

SUMMARY PAGE

This GRANT AGREEMENT is entered into this _____ day of _____, 2011, by the CITY OF SAN JOSÉ (“City”), a municipal corporation, and SAN JOSÉ CONSERVATION CORPS, a California non-profit corporation (“Grantee”).

Dept. Contract No.: _____ CAO Document No.: _____

Agency: SAN JOSÉ CONSERVATION CORPS

Project: EVENT RECYCLING AND CREEK CLEANUP & RIPARIAN WORK

Description: BRIEF DESCRIPTION OF PROJECT as more fully described on Exhibit A to be undertaken by the GRANTEE subject to the terms and conditions set forth in this Agreement. The GRANTEE, a Charter School, provides an academic education, a gang prevention program, and job skills training in marketable careers to young men and women of the San José area through a program which includes projects in public service conservation work (recycling, habitat restoration & protection, fire and flood mitigation, home construction). The GRANTEE is generally engaged in service projects which preserve, maintain, and enhance environmentally important lands and water.

Funding Source: 423 (Event Recycling) and 446 (Creek Cleanup)

Grant Award Not to Exceed: Agreements up to and including \$250,000 need City Manager approval. Any Agreements for over \$250,000 requires City Council approval. The GRANTEE may use these funds to match state and federal funding sources to the extent the funds have been approved in a project approval form..

Payment Terms: Cost reimbursement basis. See Exhibit D

Agreement Term: Start Date: July 1, 2011 End Date: June 30, 2012

PARTIES TO AGREEMENT:

	GRANTEE	CITY OF SAN JOSÉ
Agency Name:	SAN JOSÉ CONSERVATION CORPS	City of San José Director of Environmental Services
Address for Legal Notice:	2650 Senter Road	200 E. Santa Clara St., 10 th Floor
City/State/Zip Code:	San José, CA 95111	San José, CA 95113-1905
Attention:	Robert J. Hennessy	John Stufflebean
Email Address:	bob@sjcccharterschool.org	John.Stufflebean@sanjoseca.gov

ESD/Event Recycling and Creek Cleanup
and Riparian Work

Telephone No.:	(408) 515-4254	(408) 535-8560
Fax No:	(408) 459-6401	(408) 292-6211
Taxpayer ID	77-0155997	[REDACTED]
CITY Business License/ Tax No.:	052720	
Type of Entity:	501(C)(3) nonprofit corporation	
General Contractor License	Class B 812939	
Franchise Haulers		
State of Incorporation or Residency:	California	

CONTACT INFORMATION

GRANTEE CONTACT PERSON:	Robert J. Hennessy
Title:	Executive Director - Founder
Telephone No:	(408) 515-4254
Fax No:	(408) 459-6401
Email:	bob@sjcccharterschool.org

EXHIBIT LIST

- | | | |
|-------------------------------------|-------------------------------------|--|
| YES | N/A | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit A: Scope of Services |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit B: Monitoring, Evaluation, and Reporting Requirements |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Exhibit C: Budget Summary |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit D: Payments to GRANTEE |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit E: General Service Requirements (Special Grant Conditions) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit F: Employee/Volunteer Clearance Verification and Compliance with the Child Abuse and Neglect Reporting Act |

To the extent applicable, the following grant provisions are required for this AGREEMENT. (Check all provisions that apply.)

ADDITIONAL REQUIRED LANGUAGE ATTACHMENTS

- | | | |
|-------------------------------------|------------|--------------------------|
| YES | N/A | (if applicable) |
| <input checked="" type="checkbox"/> | | City of San José Funding |
| <input type="checkbox"/> | X | Federal |
| <input type="checkbox"/> | X | State |
| <input type="checkbox"/> | X | County |
| <input type="checkbox"/> | X | Other Public Agency |
| <input type="checkbox"/> | X | Private Funding Agency |

- Exhibit G: Insurance
- Exhibit H: Invoice Template
- Exhibit I: Final Report Template
- Exhibit J: Project Approval and Completion Form
- Exhibit K: Daily Sign-In Log

I certify that I have read and hereby consent to all the terms and provisions contained in the attached AGREEMENT, including without limitation, all exhibits.

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

SAN JOSE CONSERVATION CORPS, a California non-profit corporation

GRANTEE Signature: Robert J. Hennessy Date: 5/4/11
 Print Name: ROBERT J HENNESSY
 Title: EXEC. DIRECTOR

City of San Jose, a municipal corporation
 By: EDWARD K. SHIKADA
 Assistant City Manager

_____ Date: _____

Approved as to form:
 ROSA TSONGTAATARII
 Deputy City Attorney

Rosa Tsongtaatarii Date: 6/2/2011

**CITY OF SAN JOSÉ
AGREEMENT**

This AGREEMENT is made and entered upon execution by CITY, by and between the CITY OF SAN JOSÉ, a municipal corporation of the State of California (hereinafter referred to as “CITY”), and the person or entity identified as GRANTEE on page 1 of the Summary Pages at the beginning of this AGREEMENT (hereinafter referred to as “GRANTEE”).

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1: RECITALS (if applicable for agreements which are limited by special funds)

WHEREAS, the GRANTEE wishes to provide a high school education, job skills training, and environmental education to young men and women of the San José area through a program which includes projects in public service conservation work; and

WHEREAS, the CITY can provide opportunities for public service through meaningful and productive work projects; and

WHEREAS, the GRANTEE shall generally be engaged in service projects which preserve, maintain, and enhance environmentally important lands and waters; and

NOW, THEREFORE, the purpose of this AGREEMENT is to retain GRANTEE to perform those services specified in **EXHIBIT A** of this AGREEMENT.

SECTION 2: PROGRAM COORDINATION

A. CITY: The Director of the Department identified on the Summary Pages under City of San José (hereinafter “DIRECTOR”), or his or her designee, shall be the CITY official responsible for the program and shall render overall supervision of the progress and performance of this AGREEMENT by CITY. All services agreed to be performed by CITY shall be under the overall direction of the DIRECTOR.

B. GRANTEE: GRANTEE shall identify a single project director who shall have overall responsibility for the progress and execution of this AGREEMENT. Such person is identified on the Summary Pages as GRANTEE CONTACT PERSONS. Additionally, GRANTEE shall immediately notify CITY in writing should circumstances or conditions subsequent to the execution of this AGREEMENT require a substitute GRANTEE CONTACT PERSONS. GRANTEE’s CONTACT PERSON and GRANTEE staff will fully cooperate with the DIRECTOR relating to the work or services provided hereunder.

SECTION 3: TERM OF AGREEMENT AND GRANT AWARD

The term of this AGREEMENT shall commence on the Start Date as set forth in the Summary Pages and shall expire on the End Date as set forth in the Summary Pages subject to the early termination provision set forth in SECTION 6C, unless extended or sooner terminated in accordance with the terms of this AGREEMENT. Regardless of the date of execution of this AGREEMENT, this AGREEMENT is effective as of the Start Date. The CITY may, at the CITY's sole discretion, extend the AGREEMENT for up to four (4) times each for one-year extension periods, on the same terms and conditions of this AGREEMENT. Every year either the CITY or GRANTEE may request a review of the rate to determine if the rate should be adjusted to reflect any changes in the applicable Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (BLS). Authority to extend this AGREEMENT depends upon the aggregate amount of the Grant Award, including any amendments to this AGREEMENT. As a part of approval of this agreement, City Council has authorized the City Manager to authorize each of the four extensions subject to appropriation of funds. The City Manager may exercise an extension by delivering written notice to the GRANTEE prior to the expiration of the AGREEMENT or any extension.

SECTION 4: GRANT SERVICES

GRANTEE shall perform those services as specified on **EXHIBIT A** entitled "Scope of Services," and GRANTEE shall comply with the terms and conditions of this AGREEMENT (referred to as "Services").

SECTION 5: PAYMENTS

A. CITY agrees to pay GRANTEE an amount not to exceed the amount set forth on **EXHIBIT D** for the project described therein ("Grant Award"), for the Services described in **EXHIBIT A** entitled "Scope of Services", and which payment is subject to the terms and conditions set forth in **EXHIBITS C and D** entitled "Budget Summary" and "Payments to GRANTEE and Reporting Schedule." Any costs incurred by GRANTEE above the Grant Award shall be at GRANTEE's sole cost and expense. City Council approval is required for any project for which CITY's compensation exceeds \$250,000. City Manager approval is required for any agreement up to and including \$250,000. Grant Award for Services provided hereunder shall not exceed the amount set forth on **EXHIBIT D**.

B. GRANTEE will provide CITY with invoices or financial reports signed by the Deputy Director of Accounting or other authorized agency representative with authority to confirm the accuracy of reported expenditures on a form approved by the CITY, and invoices and/or financial reports shall be in sufficient detail to determine actual costs incurred, hours services provided, and any indirect, overhead or administrative costs charged to the CITY.

C. CITY will review invoices or financial reports for adherence to AGREEMENT requirements and Services, and authorize and release payment to GRANTEE based upon claims submitted and within twenty (30) calendar days from receipt of invoice or financial reports, provided that GRANTEE is not in default under any provisions of this AGREEMENT.

D. CITY will not pay for unauthorized Services rendered by GRANTEE or for claimed services which GRANTEE has not provided as required by this AGREEMENT.

E. CITY Manager may, without prior notice to GRANTEE, at any time in his or her absolute discretion, elect to suspend or terminate payment to GRANTEE, in whole or in part, terminate work or expenditures by GRANTEE, under this AGREEMENT, or not to make any particular payment under this AGREEMENT or take any other action available in the event of any of the following occurrences:

1. If GRANTEE (with or without knowledge) shall have made any material misrepresentation of any nature with respect to any information or statements furnished to CITY in connection with this AGREEMENT;
2. If there is pending litigation with respect to the performance by GRANTEE of any of its duties or obligations under this AGREEMENT which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Services;
3. If GRANTEE, without having obtained CITY approval, has taken any action pertaining to the Services which requires CITY approval;
4. If GRANTEE makes improper use of the Grant Award;
5. If GRANTEE fails to comply with any of the terms and conditions of this AGREEMENT including without limitation, GRANTEE's failure to carry out the Services or other obligations as described in any Exhibit to this AGREEMENT.
6. If GRANTEE submits to CITY any report which is incorrect or incomplete in any material respect, or is untimely.

SECTION 6: DEFAULT AND TERMINATION OF AGREEMENT

A. CITY may, through DIRECTOR, terminate this AGREEMENT without cause by giving GRANTEE thirty (30) calendar days written notice.

B. Each of GRANTEE's obligations under this AGREEMENT shall be deemed material. If GRANTEE fails to perform any of its obligations under this AGREEMENT, or any other AGREEMENT with the CITY, CITY may terminate this AGREEMENT upon ten (10) days advance notice ("Notice Period") to GRANTEE, specifying GRANTEE's breach and providing GRANTEE with the opportunity to cure the specified breach within the Notice Period or in those instances where the specified breach cannot reasonably be cured within the Notice Period, the opportunity to commence to cure the specified breach. In the event GRANTEE fails to cure or to commence to cure the specified breach within the Notice Period, this AGREEMENT shall be terminated. Without limiting the generality of the foregoing, the occurrence of any one of the following events shall constitute a default of this AGREEMENT for which CITY may exercise its right of termination:

1. GRANTEE's breach of any of the representations or warranties contained in this AGREEMENT;
2. The occurrence of any of the events set forth in SECTION 5 for suspension or termination of CITY's payment of the Grant Award.

C. In the event of termination under this SECTION, GRANTEE shall have the following obligations:

1. No later than thirty (30) days following the date of termination GRANTEE shall refund to CITY any unused portion of the Grant Award, except that GRANTEE shall have no obligation to refund to CITY any portion of the Grant Award that was expended in accordance with the terms of the AGREEMENT. GRANTEE shall also provide CITY with a written report detailing the expenditures, if any, from the Grant Award, including an accounting of its administrative expenses to the date of termination. GRANTEE shall refund to CITY any portion of the Grant Award designated for GRANTEE's administrative expenses which was not expended as of the date of termination. Nothing in this AGREEMENT shall be deemed to be a waiver of CITY's right to recover from GRANTEE any portion of the Grant Award that has not been spent in accordance with this AGREEMENT. Upon receipt, GRANTEE will be paid for services performed in compliance with the terms of this AGREEMENT to date of termination.
2. Upon termination, GRANTEE shall immediately deliver to CITY any and all copies of materials used or developed for this AGREEMENT including, but not limited to, all data collection forms, reports, studies and other work performed, whether or not completed by GRANTEE or GRANTEE's subcontractor, if any, under this AGREEMENT.

D. Nothing in this AGREEMENT shall be construed so as to deprive CITY of its rights and remedies at law or in equity against GRANTEE.

E. DIRECTOR is authorized to terminate this AGREEMENT on CITY's behalf.

F. If the term of this AGREEMENT is more than one year, the funding in any year after the first year may be contingent upon past and pending performance as well as future appropriation by the City Council of the City of San José, in its sole discretion. If the funding required to pay for Services for the next fiscal year has not been appropriated by June 30 of any year, this AGREEMENT will automatically terminate, effective June 30.

G. CITY may, at its sole option, pursue a course correction process with GRANTEE to address issues with GRANTEE's performance under this AGREEMENT. However, CITY is under no obligation to pursue a course correction prior to exercising its rights to suspend payment to GRANTEE or to terminate this AGREEMENT.

SECTION 7: ACCOUNTING AND FINANCIAL RECORDS

GRANTEE shall establish and maintain at all times, on a current basis in connection with the provision of 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. GRANTEE shall maintain its accounting system and shall provide CITY with annual reports that separate costs and expenses incurred by GRANTEE and paid for with CITY funds as distinguished from costs and expenses paid for from other funding sources.

SECTION 8: REPORTING REQUIREMENTS

GRANTEE shall submit invoices and reports related to GRANTEE's performance under this AGREEMENT prepared in accordance with **EXHIBIT B** and **EXHIBIT D**. The format of the reports shall be as provided in this AGREEMENT unless otherwise directed by the DIRECTOR. A final report shall be delivered to CITY prior to expiration of this AGREEMENT, as may be further described in **EXHIBIT B**.

SECTION 9: RIGHT OF EXAMINATION AND AUDIT AND PRESERVATION OF RECORDS

GRANTEE agrees that the CITY's Manager, Auditor, or Attorney, 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 during the term of this AGREEMENT.

EXHIBIT B, "MONITORING, EVALUATION AND REPORTING REQUIREMENTS" may set forth additional standards regarding the CITY's right to audit, and GRANTEE's obligation to deliver to the CITY reports which may include audited financial reports.

SECTION 10: CITY ACKNOWLEDGMENT

GRANTEE shall acknowledge the support of CITY, where appropriate, in written documents and informational materials regarding the Grant Program.

SECTION 11: INSURANCE

GRANTEE agrees to have the policies set forth in the attached **EXHIBIT G**, entitled "INSURANCE" not later than the date of execution of this AGREEMENT and to maintain such policies throughout the term of this AGREEMENT. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements may not be amended or waived unless 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.

SECTION 12: INDEMNIFICATION AND HOLD HARMLESS

A. GRANTEE agrees to defend, indemnify and hold harmless the CITY from and against any and all claims, demands, causes of action, or liabilities incurred by CITY arising from, in whole or in part, directly or indirectly, GRANTEE's acts or omissions under this AGREEMENT, except as may arise from the gross negligence or willful misconduct of CITY. In any action or claim against CITY in which GRANTEE is defending CITY, CITY shall have the right to approve legal counsel providing CITY's defense and such approval shall not be unreasonably withheld. GRANTEE further agrees to release CITY from any and all claims for any damages,

including property damage, injury or death occurring or arising out of use of CITY's property, except as may be caused by the CITY's gross negligence or willful misconduct.

B. The GRANTEE's obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

SECTION 13: NOTICES

A. Any communication or notice to either party shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, facsimile, or by electronic mail, to the respective parties addressed as referenced on the Summary Page of this AGREEMENT.

B. Either party may change its address by sending written notice of the new address to the other party pursuant to this SECTION.

SECTION 14: AMENDMENTS

Unless otherwise authorized by this AGREEMENT, amendments to the terms and conditions of this AGREEMENT and any such adjustment to this AGREEMENT shall be effective only upon the mutual AGREEMENT in writing of the authorized representatives of the parties.

SECTION 15: COMPLIANCE WITH LAWS/NONDISCRIMINATION

A. GRANTEE shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments and with applicable CITY policies.

B. GRANTEE shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnicity or national origin in connection with or related to the performance of this AGREEMENT.

C. GRANTEE will also obtain and maintain all licenses and permits appropriate to its proper and effective performance of this AGREEMENT prior to the date of commencement, including, but not limited to a City of San José business tax certificate or exemption, if applicable, with the CITY's Finance Department to operate in the CITY. GRANTEE is responsible for contacting the appropriate offices and filing the necessary documents to comply with these requirements.

SECTION 16: RELATIONSHIP OF PARTIES

A. It is understood and agreed by and between the parties that GRANTEE in the performance of this AGREEMENT, shall not act nor is it at any time authorized to act, as the agent or representative of CITY in any matter. GRANTEE further agrees that it will not in any manner hold itself out as the agent or representative of CITY or act in such a fashion as would give the impression to a reasonable person that GRANTEE is acting in such a capacity.

B. The parties agree that GRANTEE and GRANTEE's employees shall be at all times independent contractors and not agents or employees of the CITY, and that GRANTEE and GRANTEE's employees 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 ESD/Event Recycling and Creek Cleanup and Riparian Work

the City of San José, or any compensation other than as prescribed herein, and GRANTEE and GRANTEE's employees expressly waive any claim it/they may have to any such rights.

C. 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 17: WAIVER

A. In no event shall any payment by CITY or any acceptance of payment by GRANTEE hereunder constitute or be construed to be a waiver by CITY or GRANTEE of any breach of covenants or conditions of this AGREEMENT or any default which may then exist on the part of CITY or GRANTEE, and the making of any such payment or the acceptance of any such payment while any such breach or default exists, shall in no way impair or prejudice any right or remedy available to CITY or GRANTEE with respect to such breach or default.

B. The waiver by any party to this AGREEMENT of a breach of any provision of this AGREEMENT shall not be deemed a continuing waiver or a waiver of any subsequent breach of that provision nor any other provision of this AGREEMENT.

SECTION 18: CORPORATE AUTHORITY/AUTHORIZED REPRESENTATIVES

GRANTEE represents and warrants that it has the authority to enter into this AGREEMENT. GRANTEE further represents and warrants that its signatory to this AGREEMENT is authorized to execute this AGREEMENT on GRANTEE's behalf.

SECTION 19: INTEGRATED DOCUMENT

This AGREEMENT, including the Summary Pages and any Exhibits, are incorporated herein and embody the entire AGREEMENT between CITY and GRANTEE. No oral agreements or conversations with any officer, agent or employee of CITY shall affect or modify any of the terms or obligations contained in any documents comprising this AGREEMENT. Any such oral AGREEMENT shall be considered as unofficial information and in no way binding upon CITY.

SECTION 20: SEVERABILITY OF PROVISIONS

If any part of this AGREEMENT is for any reason found to be unenforceable by a court of competent jurisdiction, all other parts nevertheless remain enforceable. CITY and GRANTEE agree that to the extent that the exclusion of any unenforceable provisions from this AGREEMENT affect the purpose of this AGREEMENT, then the parties shall negotiate an adjustment to this AGREEMENT in order to give full effect to the purpose of this AGREEMENT or either party may terminate this AGREEMENT. In the event of termination, the provisions of SECTION 6 as related to repayment of the Grant Award shall apply.

SECTION 21: VENUE

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 shall be brought by either party to this AGREEMENT, 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 José, California.

SECTION 22: CONFLICT OF INTEREST

GRANTEE shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified in California Government Code Section 87000, *et seq.*), with the conflict of interest provisions of Government Code Section 1090 *et seq.* and with the CITY’s Code of Ethics, set forth in City Council Policy 0-15. GRANTEE will promptly advise CITY of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

SECTION 23: RELIGIOUS/POLITICAL ACTIVITIES

A. GRANTEE shall not expend any portion of the Grant Award to inhibit or promote religion and the Services funded by the Grant Award must not be used to convey a religious message. Any portion of the Grant Award used in contradiction to the provisions of this SECTION shall be deemed a disallowed cost.

B. GRANTEE shall not expend any portion of the Grant Award for political advocacy efforts, whether for or against a political candidate, ballot measure or bill.

SECTION 24: ASSIGNABILITY

The parties agree that the expertise and experience of GRANTEE are material considerations for this AGREEMENT. Unless specifically authorized by this AGREEMENT, GRANTEE may not assign the performance of any obligation or interest under this AGREEMENT, including subcontracting, without the prior written consent of CITY. Any attempt by GRANTEE to assign this AGREEMENT, in violation of this SECTION, will be voidable at CITY's sole option.

SECTION 25: SUBCONTRACTS

A. Subcontractors may not be used by GRANTEE under the terms of this AGREEMENT.

SECTION 26: EMPLOYEES/VOLUNTEERS

A. Any and all personnel employed or volunteers retained by GRANTEE in conducting the operations of GRANTEE’s program shall be qualified to perform the duties assigned to them by GRANTEE.

B. GRANTEE shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public ESD/Event Recycling and Creek Cleanup

Resources Code Section 5164. GRANTEE shall fully indemnify, defend, and hold harmless CITY for any such hiring. GRANTEE shall notify CITY in writing of any violation of this provision as soon as is reasonably practicable.

C. GRANTEE shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless GRANTEE has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code.

D. Regardless of whether services have been provided prior to full execution of this AGREEMENT, GRANTEE certifies to the CITY that all services were provided in full compliance with the terms and provisions of this AGREEMENT.

E. To give effect to California Public Resources Code Sections 5163 and 5164, GRANTEE shall follow the procedures contained in **EXHIBIT F** attached hereto. In the event GRANTEE chooses a different national criminal database for complying with the FBI requirement for background checks, then such alternative database shall be subject to the CITY's prior written approval.

SECTION 27: CONTRACTOR'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.

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 28: 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 29: GIFTS

A. GRANTEE is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.

B. GRANTEE agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by GRANTEE. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 6 of this AGREEMENT.

SECTION 30: DISQUALIFICATION OF FORMER EMPLOYEES

GRANTEE is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code (“Revolving Door Ordinance”). GRANTEE shall not utilize either directly or indirectly any officer, employee, or agent of GRANTEE to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 31: MISCELLANEOUS

- A. The headings of the sections and subsections of this AGREEMENT are inserted for convenience only.
- B. Where this AGREEMENT refers to CITY and no officer of the CITY is named, CITY’s Manager shall have the authority to act on CITY’s behalf.

EXHIBIT A

SCOPE OF SERVICES

A. GENERAL PROVISIONS

1. In accordance with Section 14304 of the California Public Resources Code, GRANTEE projects shall be directed toward providing opportunities to the public for the use of natural resources and environmentally important public lands and waters, while at the same time providing young men and women with an opportunity for personal development in a variety of basic skills. Service Projects shall be undertaken in both urban and rural areas and shall be selected by mutual agreement of the CITY and GRANTEE on the basis of the environmental and natural resource benefits each offers, the opportunities for public use each offers, and the on-the-job training value of each.
2. No Project undertaken hereunder shall involve work that would be considered a public works project, as that term may be defined in the San José Municipal Code or under California law.
3. The GRANTEE shall complete the services described hereunder in a manner satisfactory to the DIRECTOR and in compliance with the provisions of this AGREEMENT. To the extent that the GRANTEE deviates from the services described in this AGREEMENT, the CITY shall not be obligated to compensate the GRANTEE, unless this AGREEMENT is amended in writing at CITY's sole discretion.
4. The GRANTEE shall confine equipment, the storage of materials and equipment, and the operations of workers to the specified site and land and areas identified in this AGREEMENT and shall not unreasonably encumber the premises with equipment or other materials or equipment. The GRANTEE shall assume full responsibility for any damage to any such land or area, or of any land or areas contiguous thereto, resulting from the performance of the work.
5. Temporary suspension or permanent cessation of Projects may be required due to emergency conditions. Under such circumstances, the CITY and the GRANTEE shall mutually agree on the postponement of a Project and who should bear the burden of incurred costs.
6. GRANTEE agrees to begin actual work for the service covered by this AGREEMENT in a timely manner and in conformity with the provisions set forth herein and to prosecute the same with all due diligence, so as to complete the entire services for each Project according to the time schedule as detailed in each Project Approval and Completion Form, attached hereto as EXHIBIT J. The GRANTEE and the CITY shall mutually notify the other and obtain written approval from the other prior to any change in any time schedule.

7. During the progress of the work, the GRANTEE shall keep the premises free from accumulations of waste materials, rubbish, and debris. Upon completion, the GRANTEE shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. The GRANTEE shall restore to original condition all property.
8. The GRANTEE or any contractor shall neither load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the GRANTEE subject any part of the work or adjacent property to stresses or pressures that would endanger it.
9. CITY agrees to hold an orientation meeting with GRANTEE personnel at the commencement of each approved Project to explain the technical aspects, safety considerations, and any other aspects necessary for successful execution of such Projects.
10. The GRANTEE agrees to keep the DIRECTOR or the DIRECTOR'S designated representative informed on all phases of the service Project. Until all services have been completed, the GRANTEE shall make progress reports when milestone dates are achieved or upon special request by the DIRECTOR or his or her designated representative in such detail and at such times as may be reasonably requested as to the actual progress of the Project.
11. Upon completion of work, the CITY will conduct a final inspection. The CITY will accept services that are performed to the CITY's satisfaction by a final sign off by an authorized City representative on the Project Approval and Completion Form. If services are not performed to the CITY's satisfaction, corrective actions will be identified on the Project Approval and Completion Form.
12. Payment to the GRANTEE shall be contingent upon CITY's final inspection and acceptance of the materials and/or services provided hereunder. The CITY reserves the right to sample and inspect materials and services throughout the duration of the Project, and to reject any materials or services which are found to be unsatisfactory.
13. Work performed under this AGREEMENT shall be under the immediate supervision of the GRANTEE's officials. The CITY may provide such operation supervision, technical assistance, guidance, and inspection as it considers necessary to properly complete the services.
14. The GRANTEE agrees not to place upon any CITY property a sign or emblem without first obtaining prior approval of the DIRECTOR or his or her designated representative. Without limiting in any way the provisions of SECTION 15 of this AGREEMENT, GRANTEE shall comply with all applicable laws with respect to the posting of any sign or emblem upon CITY property.

15. CITY's decision to award this AGREEMENT to GRANTEE was, in a material respect, dependent upon the value added community benefits GRANTEE represented that it will provide to "at risk" youth as a part of the services provided hereunder, which include: providing job training, vocational instruction, academic education, on-the-job training, service learning, job placements. Furthermore, GRANTEE represents that it will apply third party grants and other non-City funding sources toward the costs of the services provided hereunder, to provide the CITY with value-added services.
16. To ensure a desired balance between on-the-job training and academic performance, the GRANTEE agrees to require students without a diploma to work no more than one week on-the-job per each week in the classroom while studying to pass the high school exit exam. Students who are waiting for the results of their exam, or who have passed the exit exam may work full time while seeking full-time employment. CITY understands that the desired alternating week on-the-job and week in the classroom may be temporarily disrupted if the services of students still working toward a diploma are needed to adequately respond to a request for assistance from a public agency during a public emergency.

B. SPECIFIC PROVISIONS

B.1 EVENT RECYCLING SERVICES

The GRANTEE will provide all labor, supervision, equipment, supplies and all other items necessary to perform event recycling services at public events of various sizes and at various locations throughout the City of San José, and divert recyclable materials from the landfill by delivering materials to a state certified recycling center. Recycling containers shall be used to collect Recyclable Materials. Other source-separated recyclables (cardboard, paper) may be collected without recycling containers.

Definitions

- **Eco-Station.** An eco-station is a collection station with multiple containers for material collection used instead of single trash cans at an event. An eco-station can contain as few as two containers: one for recycling and one for trash, or it can contain three: one for bottles and cans recycling, one for compost, and one for trash.
- **Recyclable Materials.** Plastic bottles, cups and containers, aluminum cans, aluminum foil, and glass.
- **Compost.** Food, plates, napkins, plant starch utensils, and soiled paper.

The GRANTEE shall provide the Levels of Service listed below.

1. Levels of Service

- a. Level of Service A: Equipment Delivery
 - Service shall include drop-off and pick-up of recycling containers to the event location and removal of recycling containers from the event site.

- b. Level of Service B: Equipment Delivery and Set-up
 - Service shall include drop-off and pick-up of recycling containers and/or City provided eco-stations and accessories to the event location and removal of recycling containers from the event site.
 - Additionally, work shall include set-up and break down of recycling containers and/or City-provided eco-stations and accessories.

- c. Level of Service C: Recycle Only – Staffed
 - Service shall include drop-off and pick-up of recycling containers to event location and removal of recycling containers from event the site.
 - Work shall include set-up and break down of recycling containers.
 - Staff shall be provided to:
 - Monitor, replace, and remove full recycling containers
 - Separate mixed cans, bottles, plastics, and cardboard from trash boxes
 - Collect all vendor generated cardboard (when applicable)

- d. Level of Service D: Recycle and Compost – Staffed
 - Service shall include drop-off and pick-up of recycling containers and City provided eco-stations and accessories to event location and removal of recycling containers from the event site.
 - Work shall include set-up and break down of recycling containers and City provided eco-stations and accessories.
 - Staff shall be provided to:
 - Monitor, replace, and remove full recycle and compost containers
 - Collect and transfer compost bags into event-provided and designated bin
 - Separate mixed cans, bottles, plastics, and cardboard from waste and compost containers
 - Collect all vendor generated cardboard (when applicable)

- e. Level of Service E: Recycle, Compost, Consultation – Staffed
 - Service shall include drop-off and pick-up of recycling containers and City-provided eco-stations and accessories to event location and removal of recycling containers from the event site.
 - Work shall include set-up and break down of recycling containers and City-provided eco-stations and accessories.

- Staff shall be provided to:
 - Monitor, replace, and remove full recycle and compost containers
 - Collect and transfer compost bags into event provided and designated bin
 - Separate mixed cans, bottles, plastics, and cardboard from waste and compost containers
 - Collect all vendor generated cardboard (when applicable)
 - Provide pre-event consultation to event organizer(s) to coordinate recycling and compost collection services and logistics planning.

2. Equipment and Materials

GRANTEE shall provide all materials and equipment to adequately service events at the levels described above including but not limited to recycling containers, vehicles, litter sticks, gloves, clothing, work shoes, masks, and drinking water dispensers. GRANTEE shall ensure that all recyclable materials, and Project supplies and materials under GRANTEE's responsibility are removed from the event site after each Project.

- City Provided Equipment: GRANTEE shall take possession of City owned eco-stations, signs, flags, poles, cones, bags, and transport carts at the beginning of the Agreement term. GRANTEE shall store equipment in a secure and enclosed facility for the length of the Agreement. GRANTEE shall be responsible for City-provided equipment during loading and unloading, and transportation to and from the event site. Any loss not as a result of normal wear and tear while under GRANTEE's custody and control must be repaired or replaced at GRANTEE's expense. All City-provided equipment shall be returned to the City at the end of the Agreement term.
- Multiple Events: GRANTEE shall provide adequate number of materials and equipment for concurrent events.

3. Personnel

GRANTEE shall provide all labor to adequately service events at the levels described above. The City Representative will coordinate with GRANTEE to determine the appropriate crew size for each event. In addition, GRANTEE will comply with the following provisions:

- a. Training Requirements: GRANTEE's staff shall attend, at minimum, one City-led training on the City's Zero Waste Event program prior to each event season. GRANTEE shall train and brief staff prior to each event.
- b. Work Hours & Availability: GRANTEE's staff shall be available to work nights, weekends, and holidays including multiple events per day. GRANTEE shall have a backup plan in place to address sick calls/outages to ensure staffing levels for each event are met.
- c. Key Staff: GRANTEE shall provide a dedicated project manager/special events coordinator. Additionally, one City-approved alternate shall be named for cases where the project manager has scheduled time off.

- d. Flexible Staffing: GRANTEE shall have the ability to flexibly staff events to ensure that no more than eight hours per day or forty hours per week are worked by each staff member.
- e. GRANTEE shall provide the contact information of on-site supervisors at staffed events to the City Representative (via email) at least five business days prior to the event
- f. Unless notified in advance by the City Representative, GRANTEE staff shall be present until the end of the event day per each event date.

4. Authorization to perform work, invoicing procedures and payment schedule

- a. The City Representative shall issue a Project Approval and Completion Form (**EXHIBIT J**) for each event detailing the location and the technical aspects, safety considerations, and any other information necessary for successful execution of such project.
- b. The GRANTEE shall sign and return the Project Approval and Completion Form to the City Representative to confirm Project approval.
- c. The GRANTEE shall provide monthly invoices (**EXHIBIT H**) to the City Representative within thirty (30) days of completion of work.
- d. Invoices will be matched to completed, signed and approved Project Approval and Completion Forms. Invoices must outline the number of staff and list the staff members that actually worked the site. The invoice must match the Project Approval Form for payment processing.

5. Reporting

The GRANTEE shall:

- a. Complete and submit a Project Approval and Completion Form with the completion of each Project.
 - i. Since the City Representative does not provide onsite supervision of each Project, it is not practical to conduct a final inspection upon completion of event. A review of the Post-Event Report (referenced in Section 5C) and subsequent discussion with the Project Supervisor will inform the level of satisfaction with each Project. The City Representative will accept that services are performed to the City's satisfaction by a final sign off on the Project Approval and Completion form.
 - ii. If services are not performed to the City's satisfaction, corrective actions will be identified on the Project Approval and Completion form.
- b. Submit the completed Project Approval and Completion Form and sign-in sheet no later than thirty (30) days after Project completion.
- c. Submit an email to GreenEvents@sanJoseca.gov no later than five business days after each Project reporting the overall recycling weights (in tons) for that Project.
- d. Submit a Post-Event Report within ten (10) business days after the end of each Project. This report shall summarize, including but not limited to, the following information: weights of materials collected, any damage/and or loss to equipment,

operational performance, observations of Project implementation, including successes and obstacles, and any staffing issues.

- e. Submit a quarterly inventory report of all City-provided equipment.

6. Performance

In order to ensure that the Event Recycling Services and documentation meet the standards required for the City, the City Representative, or their designee(s), may attend and observe the events for:

- a. Condition of site upon completion of Project.
- b. Correct reporting and documentation process.
- c. Event setup and teardown occurred within time allocations.
- d. Appropriate staffing level

B.2 CREEK CLEANUP & RIPARIAN WORK

1. Creek and River Single Event Cleanups

The GRANTEE will collect and remove trash, litter and debris from the channels and banks of creeks and rivers within the City and deposit all bags of collected trash and piles of debris at a collection site. Debris may include large bulky items, such as mattresses and furniture, and floating trash that requires wading to remove. If the City provides a truck or garbage compactor for the removal of the debris, the GRANTEE will load the trash bags and debris into the vehicle. All clean-up work will be conducted with, and under the direction of, City crews at sites selected to be cleaned under the Memorandum of Agreement Between the City of San José and the Santa Clara Valley Water District for Trash Removal and Prevention. A maximum of five locations are to be cleaned in a fiscal year.

2. Creek and River Hot Spot Cleanups

The GRANTEE will collect and remove trash, litter and debris from trash hot spots in creeks and rivers designated by the City. A trash hot spot is a section of creek or river, including both banks, three hundred (300) feet in length. The trash hot spot is to be cleaned to the point that no trash is visible. Debris may include large bulky items, such as mattresses and furniture, and floating trash that requires wading to remove. The GRANTEE will sort and categorize the trash collected at a hot spot at the discretion of City Staff with advance notice to GRANTEE. All trash is to be placed back into bags for disposal following the trash categorization. If the City provides a truck or garbage compactor for the removal of the debris, the service provider will load the trash bags and debris into the vehicle. More than one location may be scheduled to clean per work day, the GRANTEE is responsible for transportation between work sites. Estimated thirty two hot spot locations are to be cleaned per fiscal year.

3. Personnel

GRANTEE shall provide all supervision and labor to adequately perform clean-up events at the levels described above. City staff will coordinate with GRANTEE to determine the appropriate crew size for the cleanup.

4. Equipment and Materials

GRANTEE will provide or ensure that all GRANTEE staff has appropriate protective clothing, including but not limited to gloves, work shoes, waders, drinking water, and masks. The GRANTEE will provide the tools and supplies necessary for a cleanup.

5. Authorization to Perform Work, Invoicing Procedures and Payment Schedule

- a. City Representative shall issue a Project Approval and Completion Form (see EXHIBIT J) for each cleanup event detailing the location and boundaries of the cleanup site.
- b. The GRANTEE shall sign and return the Project Approval Form to the City Representative to confirm Project approval.
- c. The GRANTEE shall provide monthly invoices (see EXHIBIT H) to the City Representative within thirty (30) days of completion of work.
- d. Invoices will be matched to completed, signed and approved Project Approval and Completion Forms. Invoices must outline the number of staff and list the staff members that actually worked the site. The invoice must match the Project Approval and Completion Form for payment processing.

6. Reporting

The GRANTEE shall:

- a. Complete and submit a Project Approval and Completion Form with the completion of each Project.
 - i. Upon completion of work, the City Representative will conduct a final inspection. The City Representative will accept that services are performed to the City's satisfaction by a final sign off on the Project Approval and Completion form.
 - ii. If services are not performed to the City's satisfaction, corrective actions will be identified on the Project Approval and Completion form.
- b. Submit the completed Project Approval and Completion Form and sign in sheet no later than thirty (30) days after Project completion.

7. Performance

In order to ensure the cleanups and documentation meet the standards required for the City, the City Representative, or their designee(s), may attend and observe the cleanups for:

- a. Condition of site upon completion of cleanup.
- b. Correct reporting and documentation process.
- c. Cleanups made on the scheduled day and within time allocations.
- d. Appropriate staffing during cleanup.

EXHIBIT B
MONITORING, EVALUATION AND REPORTING REQUIREMENTS

The GRANTEE agrees to keep the DIRECTOR or the DIRECTOR's designated representative informed on all phases of the services Project. GRANTEE shall submit a final report providing status and other detail reasonably satisfactory to CITY on Projects completed under this AGREEMENT. This report shall be delivered to CITY no later than thirty (30) days prior to the end of the term of this AGREEMENT using the report template included in EXHIBIT I. At any time, the DIRECTOR or his or her designated representative may request progress reports at such times as may be reasonably requested as to the actual progress of Projects.

The GRANTEE will participate in quarterly coordination meetings as requested by CITY on no less than ten (10) days' notice with Departments to periodically check-in on the CITY's Projects with the GRANTEE and to engage in early and proactive involvement of emerging issues.

GRANTEE shall maintain a qualified and experienced chief financial officer or equivalent thereof with significant experience in a senior accounting role, degree in finance, business or accounting, and up to date knowledge of current financial and accounting applications (CPA designation is preferred) and adequate staff experienced in financial accounting to provide reasonable oversight of the internal accounting systems of the GRANTEE and in the preparation and delivery of financial reports by the GRANTEE.

GRANTEE shall maintain a Board of Directors Audit Committee and an Independent Audit Committees, the latter comprised of experienced business persons who do not serve on the Board of Directors of the Conservation Corps, which shall meet at least twice annually to oversee the financial operations and financial reporting of the Conservation Corps. The Board of Directors Executive Committee shall meet no less than quarterly to oversee the financial operations and financial reporting of the Conservation Corps.

GRANTEE shall provide on going staff training to all staff reasonably involved in the Conservation Corps financial reporting has been given on prudent financial practices. This training must be conducted by a CPA or similarly qualified financial expert, no less than once per fiscal year.

Records, Reports and Audits of GRANTEE:

1. Establishment and Maintenance of Records. GRANTEE shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
 - a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this AGREEMENT; and
 - b. All other matters covered by this AGREEMENT. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the CITY.

2. Preservation of Records. GRANTEE shall preserve and make available its records:
- a. for the period of four (4) years from the date of final payment to GRANTEE under this AGREEMENT; or
 - b. for such longer period, if any, as may be required by applicable law; or
 - c. if this AGREEMENT is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.

3. Audits.

a. Independent Audits

- (1) GRANTEE shall submit an agency audit that conforms to generally accepted auditing standards and that includes the following components:
 - A. Balance Sheet or Statement of Financial Position;
 - B. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement of Activities;
 - C. Statement of Functional Expenses;
 - D. Independent Auditor's Report. If the audit includes a Management Letter, this must also be submitted to the CITY.
 - E. Schedule of Government Financial Assistance which identifies the gross amounts of grants obtained from the CITY and other governmental sources and shows the amount received and disbursed under each grant during the audited fiscal year; and
 - F. Report on Compliance and on Internal Control over Financial Reporting based on an Audit of Financial Statements performed in Accordance with Government Auditing Standards indicating that a review of internal controls was performed and identifying material weaknesses and/or reportable conditions, if any.
- (2) If GRANTEE expends \$500,000 or more in a year in Federal awards, GRANTEE shall submit an audit report that conforms to the requirements of OMB Circular A-133 for Non-Profit Institutions.
- (3) The GRANTEE's contract with its independent auditor shall require that the audit ascertains and determines that no services provided by the GRANTEE under this Agreement are duplicative of services provided to another agency from which GRANTEE receives funding and are not being reimbursed from funding received from another agency.
- (4) GRANTEE shall also submit a written agency management response to the findings of the Internal Control Report, if required.
- (5) The audit reports must be completed and sent to the DIRECTOR's Office within one hundred eighty (180) days of the end of each of the GRANTEE's Fiscal Years

covered by this Agreement. If this AGREEMENT expires or is terminated on a date that occurs after the period covered by the foregoing audit, GRANTEE shall deliver an audit report within two hundred and fifty (250) days after the expiration or termination of this AGREEMENT auditing the period not covered by the prior audit. The GRANTEE's Fiscal Years ends June 30th.

- (8) Should GRANTEE not enter into an agreement with an outside auditor or should an audit not be done on a timely basis, the CITY, at its discretion, may enter into an Agreement with an independent auditor to do the audit at GRANTEE's expense.
 - (9) The GRANTEE shall submit to the CITY copies of management letters the auditor prepares for the GRANTEE as part of the audit engagement.
 - (10) All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. GRANTEE must have Auditor's proof of current licensing on file in GRANTEE's office. GRANTEE must submit to the DIRECTOR a copy of Auditor's certification to practice in California with the audit.
 - (11) The CITY, at its discretion, may request a certification by the Conservation Corp's independent auditor through a management letter or similar notation to the annual audit, that the Conservation Corps has followed and continuously maintained the Fiscal Management Capacity Measures required by this grant agreement that are also set forth in the settlement agreement approved by the CITY and the Conservation Corps on January 12, 2010. This certification shall be delivered to City no later than 180 days after the end of each fiscal year end of the Corps (Corps fiscal year ends June 30) or 180 days after City's request is delivered to Corps, whichever is later.
- b. City Audits. The CITY may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. GRANTEE will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Costs of such audits will be borne by the CITY.

In the event any audit conducted by CITY or by CITY's representative discloses that GRANTEE has made any misrepresentation with respect to the services provided hereunder or in the compensation due to GRANTEE hereunder then, in addition to any other remedies available to CITY, CITY may demand that GRANTEE reimburse CITY for CITY's costs incurred in the performance of the audit and shall pay all outstanding fees and late penalties due to CITY. Furthermore, CITY may require, and if required by CITY, GRANTEE shall pay for the audit costs when GRANTEE cannot properly account for or otherwise provide satisfactory documentation of charges made to the CITY greater than ten percent (10%) of the amounts payable to GRANTEE during the period covered by the audit. Such reimbursement shall be paid by GRANTEE within thirty (30) days of

the date CITY notifies GRANTEE of CITY's demand for payment and the amount of CITY's costs.

- c. Disallowed Costs. GRANTEE is liable for repayment of disallowed costs as determined by CITY. Disallowed costs may be identified through audits, monitoring or other sources. GRANTEE shall be afforded the opportunity to respond to any adverse findings that may lead to disallowed costs. DIRECTOR shall make the final determination of disallowed costs.

EXHIBIT C
BUDGET SUMMARY

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EXHIBIT D
PAYMENTS TO GRANTEE

The cost of labor shall be computed at a single rate of \$22.00 per hour for all GRANTEE members working on the Project except as provided below. This rate includes without limitation, the costs of GRANTEE supervision of the work done by the members, and the cost of overtime. The City will pay up to ½ hour travel time to the site and ½ hour from the site, or an amount equal to the actual travel time incurred, whichever is less. Every year either the CITY or GRANTEE may request a review of the rate to determine if the rate should be adjusted to reflect any changes in the applicable Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (BLS).

The maximum annual compensation for this Agreement shall not exceed \$120,000 as set forth by each Project described in Exhibit A:

B.1. Event Recycling: \$80,000

B.2. Creek Cleanup and Riparian Work: \$30,000.

GRANTEE may retain any revenue received for the sale of Recyclable Materials collected pursuant to this AGREEMENT.

The GRANTEE agrees to account for CITY funds independently from non-CITY funds by tracking all grants and contracts by "Cost Center."

The GRANTEE shall invoice CITY promptly following provision of services, using the invoice template found in EXHIBIT H but in any event no later than thirty (30) days after Project completion. Invoices shall at a minimum detail:

1. date of issue of the invoice
2. a sequential number, based on one or more series, which uniquely identifies the invoice,
3. business/tax ID Number
4. contact names, addresses and phone numbers of the GRANTEE and the CITY
5. nature and location of the services provided
6. date on which the services were provided
7. number of GRANTEE's member hours worked
8. hourly charge rate
9. cost of materials and supplies

The GRANTEE agrees to provide as an attachment with each invoice:

1. Daily sign-in logs that demonstrate hours and dates worked on Projects. See Daily Log Sheet in Exhibit K.
2. Receipts for costs of materials or supplies specific to the Project.

The CITY agrees to promptly reimburse GRANTEE for the cost of reasonable services as calculated pursuant to this AGREEMENT that have been completed to CITY's satisfaction.

Nothing in the CITY's payment of any invoice to the GRANTEE shall be deemed to be a waiver of CITY's right to recover from GRANTEE for any payments made by CITY that were not spent in accordance with this AGREEMENT, nor shall any payment made to the GRANTEE in any way impair or prejudice any right or remedy available to CITY with respect to such breach or default.

GRANTEE understands that it is liable for repayment of disallowed costs under this AGREEMENT as determined by CITY. Disallowed costs may be identified through audits, monitoring or other sources. GRANTEE shall be afforded the opportunity to respond to any adverse findings that may lead to disallowed costs. CITY shall make the final determination of disallowed costs.

GRANTEE covenants to CITY that no services provided by the GRANTEE on under this AGREEMENT shall be duplicative of services provided to another agency from which GRANTEE receives funding and that the CITY shall not be charged for costs that are being reimbursed by another entity or agency.

EXHIBIT E
GENERAL SERVICE REQUIREMENTS

Special Grant Conditions

Payment of Wages

The GRANTEE shall compensate its members in accordance with state law and in a manner consistent with CITY prevailing wage policies. So long as the GRANTEE's certification with the California Conservation Corps remains in full force and effect, the CITY's prevailing wage policy shall not apply to the GRANTEE for any maintenance work or other services provided hereunder. If federal or state funds are used by GRANTEE for all or part of the services provide hereunder, the GRANTEE shall comply with any minimum wage requirements associated with such funding, if any.

Unforeseen Delays

Neither the CITY nor the GRANTEE shall be deemed in violation of this AGREEMENT if prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, Acts of God, acts of public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage or any other circumstance for which it is not responsible or which is not within its control.

Plans

If applicable, the CITY shall provide complete programs and plans for each Project. The plans shall include time schedule for delivery of services, description of the location and type of services to be provided and required reports and other deliverables.

Emergencies

Temporary suspension or permanent cessation of Projects may be required due to emergency conditions. Under such circumstances, the DIRECTOR and the GRANTEE shall mutually agree on the postponement of a Project and who should bear the burden of incurred costs. Such agreement shall be documented in writing signed by DIRECTOR and GRANTEE.

Rights of Entry and Inspection

The CITY and its agents and employees shall at all times have the right of entry and free access to inspect all work done, labor performed, and materials furnished in connection with the services provided hereunder and to inspect all books, contracts, and records of the GRANTEE pertaining to the Projects.

CITY Approval for Matching Funds

1. GRANTEE may not represent to any entity that the CITY will provide matching funds beyond the amounts approved in the project approval and completion forms.
2. If GRANTEE receives a grant to match the funds approved by the CITY, irrespective of whether the CITY funds are expressly identified in the grant application, GRANTEE agrees to use the matching funds to provide education and job training to Corp members.
3. In the event that the GRANTEE receives a grant for community service work to match the funds approved by the CITY, irrespective of whether the CITY funds are expressly identified in the grant application, GRANTEE further agrees to provide the CITY the first right of refusal and a reasonable period to identify an eligible service project in San José to be paid for by the grant funds.

EXHIBIT F

EMPLOYEE/VOLUNTEER CLEARANCE VERIFICATION AND COMPLIANCE WITH THE CHILD ABUSE AND NEGLECT REPORTING ACT

If GRANTEE provides services involving minors, and as a CITY-approved method of complying with the provisions contained in this AGREEMENT, GRANTEE shall conduct a criminal background check through the database of the California Department of Justice **and** an FBI criminal database or equivalent national database as approved in writing by GRANTEE's liability insurance provider,, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

GRANTEE shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 *et. seq.* Additionally, GRANTEE certifies the following:

1. Any and all personnel employed or retained by GRANTEE in conducting the operations of GRANTEE's program shall be qualified to perform the duties assigned to them by GRANTEE. GRANTEE agrees that GRANTEE shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164. (Copy attached.)

CITY and GRANTEE understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

If GRANTEE intends to have employees or volunteers under the age of 18 providing services under this AGREEMENT, GRANTEE must obtain CITY's prior consent, and GRANTEE shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. GRANTEE shall be responsible for ensuring that no person who has supervisory or disciplinary authority over minors, who is paid or unpaid by GRANTEE, shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this AGREEMENT, and the person meets the standards set forth above. If requested by CITY, and to the extent allowed by law, GRANTEE shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, and certifying that the GRANTEE has conducted the proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this AGREEMENT. Regardless of whether such documentation is requested or delivered by GRANTEE, GRANTEE shall be solely responsible for compliance with the provisions of this SECTION.
3. That no person paid or unpaid by GRANTEE shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed

concessionaire services in that area, unless GRANTEE has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code (copy attached), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than two (2) years old (if newly hired) or within four (4) years (if current employee) of the date of execution of this AGREEMENT and every four (4) years thereafter, if the term of this AGREEMENT exceeds four (4) years.

For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. GRANTEE shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to CITY, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

4. GRANTEE understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. GRANTEE, acknowledges that it is GRANTEE's sole responsibility to comply with all applicable laws, regulations and licensing requirements in GRANTEE's provision of services hereunder.

I, the GRANTEE by signing below verify that I have read and agree to the above:

Signature/Title

Date

CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

5164. (a) (1) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (2).

(2) (A) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) Any felony or misdemeanor conviction specified in subparagraph (C) within ten (10) years of the date of the employer's request.

(C) Any felony conviction that is over ten (10) years old, if the subject of the request was incarcerated within ten (10) years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three (3) or more misdemeanor convictions, or a combined total of three (3) or more misdemeanor and felony convictions, for violations listed in this Section within the ten (10) year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding ten (10) years.

(b) (1) To give effect to this Section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background.

(2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

CALIFORNIA PUBLIC RESOURCES CODE SECTION 5163

5163. (a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two (2) years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four (4) years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within thirty (30) days of the examination to the local health officer to determine the need for follow-up care.

"Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

5163.1. The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this Section.

5163.2. The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

5163.3. The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

5163.4. Nothing in Sections 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.

EXHIBIT G

INSURANCE REQUIREMENTS

The GRANTEE, at GRANTEE's sole 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 the GRANTEE, its agents, representatives, employees or subcontractors.

I. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. The coverage provided by Insurance Services Office Form Commercial General Liability coverage ("occurrence") Form Number CG 0001, products and completed operations; and
- B. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned, and hired automobiles; and
- C. 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.

II. Minimum Limits of Insurance

The GRANTEE shall maintain limits no less than:

- A. 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
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- C. 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; coverage shall be endorsed to state carrier waives its rights of subrogation against the CITY, its officers, employees, agents, and contractors.

III. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by the CITY's Risk Manager. 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, employees, agents and contractors; or the GRANTEE 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.

IV. Other Insurance Provisions

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

A. Commercial General Liability and Automobile Liability Coverages.

1. **Insured.** 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, the GRANTEE; products and completed operations of the GRANTEE; premises owned, leased or used by the GRANTEE; and automobiles owned, leased, hired or borrowed by the GRANTEE. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, employees, agents and contractors.
2. **Contribution Not Required.** The GRANTEE's insurance coverage shall be primary insurance as respects the CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by the CITY, its officers, employees, agents or contractors shall be excess of the GRANTEE's insurance and shall not contribute with it.
3. **Provisions Regarding the Insured's Duties After Accident or Loss.** Any failure to comply with reporting provisions of the policies by the GRANTEE shall not affect coverage provided the CITY, its officers, employees, agents, or contractors.
4. **Coverage.** Coverage shall state that the GRANTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. **Waiver of Subrogation.** Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents, and contractors.

B. Workers' Compensation and Employers' Liability coverage shall contain a waiver of subrogation in favor of the City of San José, its officers, employees, agents, and contractors.

C. 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 the CITY's Risk Manager.

V. Acceptability of Insurers

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

VI. Verification of Coverage

The GRANTEE shall furnish the 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: 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 José – Human Resources
Risk Management Division
200 E. Santa Clara Street, 2nd Floor Wing
San José, CA 95113-1903

VII. Subcontractors

The GRANTEE shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontract.

EXHIBIT H

INVOICE TEMPLATE

San José Conservation Corps

INVOICE

[Street Address]
[City, ST ZIP Code]
Phone
Business Tax ID #

INVOICE #
DATE:

Project Contacts

City Finance/Administration: _____ Phone: _____
City Project Supervisor: _____ Phone: _____
Corps Finance/Administration: _____ Phone: _____
Corps Project Supervisor: _____ Phone: _____

DESCRIPTION <small>[include date service provided, number of Corpsmember hours actually worked, hourly charge rate, and cost of materials and supplies.</small>	HOURS	RATE	AMOUNT
	TOTAL		

Attachment:

1. Daily sign-in logs that demonstrate hours and dates worked on projects.
2. Receipts for costs of materials or supplies specific to the project.
3. Project Approval and Completion Form

***Self Certification:** By my signature below, I, the Deputy Director of Accounting for the Conservation Corps, I hereby certify that I have reviewed the invoice and compared it with project scope, payroll, daily log sheets, cost of materials and supplies and determined that the amount charged to the City is accurate.

By _____ Date: _____
Title: Deputy Director of Accounting, San José Conservation Corps

ESD/Event Recycling and Creek Cleanup
and Riparian Work

H-1

DB#

EXHIBIT I

FINAL REPORT TEMPLATE

Section 1. Project Overview/Summary

Project Budget, Schedule, and Scope

Identify Chief Financial Officer over term of the agreement.

Section 2. Value Added Community Benefits

Describe value-added benefits to the community in the delivery of the service including: Number of at risk served, vocational instruction, academic education, on-the-job training, service learning, job placements, etc.

Section 3. Leveraging Resources

Describe ability to leverage grants and other funding sources to provide value-added services.

Section 4. Service Review (e.g., Service Quality, Accounting Practices)

Describe review of service quality (to include but not limited to a summary of the projects completed on time and to the City's satisfaction, and corrective actions required if any), fiscal capacity measures employed, administration and invoicing procedures, areas of improvement in coming year for GRANTEE and CITY if applicable.

Section 5. Unanticipated Issues

Section 6. Recommended Next Steps

I certify that I have read the information provided by me on this report and all the information is true and correct.

SAN JOSÉ CONSERVATION CORPS
EXECUTIVE DIRECTOR

Date:

Signature: _____

Print Name: _____

Title: _____

CHIEF FINANCIAL OFFICER

Date:

Signature: _____

Print Name: _____

Title: _____

EXHIBIT J

PROJECT APPROVAL & COMPLETION FORM

**SAN JOSÉ CONSERVATION CORPS
PROJECT/EVENT SERVICES APPROVAL FORM**

Date Prepared:	Project/Event Number:
City Budget Source:	City Visible Code:
<i>This project is subject to the terms and conditions of the "Grant Agreement" between the City of San José (City) and the San José Conservation Corps (SJCC) which terms and conditions are incorporated by reference into this Special Project Approval and Completion Form. The terms of the Grant Agreement shall apply to the project described on this Project Services Approval Form.</i>	

1	Project/Event Name:	
2	Project/Event Address/Location:	
3	Project/Event Description: (attach plans, detailed specifications, diagrams, maps, etc.)	
4	Start Date:	Estimated Completion Date:
5a	City Finance/Administration contact:	Phone:
5b	City Project Supervisor Contact:	Phone:
5c	Corps Project/Event Supervisor Contact:	Phone:
6	Estimated number of crew members:	
7	Estimated total hours worked by all crew members:	
8	Materials/equipment supplied by Corps:	
9	Materials/equipment supplied by City:	
10	TOTAL CITY COST FOR EVENT/PROJECT:	
City Project Approval		Authorized Signature:
Name:		Date:
Corps Project Approval		Authorized Signature:
Name:		Date:

Date Prepared:	Project/Event Number:
----------------	-----------------------

POST PROJECT / EVENT COMPLETION

Date	Item	Yes	No	Initial Corps/ City	Project Comments
	Project Completed On Time				
	Project Completed On Budget				
	Project Completed Satisfactory				
	Correction Action Required				
	Corrective Action Completed (n/a)				

Overall Comments if Any:

City – Authorized Signature confirming project completion and Date:

Corps – Authorized Signature confirming project completion and Date:

EXHIBIT K



SAN JOSE CONSERVATION CORPS & CHARTER SCHOOL

DAILY PROJECT ROSTER

SJCC&CS Site Supervisor:	Date:
Project Number:	Day:
Project Name:	
Project Location:	
Scheduled Project Time From: _____ to _____	

Corpsmember Name	Corpsmember Signature	Supervisor's Use Only to Match with Kronos Actual Hours	Check (x) When Supervisor's Review is Completed
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
TOTAL HOURS			

Description of Work Activities (cubic feet collected, linear feet cleared):

Signature of Site Supervisor and Date:

Reviewed and Approved by Department Director:

ESD/Event Recycling and Creek Cleanup
and Riparian Work

K-1

DB#