

**State of California
The Natural Resources Agency
GRANT AGREEMENT**

Safe Drinking Water, Clean Water, Watershed Protection
And Flood Protection Bond Act of 2000

APPLICANT: City of San Jose
PROJECT TITLE: Guadalupe River Trail Amenities Project
AGREEMENT NUMBER: 13625-02

PROJECT PERFORMANCE PERIOD IS: May 5, 2010 - May 1, 2011

Under the terms and conditions of this agreement, the applicant agrees to complete the project as described in the project description, and the State of California, acting through the Natural Resources Agency pursuant to the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000, agrees to fund the project up to the total state grant amount indicated.

PROJECT DESCRIPTION:

Install concrete work to create the main access to the Guadalupe River Trail between Woz Way and Virginia Street in the city of San Jose in Santa Clara County.

Total State Grant not to exceed \$ 123,574 (or project costs, whichever is less)

The Special and General Provisions attached are made a part of and incorporated into the Agreement

CITY OF SAN JOSE

**STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY**

By _____ Signature of Authorized Representative Title <u>Debra Figone, City Manager</u> Date _____	By _____ Signature of Authorized Representative <u>Bryan Cash, Deputy Assistant Secretary</u> Date _____
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CERTIFICATION OF FUNDING

AMOUNT OF ESTIMATE FUND \$ 123,574	AGREEMENT NUMBER 13625-02	FUND 6015 Water Bond (Proposition 13)		
ADJ. INCREASING ENCUMBRANCE \$	APPROPRIATION 6015-2000-101			
ADJ DECREASING ENCUMBRANCE \$	FUNCTION Local Assistance			
UNENCUMBERED BALANCE	LINE ITEM ALLOTMENT 0540-101-6015(5)	CHAPTER 379	STATUTE 2002	FISCAL YEAR 02-03
T.B.A. NO.	B.R. NO.	INDEX 0540	OBI. EXPEND 751	PCA 10625
PROJECT/WORK PHASE				

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance

SIGNATURE OF ACCOUNTING OFFICER	DATE
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**STATE OF CALIFORNIA
NATURAL RESOURCES AGENCY
GRANT AGREEMENT**

**Safe Drinking Water, Clean Water, Watershed Protection
And Flood Protection Bond Act of 2000**

GRANTEE NAME: City of San Jose'
PROJECT TITLE: Guadalupe River Parkway Trail Amenities Project
AGREEMENT NUMBER: 13625-02

PROJECT DESCRIPTION

Install concrete work to create the main access for the Guadalupe River Trail between Woz Way and Virginia Street in the city of San Jose in Santa Clara County.

Project scope and schedule are described and attached hereto as Exhibit A.

Grantee agrees that if the Grant Funds are received and the property is developed, such development will be for improvements that will provide bicycle and pedestrian trail linkages, and river viewing facilities for a minimum period of twenty (20) years.

TERMS AND CONDITIONS OF GRANT

Special Provisions

1. Recipients of grant funding pursuant to the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act of 2000 shall post signs acknowledging the source of the funds pursuant to the sign guidelines issued by the Secretary of the Natural Resources Agency. Size, location and number of signs are subject to mutual written agreement by Grantee and the State.
2. The Grantee shall record a Memorandum of Unrecorded Grant Agreement on city-owned properties, incorporating by reference this Grant Agreement and giving public notice that the Grantee received funds under this Grant Agreement in order to assist Grantee in developing the Real Property and that, in consideration for the receipt of the Grant Funds, the Grantee has agreed to the terms of this Grant Agreement.
3. Notwithstanding Section H., Provision Number 5 of this Grant Agreement, should the land owned and/or controlled by the Santa Clara Valley Water District (District) be revoked for flood control and/or other safety purposes, as defined by the District, the State waives its rights under this provision.
4. Notwithstanding Section H., Provision Number 5 of this Grant Agreement, should the land owned and/or controlled by the California Department of Transportation (CalTrans) be revoked for other purposes, as defined by CalTrans, the State will require the Grantee pay back only the amount of the grant award.

General Provisions

A. Definitions

1. The term "Act" means the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond Act of 2000.
2. The term "Agreement" means Grant Agreement Number 13625-02.
3. The term "Application" as used herein means the individual application form and its required attachments for grants.
4. The term "Development" as used herein means improvements to real property by construction of new facilities, renovation or additions to existing facilities.
5. The term "Grant Funds" means the money provided by the State to the Grantee in this Agreement.
6. The term "Grant Guidelines" means the specific guidelines issued for the program under which this grant is awarded.
7. The term "Grantee" means an applicant who has a signed agreement for Grant Funds.
8. The term "Project" means the acquisition, development or other activity described under the Project Description section of this Agreement to be accomplished with Grant Funds.
9. The term "State" means the State of California, Office of the Secretary of Natural Resources.

B. Project Execution

1. Subject to the availability of grant monies in the Act, the State hereby grants to the Grantee a sum of money (Grant Funds) not to exceed the amount stated on the signature page in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Description of Project in this Agreement and its attachments and under the terms and conditions set forth in this Agreement. Grantee shall assume any obligation to furnish any additional funds that may be necessary to complete the Project.
2. Grantee shall complete the Project in accordance with the time of Project performance set forth on the signature page, unless an extension has been formally granted by the State under the terms and conditions of this Agreement. Extensions may be requested in advance and will be considered in the event of circumstances beyond the control of the Grantee, but in no event beyond May 1, 2011.
3. Grantee shall comply with the California Environmental Quality Act (Public Resources Code Section 21000, et. seq. Title 14, California Code of Regulations Section 15000, et. seq.) and other environmental laws before any Grant Funds for Acquisition are made available.
4. If the Project includes Acquisition of real property, the Grantee agrees to comply with all applicable state and local laws or ordinances that apply to relocation and real property Acquisition by public agencies.
5. Grantee shall provide for public access to the Project facilities in accordance with the intent and provisions of the Act.

6. Grantee shall provide photographs of the site at the request of the State.
7. Lands acquired with Grant Funds from this Agreement shall be acquired from a willing seller of the land.

C. Project Costs

1. The Grant Funds to be provided to Grantee under this Agreement will be disbursed for eligible costs consistent with the Grant Guidelines published for this program.
 - a. For Acquisitions, the State may disburse up to 90 percent of the amount of the State-approved purchase price, together with State-approved costs of Acquisition into an escrow account within sixty (60) days of close of escrow. Costs of obtaining approval of the purchase price from the State Department of General Services are allowable costs and shall be reimbursed to the Grantee out of the Grant proceeds. The amount disbursed by the State in any event shall not exceed the amount set forth on the signature page of this Agreement. The remainder of the Grant, if any, shall be available on a reimbursable basis.
 - b. Requests for payment of Grant Funds into escrow must be submitted via a completed Payment Request Form and be accompanied by the Grantee's letterhead containing all of the following:
 - i. Name and address of Grantee;
 - ii. Number of Agreement;
 - iii. Dollar amount of disbursement requested;
 - iv. Name, address and telephone number of the title company of escrow holder, and the escrow account number to which the Grant Funds will be disbursed;
 - v. A statement by Grantee that all funds (exclusive of the Grant Funds to be provided under this Agreement) needed for completion of Acquisition of the Real Property have been secured and have been or will be deposited to escrow at or about the same date as the requested Grant Funds. In making this statement, Grantee shall be entitled to reasonably rely on the representations of the transferor of the Real Property; and
 - vi. Anticipated close of escrow date.

The letter shall be accompanied by a Payee Data Record completed by the escrow company (Form 204).

- c. Requests for payment of Grant Funds on a reimbursable basis for Acquisitions shall include all of the following:
 - i. Complete Payment Request Form;
 - ii. Buyers closing statement;
 - iii. Copies of grant deeds;
 - iv. Policy of title insurance;
 - v. Project Completion Certification Form (if the project is complete and payment in full is requested);
 - vi. Evidence of compliance with signage requirement; and
 - vii. Summary report of final total Project expenditures.

All reimbursements are subject to a 10 percent withhold pending Project completion.

2. Grant Funds in this award have a limited period in which they must be expended. All Grantee expenditures must occur prior to the end of the term of this Agreement.
3. Except as otherwise provided herein, the Grantee shall expend Grant Funds in the manner described in the Project Budget approved by the State.

D. Project Administration

1. Grantee shall promptly submit written Project reports as the State may request. In any event Grantee shall provide the State a report detailing final total Project expenditures as required under the Grant Guidelines, Project Certification.
2. Grantee shall make property and facilities acquired or developed pursuant to this Agreement available for inspection upon request by the State.
3. Grantee agrees to use any Grant Funds advanced by the State under the terms of this Agreement solely for the Project herein described.
4. If Grant Funds are advanced, the Grantee shall place these funds in a separate interest-bearing account, setting up and identifying such account prior to the advance. Interest earned on Grant Funds shall be used on the Project, as approved by the State. Any overpayment of Grant Funds in excess of final project costs shall be returned to the State within sixty (60) days of completion of the Project or the end of the Project performance period as shown on the signature page, whichever is earlier.
5. Grantee shall use income earned by the Grantee from use of the Project to further Project purposes or, if approved by the State, for related purposes within the jurisdiction.
6. This Agreement may be amended by mutual agreement in writing between Grantee and State. Any request by the Grantee for amendments must be in writing stating the amendment request and reason for the request. The Grantee shall make requests in a timely manner and in no event less than sixty (60) days before the effective date of the amendment.
7. Grantee shall submit all documentation for Project completion and final reimbursement within ninety (90) days of Project completion, but no later than May 1, 2011.

E. Project Termination

1. Prior to the last to occur of (1) State's deposit of the Grant Funds into escrow and (2) Grantee's close of escrow for Acquisition of the real property, either party may terminate this Agreement for any reason or for no reason, by providing the other party with a minimum of fifteen (15) days written notice of such termination.
2. If the State terminates prior to the completion date, the Grantee shall take all reasonable measures to prevent further costs to the State under this Agreement. The State shall be responsible for any reasonable and non-cancelable obligations incurred by the Grantee in the performance of this Agreement prior to the date of the notice to terminate, but only up to the unpaid balance of funding authorized in this Agreement.

3. Failure by the Grantee to comply with the terms of this Agreement or any other Agreement under the Act may be cause for suspension of all obligations of the State hereunder.
4. Failure of the Grantee to comply with the terms of this Agreement shall not be cause for the suspension of all obligations of the State hereunder if in the judgment of the State, such failure was due to no fault of the Grantee. At the discretion of the State, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this Agreement.
5. Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of this Agreement, is the preservation, protection and net increase in the quantity and quality of river parkways, riparian habitat, river and aquatic habitat, and stream and trail projects available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of Grant Funds under the provisions of this Agreement, the Grantee agrees that payment by the Grantee to the State of an amount equal to the amount of the Grant Funds disbursed under this Agreement by the State would be inadequate compensation to the State for any breach by the Grantee of this Agreement. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach by the Grantee of this Agreement shall be the specific performance of this Agreement, unless otherwise agreed to by the State.

F. Hold Harmless

1. Grantee shall waive all claims and recourses against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the gross negligence of the State, its officers, agents and employees.
2. Grantee shall indemnify, hold harmless and defend the State, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the Acquisition, Development, construction, operation, or maintenance of the property described in the Project description which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise, including, but not limited to, items to which the Grantee has certified, except for liability arising out of the gross negligence of the State, its officers, agents or employees. Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.
3. Grantee agrees that in the event the State is named as codefendant under the provisions of Government Code Section 895 et seq., the Grantee shall notify the State of such fact and shall represent the State in the legal action unless the State undertakes to represent itself as codefendant in such legal action, in which event the State shall bear its own litigation costs, expenses, and attorney's fees.
4. Grantee and the State agree that in the event of judgment entered against the State and Grantee because of the gross negligence of the State and Grantee, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

G. Financial Records

1. Grantee shall maintain satisfactory financial accounts, documents and records for the Project and make them available to the State for auditing at reasonable times. Grantee

shall also retain such financial accounts, documents, and records for three (3) years after final payment and one (1) year following an audit.

2. Grantee and the State agree that during regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or matters related thereto. Grantee shall maintain and make available for inspection by the State accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.
3. Grantee shall use any generally accepted accounting system.

H. Use of Facilities

1. Grantee shall maintain, operate and use the property funded pursuant to this Grant for a minimum of twenty (20) years, consistent with the Land Tenure requirements included in the Grant Guidelines. With the approval of the State, the Grantee or the Grantee's successor in interest in the property may transfer the responsibility to maintain and operate the property in accordance with this requirement. Grantee may be excused from its obligations for operation and maintenance of the Project site only upon the written approval of the State for good cause. "Good cause" includes, but is not limited to, natural disasters that destroy the Project improvements and render the Project obsolete or impracticable to rebuild.
2. The Grantee shall not use or allow the use of any portion of the real property for mitigation without the written permission of the State.
3. The real property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State.
4. The real property (including any portion of it or any interest in it) may not be transferred without the approval of the State.
5. Grantee shall use the property for the purposes for which the Grant was made and shall make no other use or sale or other disposition of the property. This Agreement shall not prevent the transfer of the property from the Grantee to a public agency, if the successor public agency assumes the obligations imposed by this Agreement. If the use of the property is changed to a use that is not permitted by the Grant, or if the property is sold or otherwise disposed of, an amount equal to (1) the amount of the Grant (2) the fair market value of the real property, or (3) the proceeds from the sale or other disposition, whichever is greater, shall be reimbursed to the State. If the property sold or otherwise disposed of is less than the entire interest in the property funded in the Grant, an amount equal to either the proceeds from the sale or other disposition of the interest or the fair market value of the interest sold or otherwise disposed of, whichever is greater, shall be reimbursed to the State.

I. Nondiscrimination

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry or physical handicap in the use of any property or facility acquired or developed pursuant to this Agreement.
2. The Grantee shall not discriminate against any person on the basis of residence except to the extent those reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this Agreement or under provisions of the Act.

J. Application Incorporation

The Grant Guidelines and the Application and any subsequent changes or additions to the Application approved in writing by the State are hereby incorporated by reference into this Agreement as though set forth in full in this Agreement.

K. Severability

If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

L. Waiver

No term or provision hereof will be considered waived by either party and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied, will constitute consent to, waiver of or excuse of any other, different or subsequent breach by either party.

M. Assignment

This Agreement is not assignable by the Grantee either in whole or in part.

EXHIBIT A

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY
GRANT AGREEMENT

Safe Drinking Water, Clean Water, Watershed Protection
And Flood Protection Bond Act of 2000
River Protection and Parkways Grant Program (Proposition 13)

Grantee Name: City of San Jose

Project Title: Guadalupe River Parkway Trail Amenities Project

Agreement Number: 13625-02

Project Scope: Project includes installation of concrete work to create the main access to the Guadalupe River Trail and related amenities.

Project site is located in the City of San Jose between Woz Way and Virginia Street.

Project Schedule:

<u>Activity Description</u>	<u>Timeline</u>
Final Engineering, Permits, Interpretive Design	November 2009
Submit to State for Approval: Detailed Plans, Specifications, and Budget	November 2009
Construction Bid Award	February 2010
Start Construction of Parkway Trail	March 2010
Open Trail to the Public	March 2011
Project Closeout	May - June 2011

Project Budget:

See Attached Exhibit A1

Agreement No. 13625-02
 City of San Jose
 Exhibit A1

City of San Jose - Guadalupe River Trail, Reach 6	Project Costs	River Parkways	Prop 13	City Funds
Mobilization	\$ 20,000	\$0	\$0	\$20,000
Site Preparation	\$ 50,000	\$17,000	\$0	\$33,000
Storm Water Pollution Prevention Plan	\$ 65,000	\$32,500	\$0	\$32,500
Emergency Erosion and Sediment Control	\$ 25,000	\$25,000	\$0	\$0
Utility Conflict Work Allowance	\$ 25,000	\$25,000	\$0	\$0
Earthwork	\$ 60,000	\$24,000	\$0	\$36,000
Traffic Control System	\$ 1,000	\$0	\$0	\$1,000
Storm Drainage System	\$ 50,000	\$40,000	\$0	\$10,000
Irrigation System	\$ 20,000	\$20,000	\$0	\$0
Concrete Work	\$ 373,000	\$250,000	\$123,000	\$0
Trail Improvements	\$ 106,000	\$106,000	\$0	\$0
Electrical Work	\$ 57,000	\$57,000	\$0	\$0
Planting	\$ 20,000	\$20,000	\$0	\$0
Trail Signs and Amenities	\$ 50,000	\$50,000	\$0	\$0
Plant Establishment	\$ 3,000	\$2,000	\$0	\$1,000
Subtotal	\$ 925,000	\$668,500	\$123,000	\$133,500
Contingency	\$93,074	\$31,500	\$574	\$61,000
TOTAL PROJECT COST	\$1,018,074	\$700,000	\$123,574	\$194,500