FOR CALTRANS USE: I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.								
				Accounting Officer		Date:	$	
Chapter	Statutes	Item	Fiscal Year	Program	BC	Category	Fund Source	$

APPLICANT-STATE AGREEMENT NO. 04-20-008
ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM

STATE PROJECT NUMBER: **EEM-2010 (008)**
2010-2011 FISCAL YEAR ALLOCATION

Advantage Project ID: **0400021031**

THIS AGREEMENT, made effective this **March 24th, 2011**, by and between the **City of San José**, hereinafter referred to as "APPLICANT", and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WITNESSETH

WHEREAS, as provided by Streets and Highways Code Section 164.56, Senate Bill 117 (Statutes of 1999, Chapter 739) established the EEM Program as a permanent program, funds have been allocated to APPLICANT by the California Transportation Commission (CTC) after the PROJECT submitted by APPLICANT had been recommended for funding by the Resources Agency; and as described in the application (APPLICATION);

WHEREAS, STATE and APPLICANT now desire to enter into an Agreement relative to fund transfers and cost sharing on the described PROJECT.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - Project Administration and General Provisions

1. PROJECT shall mean that EEM PROJECT described in the APPLICATION submitted by APPLICANT and summarized in Exhibit A to this Agreement including financing information as set forth in Section III of Exhibit A to this Agreement.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

2. The PROJECT submitted by APPLICANT, together with all conditions and assurances contained therein, and specifically including information on how the PROJECT shall be financed, are made an express part of this Agreement. Should any conflict exist between the APPLICATION and the Agreement, the Agreement shall prevail.

3. APPLICANT shall complete PROJECT, which shall be acquired, developed, designed and constructed as provided in this Agreement.

4. If PROJECT is located on STATE-owned right-of-way, APPLICANT shall comply with all applicable STATE design and construction standards and practices. If PROJECT is not on STATE-owned right-of-way, APPLICANT shall comply with the applicable design and construction standards and practices of the local government having jurisdiction over the PROJECT location.

5 In cases where the CTC approved funding is less than the amount for which APPLICANT originally applied due to a Budget Reduction on the project required by the State Resources Agency, APPLICANT is obligated to complete PROJECT without downscoping it, unless specifically authorized to do so, in writing, by the State Resources Agency. This will be accomplished by APPLICANT supplementing PROJECT costs with another funding source or by finding a less costly way to complete the PROJECT.

6 The estimated total cost of PROJECT is as shown in Section III of Exhibit A. While APPLICANT may, with the STATE's written approval, award a contract in an amount in exceeding the estimated total PROJECT cost specified in Section III-A of Exhibit A of the Agreement, the allocation of STATE funds for PROJECT will never be greater than the amount specified in Section III-C of Exhibit A of this Agreement.

7 Section III of Exhibit A specifies the APPLICANT's estimated total PROJECT cost, each party's proportionate percentage of those costs and the maximum amount of STATE funds the CTC has authorized for the PROJECT. The STATE's proportionate share of funding is a certain percent of the estimated total PROJECT cost and approved scope of the PROJECT (STATE's PROPORTIONATE SHARE) and will be used as the reimbursement ratio on the project. In the event the actual cost of PROJECT exceeds the estimated total cost of the PROJECT, the STATE shall pay its PROPORTIONATE SHARE of the cost only up to the amount specified in Section III-C of Exhibit A of the Agreement.

8. In the event the PROJECT scope decreases, a decrease in the STATE's PROPORTIONATE SHARE shall be made. In the event the actual cost of PROJECT decreases for any reason from the estimated total PROJECT cost specified in Section III of Exhibit A, the allocation of STATE funds will be decreased proportionately with any decrease in APPLICANT's participating contribution so that the STATE's PROPORTIONATE SHARE of costs relative to TOTAL PROJECT COST remains as specified in Section III-B of Exhibit A of the Agreement.

9. No changes of any kind may be made to the PROJECT without prior written notice to and written acceptance by the STATE of the proposed change. The STATE shall acknowledge a written notice of proposed change by either accepting or rejecting the proposed changed in writing. In the event the STATE responds to a proposed change by stating that the proposed change requires discussion and amendment, such action shall constitute a rejection of the proposed change and any work performed in spite of that rejection shall not be eligible for reimbursement unless and until there is a written, duly executed amendment to this Agreement which addresses that work. Any amendment to this Agreement shall not be effective until executed by both parties. In addition, the parties should take special notice of ARTICLE XII, paragraph 6 of this Agreement.

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10. After completion and acceptance of PROJECT by both APPLICANT and STATE, STATE shall pay STATE's PROPORTIONATE SHARE of the cost of PROJECT to APPLICANT, within sixty (60) days after receipt of a signed invoice for payment submitted by APPLICANT. At the option of APPLICANT, monthly or quarterly pro rata progress payments in arrears may be made on a reimbursement basis upon submittal of invoices by APPLICANT and approval by STATE of the PROJECT costs incurred. Pro rata payments will be based on the amount of the STATE fund transfer authorized herein in proportion to the total cost of PROJECT, including APPLICANT contributions. An invoice format document is included as Exhibit C.

11. If PROJECT involves work anywhere on the State highway system, a separate standard form of encroachment permit between STATE and APPLICANT must be prepared and executed before PROJECT work may commence.

12. APPLICANT shall comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit B) and further agrees that any agreement or service contract entered into by APPLICANT with a third party for performance of work connected with the PROJECT shall incorporate Exhibit B as a part of such agreement.

13. Upon completion of all work under this Agreement and prior to the expiration of this Agreement, APPLICANT shall prepare and file with STATE one (1) original Final Project Expenditure Report. The Final Project Expenditure Report must be submitted with the final invoice on the PROJECT.

ARTICLE II - Rights-of-Way

1. The acquisition, clearance, and improvement of rights of way necessary for the development of PROJECT shall be the responsibility of APPLICANT. Right-of-way acquisition and clearance costs may be included as a participating item of total PROJECT costs if included as part of the PROJECT scope of work.

2. APPLICANT shall perform all PROJECT right-of-way activities in accordance with applicable State laws and regulations unless the STATE determines, in writing, that the State Uniform Relocation Assistance and Real Property Acquisition Policies Act (Government Code Secs. 7260-7277) do not apply to PROJECT.

3. APPLICANT, as part of its PROJECT design responsibility, shall identify and locate all utility facilities within the PROJECT area. All utility facilities, including those not relocated or removed in advance of construction, shall be identified on PROJECT plans and specifications.

4. If any existing public and/or private utilities conflict with the construction of PROJECT, APPLICANT will make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. If utility relocation is required within STATE right-of-way, APPLICANT shall conform to STATE standards, policies and procedures. If utility relocation is outside of STATE right-of-way, APPLICANT shall conform with local government policies.

5. APPLICANT shall certify as to legal and physical control of that PROJECT right-of-way once it is ready for construction and that the PROJECT right-of-way was acquired in accordance with applicable State laws and regulations, subject to review and concurrence by STATE, prior to the advertisement for bids for construction/development of PROJECT.

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6. If right-of-way acquisition and clearance costs are included as a participating item of PROJECT costs, STATE shall provide funds only for purchase of the actual right-of-way required for PROJECT. If APPLICANT acquires right-of-way which includes excess land, STATE will not participate in the cost of the excess portion. In the event land initially acquired as part of PROJECT is declared excess at a later date, APPLICANT shall reimburse STATE, no later than one hundred twenty (120) days after PROJECT completion or upon the subsequent sale of that excess land, for either the pro rata fair market value of that excess at the time of disposal or, if that property is retained by APPLICANT, the pro rata fair market value of the excess land at that time. The pro rata fair market value shall be based on the total of the STATE fund transfer amount applied toward purchase of the property in proportion to the total purchase price of the property.

ARTICLE III - Safety

1. APPLICANT shall comply with OSHA regulations regarding necessary safety equipment and procedures. If PROJECT work is to be performed within STATE right of way, APPLICANT shall also comply with safety instructions issued by the District Safety Officer and other STATE representatives. APPLICANT's and APPLICANT's personnel shall see that all individuals wear white hard hats and orange safety vests at all times while working within STATE right of way.

2. Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas as are within the limits of the PROJECT and are open to public traffic, APPLICANT shall comply with all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. APPLICANT shall take all reasonably necessary precautions for safe operation of its and its agent's or APPLICANT's vehicles and the protection of the traveling public from injury and damage from such vehicles when performing work within STATE right of way.

ARTICLE IV - Inspection of Work

1. APPLICANT and any of its PROJECT subcontractors shall permit STATE to review and inspect PROJECT activities at all reasonable times during the performance period of this Agreement, including review and inspection on a daily basis.

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ARTICLE V - Equipment Purchase

1. Prior authorization in writing by STATE shall be required before APPLICANT enters into any non-budgeted purchase order or subcontract exceeding $500 for supplies, equipment, or consultant services. APPLICANT shall provide an evaluation of the necessity or desirability of incurring such costs.

2. For purchase of any item, service or consulting work not identified in APPLICANT's Cost Proposal and exceeding $500, with written prior authorization by STATE, three (3) competitive quotations must be submitted with that request or the absence of bidding must be adequately justified.

3. Any equipment purchased as a result of this Agreement is subject to paragraph 3 of this Article V. APPLICANT shall maintain an inventory of all nonexpendable property, defined as property having a useful life of at least two years and an acquisition cost of $500 or more. If purchased equipment needs replacement and is sold or traded in, STATE shall receive a proper refund or credit. Upon the expiration date of this Agreement, or if this Agreement is terminated, APPLICANT may either keep the equipment and credit STATE in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established STATE procedures, and credit STATE in an amount equal to the sales price. If APPLICANT elects to keep that equipment, fair market value shall be determined, at APPLICANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to STATE and APPLICANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by STATE.

ARTICLE VI - Management and Maintenance of Property

1. APPLICANT will operate, manage and maintain into the future all property acquired, developed, rehabilitated, or restored with funds transferred through this Agreement. With STATE's prior approval, APPLICANT or its successors in interest may transfer management and maintenance responsibilities over the property. If the property is not managed and maintained consistent with the PROJECT APPLICATION, APPLICANT or its successors in interest, at the discretion of STATE and within 45 days after receiving notice to APPLICANT by STATE, shall reimburse STATE an amount at least equal to the amount of STATE's funding participation in PROJECT together with all accrued interest at State Treasurer's pooled money investment account.

2. All real property, or rights thereto, acquired with these funds shall be subject of to an appropriate form of restrictive title, or rights, covenants approved by STATE. If the PROJECT real property, or rights thereto, is sold, traded, condemned, or otherwise put to any use other than that use as approved in the Allocation for STATE funds, the State Highway Account, at the discretion of STATE and within 45 days notice to APPLICANT by STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation in PROJECT or the pro rata fair market value of the real property, or rights thereto, including improvements, at the time of sale, whichever is higher. The pro rata fair market value shall be based on the proportions of the fund transfer amount applied toward the purchase of the property, or rights thereto, and the design and construction of improvements in proportion to the total purchase price of the real property, or rights thereto, and the cost of all improvements made prior to the time of sale.

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ARTICLE VII - Retention of Records/Audit Review Procedures

1. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code 10532, APPLICANT, its contractors and their subcontractors and STATE shall each maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under this Agreement. STATE, the State auditor, the Federal Highway Administration (FHWA), or any duly authorized representative of the Federal government shall have access to any books, records, and documents of APPLICANT that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished by APPLICANT or its contractors, if requested.

2. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not satisfactorily disposed of by agreement shall be reviewed by the Chairperson of the STATE Audit Review Committee (ARC). The ARC will consist of the Assistant Director, Audits & Security (Chairperson); Deputy Director of Transportation Engineering; the Chief Counsel, Legal Division, or their designated alternates; and two representatives appointment by the Director of Transportation from private industry whose role will be advisory in nature only and without voting rights.

3. Not later than 30 days after issuance of the final audit report, APPLICANT may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the Chief Deputy Director. The Chief Deputy Director will make the final decision for STATE within one (1) month following the receipt of the notification of dispute or following the ARC meeting recommendation date, whichever is later in time.

4. Neither the pendency of a dispute nor its consideration by STATE will excuse APPLICANT from full and timely performance of its obligations in accordance with the terms of this Agreement.

5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article VII.

6. Expenditures of EEM program funds are subject to financial and compliance audits by the State Controllers Office and Caltrans Office of Audits and Investigations. These guidelines may be found in Caltrans *Local Assistance Procedures Manual*, Chapter 10, "Consultant Selection", Exhibit 10-N "Accounting and Auditing Guidelines for Contracts with Caltrans".

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ARTICLE VIII – Allowable Costs and Payments

1. The method of reimbursement authorized by STATE for PROJECT expenditures made by APPLICANT under this Agreement will be based on actual costs incurred. STATE will reimburse the STATE's PROPORTIONATE SHARE of actual costs (based on Section III of Exhibit A and including labor costs, employee benefits, travel, equipment rental costs, and other direct costs) incurred by APPLICANT in performance of the work. APPLICANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, fringe benefit rates, and other estimated costs set forth in APPLICANT's cost proposal (Exhibit A1) unless additional reimbursement is provided for by Agreement amendment. In the event that STATE determines additional work beyond that specified in APPLICANT's cost proposal and this Agreement is required to produce a satisfactory PROJECT, the actual costs reimbursable by STATE may be increased by Agreement amendment to accommodate that additional work. The maximum total costs as specified in Section III of Exhibit A of this Agreement, shall not be exceeded unless authorized by Agreement amendment.

2. Reimbursement for transportation and subsistence costs shall not exceed the rates to be paid nonrepresented/excluded State employees under then current State Department of Personnel Administration rules detailed in the Caltrans Travel And Expense Guide.

3. General and administrative PROJECT overhead is unallowable under the Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* guidelines.

4. Progress payments will be allowed and may be made no less than monthly in arrears based on PROJECT work performed and allowable incurred costs authorized as part of the PROJECT.

5. APPLICANT may not commence any reimbursable PROJECT development work or services or PROJECT capital outlay work before both program adoption and funding allocation by the California Transportation Commission and execution of this PROJECT agreement by both APPLICANT and STATE. Reimbursement is subject to annual appropriation by the Legislature in the State Budget for the Environmental Enhancement and Mitigation Program Fund.

6. APPLICANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by STATE's Local Program Accounting office in the Division of Accounting of signed invoices. One original and two copies of the invoice (in the format shown in Exhibit C) shall be submitted after the performance of work for which APPLICANT is billing. Invoices shall include detailed backup information supporting the work performed. The final invoice must contain the final cost and all credits due STATE, including credits or reimbursements due STATE for any equipment purchased under the provisions of Article V of this Agreement. **Progress and final invoices as well as the Final Project Expenditure Report shall be mailed to the Caltrans District Director, ATTN: District Local Assistance Engineer (DLAE), for invoice approval.** The DLAE will forward invoices to the Accounting Office for payment.

ARTICLE IX – Cost Principles

1. APPLICANT agrees to comply with: 1) The Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures* and Criteria, and 2) *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects.*

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2. APPLICANT agrees to comply with the following, as applicable:

A) The Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., which shall be followed to determine the allowability of individual items of cost for which reimbursement is sought.

B) 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments..

C) Office of Management and Budget Circular A-122, Cost Principles for Nonprofit Organizations, which shall be used to determine costs of grants, contracts and other agreements with nonprofit organizations (excluding colleges, universities and hospitals).

D) Office of Management and Budget Circular A-21, Cost Principles for Educational Institution establishing principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.

E) Office of Management and Budget Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations.

3. Any costs for which payment has been made to APPLICANT that are determined by subsequent audit to be unallowable under Paragraphs 1 and 2 of this Article IX are subject to repayment by APPLICANT to STATE.

4. Should any conflict exist between the STATE guidelines as described in Paragraph 1 and 2 of this Article IX, the following order will prevail and be applied as follows: 1) Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria*; 2) *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects*, 3) 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; 49 CFR, Federal Acquisition Regulations System, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government; OMB A-21, Cost Principles for Educational Institutions; OMB A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations; OMB A-122, Cost Principles for Nonprofit Organizations; and OMB A-87, Cost Principles for State and Local Government.

5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article IX.

6. Should APPLICANT fail to reimburse moneys due STATE within thirty (30) days of demand, or within such other period as may be agreed between the parties hereto, STATE is authorized to withhold future payments due APPLICANT from any source, including but not limited to, the State Treasurer, the State Controller and the California Transportation Commission.

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ARTICLE X - Subcontracting

1. APPLICANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by STATE, except that which is expressly identified in APPLICANT's Cost Proposal (Exhibit A1).

2. Any subcontract in excess of $25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement and shall be applicable to all subcontractors.

3. Any substitution of subcontractors must be approved in writing by STATE.

4. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article X.

ARTICLE XI - Insurance

1. If the scope of APPLICANT services will not require APPLICANT or a subcontractor to enter upon STATE highway right of way, then the APPLICANT is not required to show evidence of general comprehensive liability insurance.

2. In the event that APPLICANT or an agent, contractor or subcontractor of APPLICANT will be present or working on STATE right of way, prior to commencement of the work described herein, the APPLICANT shall furnish to STATE a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for APPLICANT and/or its agents, contractors, and subcontractors who will be working (in any manner) on STATE property with a combined single limit (CSL) of not less than one million dollars ($1,000,000) per occurrence.

3. The Certificate of Insurance must provide:

A. That the insurer will not cancel the insured's coverage without 30 days prior written notice to the STATE.

B. That the STATE, its officers, agents, employees, and servants are also included as additional named insureds, but only insofar as PROJECT operations under this Agreement are concerned.

C. That STATE will not be responsible for any premiums or assessments on the policy.

4. APPLICANT agrees that all bodily injury liability insurance or self-insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, APPLICANT agrees to provide, at least thirty (30) days prior to said expiration date, a new Certificate of Insurance or Certificate of Self-Insurance evidencing coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New Certificates are subject to the approval of STATE and Department of General Services. In the event APPLICANT fails to keep coverage as herein provided in effect at all times, STATE may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

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5. If APPLICANT is self-insured, the EEM PROJECT APPLICANT shall submit a Certificate of Self-Insurance asserting that APPLICANT is covered for all purposes of liability for all work performed hereunder. STATE and APPLICANT acknowledge that only one Certificate of Self-Insurance will be required and that APPLICANT must maintain that level of Self-Insurance [not less than one million dollars ($1,000,000)]. It is also understood that STATE, its officer, agents, employees, and servants, are included as covered for all purposes insofar as the operations of APPLICANT under this Agreement are concerned.

ARTICLE XII - Miscellaneous Provisions

1. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction conferred upon APPLICANT under this Agreement. It is understood and agreed that APPLICANT shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE'S interests are at stake.

2. APPLICANT, and the agents and employees of APPLICANT, in performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of STATE.

3. Following written notice and at least thirty (30) days to cure, STATE may terminate this Agreement with APPLICANT should APPLICANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this Agreement with APPLICANT, STATE shall pay APPLICANT the sum of allowable costs due APPLICANT under this Agreement prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due APPLICANT under this Agreement, and the balance, if any, shall then be paid APPLICANT upon demand.

4. Without the written consent of STATE, this Agreement is not assignable by APPLICANT, either in whole or in part.

5. Time is of the essence in this Agreement.

6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

7. The consideration to be paid APPLICANT, as provided herein, shall constitute full compensation for all of APPLICANT's allowable approved costs and expenses incurred in the performance hereof, unless otherwise expressly so provided.

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8. APPLICANT warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by APPLICANT for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this Agreement without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the price of consideration, or otherwise recover from APPLICANT, the full amount of such commission, percentage, brokerage, or contingent fee.

9. In accordance with Public Contract Code Section 10296, APPLICANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against APPLICANT within the immediate preceding two-year period because of APPLICANT's failure to comply with an order of a Federal court that orders APPLICANT to comply with an order of the National Labor Relations Board.

10. APPLICANT shall disclose any financial, business, or other relationship with STATE, the Resources Agency, or the California Transportation Commission (CTC) that may have an impact upon the outcome of this Agreement. APPLICANT shall also list current associates or clients who may have a financial interest in the outcome of this Agreement.

11. APPLICANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of this Agreement.

12. APPLICANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE or Resources Agency employee. For breach or violation of this warranty, STATE shall have the right, in its sole discretion, to terminate the Agreement without liability, to pay only for the work actually performed, or to deduct from the Agreement price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

13. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or the Federal Government that may affect the provisions, terms, or funding of this Agreement in any manner.

14. This Agreement shall terminate on **June 30, 2014--with project completion and final invoicing done by April 30, 2014** --or upon the earlier completion of PROJECT, whichever is first earlier in time, except that APPLICANT duties regarding the continuing operations and maintenance of PROJECT property, credits due STATE, and indemnification of STATE shall survive.

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IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

By_____

John Haynes, Senior Landscape Architect
Department of Transportation
Office of Special and Discretionary Programs
Division of Local Assistance
1120 "N" Street
Sacramento, California 95814

APPLICANT

By_____

Deanna Santana, Deputy City Manager
City of San José
200 E. Santa Clara St., 17th Floor
San Jose, CA 95113
(408) 535-8100
deanna.santana@sanjoseca.gov

APPROVED AS TO FORM:

By_____
Johnny V. Phan
Deputy City Attorney

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EXHIBIT A - PROJECT DESCRIPTION AND FINANCING

APPLICANT: City of San José
PROJECT NAME : Coyote Creek Trail (Highway 237 Bikeway to Tasman Drive Light Rail)
COUNTY: Santa Clara

I. Project Location: Highway 237 Bikeway to Tasman Drive Light Rail

II. Project Description of Work Proposed (as set forth in Application No. 008):
Improve existing dirt and unpaved trails. Improve the trails appeal and usability and thereby increase opportunities for bicycle and pedestrian off street travel.

III Proposed Project Funding:

A. ESTIMATED TOTAL PROJECT COST: **$1,290,000**

Is this amount different from that set forth in the APPLICATION?

_____X____Yes _____ No

B. PROJECT FINANCING:

State Funding	$	**350,000**	= **27.13%** of total project cost*
Applicant Funding	$	**940,000**	= **72.87%** of total project cost
Federal Funding (if any)	$		
Total Project Funding	**$ 1,290,000**		=**100.00%** of total project cost

*NOTE: This percentage is referred to in this Agreement as the STATE's PROPORTIONATE SHARE of costs and will be used as the reimbursement ratio on the project.

C. The maximum amount of STATE funding approved by the CTC that may be contributed to the PROJECT shall not exceed **$350,000.**

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EXHIBIT A1 - COST PROPOSAL

*(This must be completed by APPLICANT for all projects, **except** for acquisition-only projects, and returned with Applicant-State Agreement to the STATE.)*

APPLICANT:
PROJECT NAME:
COUNTY:

Direct Labor:
(labor rates must be calculated as actual dollar earned per hour and cannot include overhead costs)

Classification	Name	Hours		Rate	Total
Project Manager			@		
			@		
			@		
			@		

Total Direct Labor Costs

Fringe Benefits:
(Benefits, such as vacation, medical, and retirement, etc., must be calculated as rates earned per hour)

Other Costs: ***(itemize with description, quantity, unit price, and total cost; estimates acceptable)***

Travel Costs
Equipment and Supplies
Other Direct Costs

Subcontractor Costs:
(attach scope of work and detailed cost estimate for each subcontractor)

Volunteer Services:

Classification	Name	Hours		Rate	Total
Volunteer			@		
			@		
			@		

Total Volunteer Labor Costs

Donations:
(itemize with description, quantity, unit price, and total cost; estimates acceptable)

Materials
Other

Total Project Cost:

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT B

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, APPLICANT will not discriminate against any employee for employment because of race, sex, color, religion, ancestry, or national origin. APPLICANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. APPLICANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. APPLICANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

3. Remedies for Willful Violation:

   a) The State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which APPLICANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the APPLICANT has violated the Fair Employment Practices Act and had issued an order, under Labor Code Section 1426, which has become final, or obtained an injunction under Labor Code Section 1429.

   b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services hereunder shall be borne and paid for by APPLICANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or the thereafter may become due to APPLICANT, the difference between the price named in the Agreement and the actual cost thereof to STATE.

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AGREEMENT EXHIBIT C - SAMPLE OF EEM INVOICES

(Prepare On Applicant's Letterhead)

Date of Invoice

Remittance Address

(For all Invoices)
Department of Transportation
Division of Local Assistance
Name, District Director
District Local Assistance Engineer

Street Number
City, CA Zip Code
Attn: District EEM Coordinator

Billing No.: ***1, 2, or Final***
Invoice No: ***Local Agency's Invoice No.***
Project Completion Date: ***Final Date or "Ongoing"*** (if not final)
Tax Identification #_____
County: ***County Name***
Project Location_____
Advantage Project ID:_____

Reimbursement for Environmental Enhancement and Mitigation (EEM) funds is claimed pursuant to State Project No. EEM-20XX (XXX), Applicant State Agreement No._____, Agreement date _____.

Description of work covered by this invoice: _____

	Preliminary Engineering	Construction Engineering	Acquisition and Incidentals	Construction
Total Costs to Date **	_____	_____	_____	_____
Less: Nonparticipating Costs to Date	_____	_____	_____	_____
Total State Participating Costs to Date	_____	_____	_____	_____
Reimbursement Ratio	_____%	_____%	_____%	_____%
Total Reimbursement	_____	_____	_____	_____
Less: Amount Claimed on Previous invoice	_____	_____	_____	_____
Amount this Invoice	_____	_____	_____	_____
			Total Amount this Invoice_____	

*** Note: The State will make the payment(s) on a reimbursement basis of its proportionate share of actual costs incurred on the project to date after expenses and debts have been paid by the applicant; timesheets, mileage logs, invoices, receipts, cancelled warrants, and other documents as applicable are required by the State as supporting documentation prior to each reimbursement.*

I certify that the work covered by this Invoice has been completed in accordance with approved plans and specifications; the costs shown in this Invoice are true and correct; including retention as reflected above, is due and payable accordance with the terms of the agreement.

_____
Signature, Title and Unit of Local Agency Representative Phone No.

_____
Contact Name (for questions about this invoice) Phone No.

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AGREEMENT EXHIBIT D - FINAL PROJECT EXPENDITURE REPORT
(Prepare On Applicant's Letterhead)

Name, District Director
Department of Transportation
Street or P.O. Box
City, CA, Zip Code
Attention: *Name,* District Local Assistance Engineer

Final Project Expenditure Report

Description/Location of Work:
Project Completion Date:
Expenditure Authorization:
Project Number:
State-Local Entity Agreement Number:

State Funds Allocated:

Expenditure Incurred: Total $

A. Payment to Contractor
(Attach final pay estimate)

B. Other Project Costs:
Preliminary Engineering
Construction Engineering
Any Additional Construction
Right of Way (Capital and Support)

C. Liquidated Damages

D. Outstanding Contractors Claims

E. Others *(specify)*

Sources and Amounts of Additional Funds Used:

State Funds Allocated But Not Used:

CERTIFICATION

I hereby certify that:

To the best of my knowledge and belief, the information in this report is a true and accurate record of project costs. The work was performed in accordance with the CTC approved scope and state funding for the project.

_____
Title and Unit of Local Agency Representative

PROJECT VERIFICATION: This verification of completion also constitutes approval to pay costs shown in the Final Invoice included in the Report of Expenditures. I have reviewed the job site and found the project completed in accordance with the scope and description of the project authorization document.

_____ _____
District Local Assistance Engineer Date:

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.