
F. Where performance is specified to be performed on or before a date certain, time shall be of the essence.

G. Where this Agreement refers to City and no officer of the City is named, the Director of the City's Department of Transportation will have the authority to act on City's behalf.

WITNESS THE EXECUTION HEREOF, the day and year first herein above written.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

 10/08/09

JOHNNY V. PHAN
Deputy City Attorney

By: _____
DEANNA J. SANTANA
Deputy City Manager

OUR CITY FOREST, a California non-profit corporation

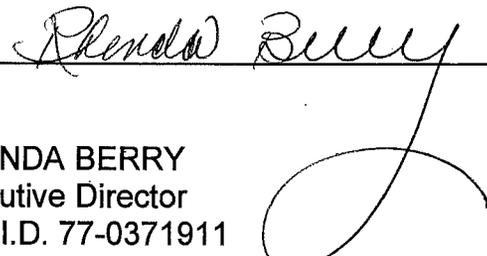
By:  _____
RHONDA BERRY
Executive Director
Fed. I.D. 77-0371911

EXHIBIT A
GRANT PROGRAM

A. PERFORMANCE COMPONENTS

Grantee's scope of work as it pertains to this Agreement is as follows:

1. **Fund Development.** Grantee shall seek and obtain funding from sources other than the City of San José. The Final Report shall detail, with copies of corroborating documentation from the granting agencies, the amount of non-City funding secured by the Grantee and the effort needed to obtain the grants.
2. **Grants Administration.** Grantee shall directly administer and manage all State, federal and other non-City urban and community forestry grants Grantee obtained, including the collection and maintenance of all pertinent program data and financial records. Grantee shall maintain two computer servers and detailed database systems for recordkeeping. Grantee shall be responsible for meeting the goals and objectives of these agreements in a timely manner. Grantee is responsible for all legal services related to the grant administration as well as for preparing and submitting invoice statements to grantors for expenditure reimbursements.
3. **Nonprofit Status.** Grantee shall maintain nonprofit 501c(3) status by meeting all legal and governmental requirements set forth by the State of California. Grantee shall comply with all state and federal laws pertaining to employment.
4. **Programs & Services.** Grantee shall seek and obtain grants from non-CITY agencies to provide residents, schools, businesses, agencies and individuals with an array of community forestry programs and services, including:
 - a. **Community Education & Outreach.** The Grantee shall provide an increased awareness regarding the benefits of trees and the importance of citizen involvement in caring for the community forest. This shall be accomplished through development and distribution of education materials in several languages, community workshops, outreach event exhibits, videos, newsletters and other projects employed to educate and motivate citizens, initiate partnerships and recruit volunteers.
 - b. **Volunteer Training and Support.** The Grantee shall develop and cultivate an Our City Forest volunteer corps to assist with education, tree planting and tree care projects. Volunteers will attend an 18-hour training class to become certified "Tree Amigos." Volunteers will receive specialized training to become classroom instructors, outreach workers or tree care specialists. One-time volunteer opportunities will be developed for corporate volunteer groups,

service clubs, youth groups and others seeking special "community service day" events.

c. **Planning & Policy.** The Grantee shall develop research opportunities to increase the information base regarding San José's community forest as well as provide input to government agencies regarding best community forestry practices. The Grantee shall also forge inter-agency partnerships that enhance the development and protection of the community forest.

d. **Business & Industry.** The Grantee shall explore how businesses can benefit from a well-managed and healthy community forest. Grantee shall develop and encourage participation of Corporate employee groups in tree planting and other related projects.

e. **Tree Planting and Tree Care.** The grantee will also work with neighborhoods, schools, and government agencies to further improve the community forest through tree planting and tree care services. These services will include planting of shade trees, tree stakes, project planning, community organizing, technical assistance, species selection, site planning, tree grants, trained volunteers and project management.

f. **Special City Projects.** The Grantee shall also provide assistance to the City on special projects such as measuring the health of the community forest. Grantee will work to develop the mechanisms needed to enhance and protect the community forest in San José and the surrounding cities. Such mechanisms include long-range planning, developing public-private partnerships, securing joint financing of major planting projects, developing a trained citywide volunteer corps and recommending sound City policies.

g. **Street Tree Inventory.** The Grantee shall provide professional services and conduct a street tree inventory in eleven (11) Pavement Maintenance Zones (PMZ) selected by the City. The data collected will be in a format acceptable to the City recording the species, size, and condition attributes of the street trees, planting locations or the presence of only non-plantable tree sites for all parcels within each PMZ. Included in the scope of work is inventorying the trees located in any median islands and roadside landscape areas maintained by the City in each PMZ. An interim delivery of the inventory data for four (4) PMZ's shall be submitted by the Grantee to the City by June 1, 2010. The inventory data shall be verified by the Grantee to be at minimum 95% accurate. The remainder of the inventory data shall be delivered to the City by October 15, 2010.

h. **Community Forest Best Management Practices Manual Preparation Services.** The Grantee shall provide technical services in the research, technical writing, editing and community outreach necessary for the

preparation of the City's Community Forest Best Management Practices Manual. The Schedule of Activities for the manual preparation is outlined in Exhibit E.

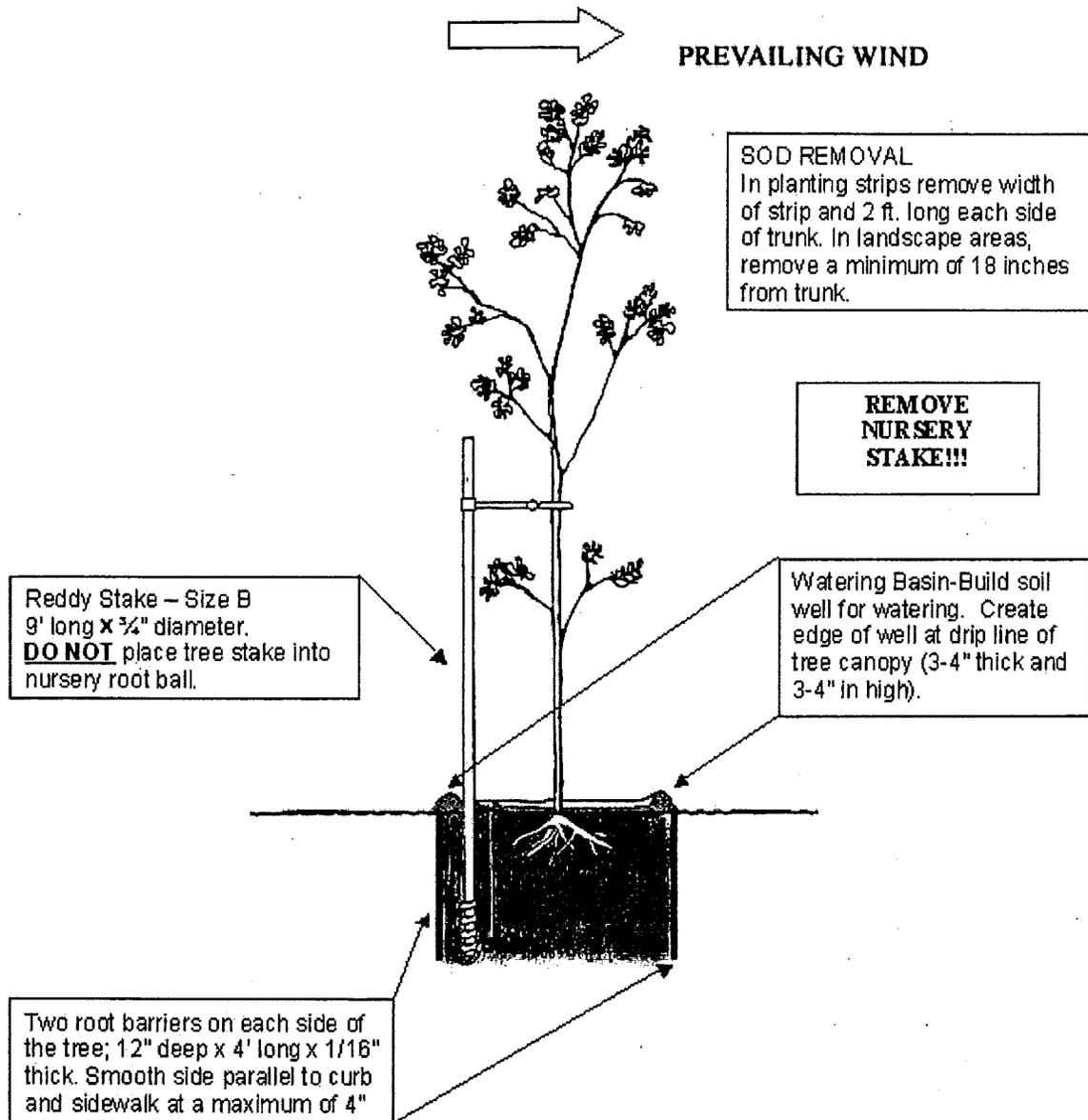
5. Use of Grant Funds as Matching Funds to Secure Additional Grants.

Grantee will expend a portion of the Grant Award on costs associated with the effort to obtain grants from other funding sources beyond the City of San José that will fund the planting of a minimum of 1,500 trees along the streets, in parks, in school grounds and on private property by Grantee's individual and group volunteers. All tree plantings must meet the following requirements:

a. All trees planted in the street right-of-way must have planting permits provided by the City prior to planting. Additionally, Grantee must obtain consent and approval from the adjacent property owner(s) prior to planting a tree in a park strip.

b. All street trees will be planted in accordance with the requirements set forth in the City of San José Standard Tree Planting Detail, which is incorporated into this Exhibit A below.

15 GALLON TREE PLANTING DETAIL FOR HOMEOWNERS



c. It is recommended that all trees planted between the sidewalk and curb have a four-foot long Vespro, or approved equal, root barrier installed parallel to the sidewalk and curb.

d. All street tree planting locations must meet clearance requirements from utilities, driveways, streetlights and intersections, which are set forth below and incorporated into this Exhibit A below.

TREE PLANTING SETBACKS

Tree Planting Clearances From:

Street Lights.....20 Feet

To prevent blocking light & dark streets

Underground utilities.....5 Feet

If they dig up utility, they do heavy damage to tree roots if tree is too close

Driveways.....5' Residential and 10' Commercial

Trucks in & out of drive damage trees; trees also can block sight lines of vehicles backing out.

Sewer Lines.....10 Feet

Roto Rooter loves roots that clog sewers

Water Meter.....5 Feet

Trees break lines at meter

Stop signs and other traffic devices.....20 Feet

Major Danger here: Vehicle collision/pedestrian collisions.

Fire Hydrants.....5 Feet

If trees are too close = block access for fire hoses

Corners.....40 Feet

(See problems associated with stop signs)

- e. All trees will be planted and in good condition prior to September 30, 2010.

B. SERVICES.

Grantee shall:

1. Develop community-based programs to enhance and protect the San José area's community forest.
2. Develop related volunteer opportunities for residents of all ages throughout the City.
3. Respond to citizen requests for information and assistance.
4. Conduct educational outreach to both English and non-English speaking populations and distribute educational materials in various languages.
5. Identify state and federal funding sources for community forestry projects and, when appropriate, assist the City in securing these funds.
6. Assist with project implementation for state and federal grants.
7. Coordinate with City Arborist, City Parks Managers and other City staff, as appropriate, on projects concerning City trees and property and related matters.
8. Provide citizen volunteers with ongoing support and technical assistance.
9. Track state and federal community forestry issues and represent San José community forest interests on the California ReLeaf tree group network and the National Alliance for Community Trees.
10. Monitor pertinent pending state and federal legislation and provide impact analysis to the City as needed.
11. Provide educational displays and information materials.

C. PERFORMANCE MEASURES.

The following performance categories will be used to measure the productivity and output of Grantee's Program:

1. Total non-City of San José funding secured. Grantee shall submit copies of letters from granting agencies or organizations announcing the grants awarded to Grantee during the term of the Agreement.

2. Staff time spent applying for grants – provide specifics of Grantee staff hours used in preparing grant application documents and whether or not the effort was successful in obtaining the specific grants for which applications were submitted.
3. Number of volunteers recruited and trained.
4. Number of community volunteer hours.
5. Number of community projects organized and outreach events organized.
6. List of street trees and non-street trees planted in the City of San José by Our City Forest, including the address or location, the species and the date of the planting. The plantings will be subject to verification by City.
7. Number of street trees and non-street trees planted in the City of San José by the various grant sources obtained by Our City Forest.
8. List of the volunteer hours used to steward or maintain the street trees and non-street trees in the City of San José. Stewardship is the watering, fertilization, pest control, re-staking, and similar tasks, of young trees.
9. Number of parcels, tree planting vacancies and street trees inventoried.
10. Completion of an outreach plan and print-ready electronic versions of a Community Forest BMP Manual and brochure.

EXHIBIT B

INSURANCE REQUIREMENTS

Grantee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to Grantee property that may arise from or in connection with the operation and use of City owned premises. The cost of such insurance shall be Grantee's responsibility.

Minimum Limits of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including products and completed operations, Fire Legal Liability; and
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto, or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "non-owned" autos; and
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance; and
4. Property insurance against all risks of loss to any tenant improvements or betterments, or Grantee owned property.

Minimum Limit of Insurance

Grantee shall maintain limits no less than:

1. General Liability: One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General 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. \$100,000 Fire Legal Liability limit.
2. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the California Labor and Employer's Liability limits of

One Million Dollars (\$1,000,000) per accident for bodily injury or disease;
and

4. Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions.

1. The City of San José, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by, or on behalf of, Grantee, Grantee products or completed operations, premises owned, occupied or used by Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
2. Grantee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of Grantee'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, its officers, officials, employees or volunteers.
4. Coverage shall state that Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits or the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) day's prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurance

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

Verification of Coverage

Grantee shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor - Wing
San Jose, CA 95113-1905

EXHIBIT C

EQUIPMENT LIST

The following is a list of furniture and equipment owned by the City to be used by the Grantee.

- 1 used metal desk
- 1 used wood bookshelf - 3-shelf
- 1 used wood veneer bookshelf – 3-shelf
- 1 used metal 2-drawer putty file cabinet
- 2 used wood veneer table – 5 ft.
- 1 used conference wood veneer table – 6 ft

EXHIBIT D
GRANT BUDGET

EXPENDITURES		
	PERSONNEL	09-10 PROPOSED
STAFF SALARIES		
	Field Operations Director/Arborist	\$ 68,000
	Tree Nursery Manager/Arborist	\$ 48,000
	Planting Project Coordinator	\$ 48,000
	Planting Project Coordinator/Arborist	\$ 48,000
	President/CEO & Fund Development Director	\$ 85,000
	Americorps Program Manager	\$ 50,400
	AmeriCorps Program Assistant - <i>half-time</i>	\$ 24,000
	Education & Outreach Coordinator	\$ 38,000
	Bookkeeper - <i>part-time</i>	\$ 20,000
	Tree Maintenance Manager/Arborist	\$ 20,000
	AmeriCorps Recovery Program Manager	\$ 22,000
	Green & Healthy Program Manager - <i>contract</i>	\$ 20,000
	TOTAL STAFF SALARIES	\$ 491,400
STAFF BENEFITS		
	Medical/Dental/Vision Insurance	\$ 47,000
	403(b) Plan	\$ 22,000
	FICA, State Disability, Taxes	\$ 40,000
	TOTAL STAFF BENEFITS	\$ 109,000
AMERICORP PERSONNEL		
	Stipends - 22 Full-Time & 2 2nd Yr.	\$ 340,000
	Member Health Benefits - Full-Time & 2nd Yr.	\$ 31,000
	FICA, SDI, Taxes - Full-Time & 2nd Yr.	\$ 25,000
	Stipends - Recovery Act - 36 PT Members	\$ 216,000
	FICA, SDI, Taxes - Recovery Act	\$ 19,850
	TOTAL AMERICORPS PERSONNEL	\$ 631,850
CONTRACT SERVICES		
	CPA Accounting & Report Fees	\$ 10,000
	Augering, Concrete Removal, Site Prep	\$ 6,000
	Publications Development	\$ 3,000
	Filemaker Pro/GIS Database Maintenance	\$ 10,000
	Web Site Development	\$ 5,000
	Translation Services	\$ 1,000
	Inventory Project Manager	\$ 20,000
	TOTAL CONTRACT SERVICES	\$ 55,000

	TOTAL PERSONNEL	\$ 1,287,250
NON-PERSONNEL		09-10 PROPOSED
PROGRAM EXPENSES		
	Field Operations Supplies	
	<i>Trees: 700/400 15-gallon + 2000 bareroot</i>	\$ 45,000
	<i>Stakes - 1,400 wood, 1,000 reddy</i>	\$ 20,000
	<i>Tools & Equipment</i>	\$ 4,000
	<i>Other Supplies - mulch, chips</i>	\$ 1,000
	<i>Fuel</i>	\$ 10,000
	<i>AmeriCorps Full-Time Member Clothing</i>	\$ 2,500
	<i>Recovery Act Member uniforms, toolbelts</i>	\$ 2,536
	<i>Staff Clothing</i>	\$ 1,500
	<i>Tree Bank Supplies</i>	\$ 2,000
	Subtotal Field Operations Supplies	\$ 88,536
	Telephone & Telecommunications	\$ 10,000
	Subtotal Telephone & Telecommunications	\$ 10,000
	Education & Outreach Supplies	\$ 10,000
	Subtotal Education & Outreach Supplies	\$ 10,000
	Other Program Expenses	
	<i>Office Supplies Expense</i>	\$ 4,000
	<i>Volunteer Supplies</i>	\$ 6,000
	<i>Postage & Shipping</i>	\$ 5,000
	<i>Copier Lease & Usage</i>	\$ 18,000
	<i>Gifts (Donors & Volunteers)</i>	\$ 1,000
	<i>Books, Subscriptions, Reference</i>	\$ 1,000
	Subtotal Other Program Expenses	\$ 35,000
	TOTAL PROGRAM EXPENSES	\$

		143,536
FACILITIES & EQUIPMENT		
		\$
	Personal Property Taxes	200
		\$
	Registration & DMV fees	3,000
		\$
	Vehicle Maintenance	5,000
		\$
	TOTAL FACILITIES & EQUIPMENT	8,200
MEETINGS & TRAVEL		
		\$
	Mileage: Staff & Full-Time Members	2,000
		\$
	Mileage: Recovery Act Members	5,808
		\$
	Travel & Meeting Expenses	3,000
		\$
	TOTAL MEETINGS & TRAVEL	10,808
OTHER NON-PERSONNEL		
		\$
	Insurance Expense (general)	6,000
		\$
	Vehicle Insurance	20,000
		\$
	Membership Dues	16,000
		\$
	Staff Development	2,000
		\$
	Fingerprinting	1,000
		\$
	Member Training	1,000
		\$
	Outside Computer Services (non contractor)	500
		\$
	Computers & Software	4,000
		\$
	Advertising Expense	3,000
		\$
	Event Registration Fees	500
		\$
	Registration & Filing Fees	600
		\$
	Bank Fees	500
		\$
	Payroll Processing Fees	7,000
		\$
	Special mtgs/programs/events contingency	500

	TOTAL OTHER NON-PERSONNEL	\$ 62,600
	TOTAL NON-PERSONNEL	\$ 225,144
CAPITAL EXPENDITURES		09-10 PROPOSED
	Nursery expansion/irrigation/greenhouse	\$ 34,000
	Prius loan payments	\$ 6,425
	Furniture	\$ 1,000
	Purchase of 2 mini-bus/vans - tree care grant	\$ 15,000
	Purchase of car - 10K down + payments	\$ 16,000
	Purchase of used pickup	\$ 8,000
	TOTAL CAPITAL	\$ 80,425
	TOTAL BUDGETED EXPENDITURES	\$ 1,592,819

REVENUE		
		09-10 PROPOSED
STATE & FEDERAL CONTRACT AGREEMENTS		
	AmeriCorps Grant - Year 3	\$320,183
	Recovery Act AmeriCorps Grant	\$199,881
	CDF Healthy Trees (basic care/prune 4,000)	\$20,000
	EEM Highway 85 Neighborhoods	\$15,000
	CDF GREEN TREES 06-09	\$18,000
	EEM Trees for Central San José	\$159,000
	CDF Community Tree Nursery	\$202,000
	CDF Green Trees 09-10	\$78,800
	STATE & FEDERAL REVENUE	\$1,012,864
CITY AGREEMENTS & FEE-FOR-SERVICE		
	City of San Jose Operating Grant	\$143,000
	City of San Jose Matching Grant	\$120,000
	City Parks Contract - <i>unconfirmed</i>	\$5,000
	ESD Youth Watershed Grant	\$5,000
	ESD Green & Healthy Grant	\$10,000
	DOT Recovery Act Grant Match	\$90,000

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10/02/2009

	DOT CDBG Proj. Manager - direct salary	\$34,000
	DOT Tree Inventory fee-for-service - <i>potential</i>	\$20,000
	RDA fee-for-service	\$20,000
	RDA-SNI watering contract - potential	\$5,000
	CITY REVENUE	\$452,000
PRIVATE CONTRIBUTIONS		
	PG&E Grant	\$7,000
	Other Corporate Contributions	\$20,672
	Mitigation Fees	\$20,000
	Earthshare Donations	\$13,000
	TreeGrant donations	\$4,723
	Memberships	\$12,000
	Fee For Service	\$15,045
	Foundation Grants	\$15,000
	Individual & small business contributions	\$10,000
	Amazon Donations	\$15
	Tribute Donations	\$500
	Special Event: Green Fair	\$10,000
	PRIVATE CONTRIBUTIONS	\$127,955
	TOTAL PROJECTED REVENUE	\$1,592,819

EXHIBIT E

Community Forest Best Management Practices Manual
Schedule of Activities

The City of San José Community Forest Best Management Practices (“BMP”) Manual is expected to be approximately 200-250 pages in length in hard copy. Additionally, a brochure to publicize the manual to the public will be developed as part of this writing effort. Grantee and City will develop a meeting schedule regarding review of source documents, communicating with subject matter experts and the scoping of framework for content. The schedule for activities is as follows:

11/01/2009 Grantee will attend initial start up meeting to review draft outline and supporting documents.

11/10/2009 Grantee and City will develop an outreach plan on proposed contents and access to the BMPs. Community outreach should include a minimum of two (2) public meetings and a web-based survey. Grantee is responsible for organizing and conducting the outreach activities.

12/11/2009 **Submittal of electronic Microsoft Word version of First draft of the BMP manual by Grantee to City is due, to include:**

- Title Page
- Table of Contents
- Draft Chapters
- References
- Index
- Glossary
- List of citations
- Section of diagrams (specification detail drawings)

01/22/2010 **Submittal of electronic Microsoft Word version of Second draft of the BMP manual by Grantee to City is due, incorporating comments from the City’s initial review, and includes the following in addition to the first draft content:**

- Formalized chapter content
- Completed layout
- Cover page
- Credits page
- Acknowledgements page
- Section titles and subtitles
- Photographs and illustrations with captions
- Quotes
- Sidebars

02/01/2010 Final draft of BMP manual by Grantee to City is due for final review.

RD: JVP:ERD
10/02/2009

02/21/2010* **Submittal of final electronic Microsoft Word version of the BMP manual in a print-ready form by Grantee to City is due: manual is complete.**

03/01/2010 Submittal of draft electronic Microsoft Word version of brochure by Grantee to City is due for review.

03/15/2010 Submittal of final electronic Microsoft Word version of the brochure in a print-ready form by Grantee to City is due; brochure is complete.

*Deadline may be extended if grant is amended by the State of California to extend length of grant period. In the event that the State of California extends the grant period, Grantee and the City may confer to revise the Schedule of Activities.