

SANTA CLARA VALLEY WATER DISTRICT

Clean, Safe Creeks and Natural Flood Protection Program

TRAIL AND OPEN SPACE GRANT AGREEMENT

This Agreement, entered into retroactively upon approval by the Santa Clara Valley Water District's Board of Directors authorizing funding for this Grant, on June 28, 2011, made by and between SANTA CLARA VALLEY WATER DISTRICT, a California special district, hereinafter referred to as "District" and the CITY OF SAN JOSE, a public entity, hereinafter referred to as "Grantee," is to provide for the creation or restoration of tidal or riparian habitat.

RECITALS:

- A. The Santa Clara Valley Water District's mission is to provide "a healthy, safe, and enhanced quality of living in Santa Clara County through watershed stewardship and comprehensive management of water resources in a practical, cost-effective and environmentally sensitive manner."
- B. In November 2000 the voters of Santa Clara County passed Measure B establishing a special tax to fund the Clean, Safe Creeks and Natural Flood Protection Program (CSC Program).
- C. The special tax provides approximately \$920,000 in annual revenue to fund Outcome 4, Trail and Open Space, of the CSC Program. The tax is to provide "additional access to 70 miles of trails and open spaces" over the course of the 15-year period of the program.
- D. Consistent with the CSC Program the District's Board established an independent oversight committee to monitor and report on the District's progress in achieving the outcomes of the CSC Program.
- E. The District's Board approved the Trail and Open Space Grant Program (Trail Grant Program) in April 2009.
- F. Grantee, consistent with the Trail Grant Program, submitted an application for Grant funds to develop access to a trail or open space.
- G. On [RESOLUTION DATE: 3/8/2011], the Grantee's [CITY COUNCIL/BOARD: City Council] adopted a Resolution for the THREE CREEKS TRAIL, TRESTLE AND INTERIM IMPROVEMENTS PROJECT "Project" and authorized the application for and acceptance of District Grant funds under the Trail and Open Space Grant Program (see Appendix G, Resolution).
- H. On June 28, 2011, the District's Board approved the Three Creeks Trail, Trestle and Interim Improvements Project, allocating \$450,000 in Grant funds to Grantee and authorized the District's Chief Executive Officer (CEO) to award a contract to Grantee to provide Grant funding.

- I. Consistent with Application submitted, Grantee has secured funding from the District in the amount of \$450,000 and any additional funds necessary to complete the Project will be supplied by the Grantee.

The parties agree to the following terms and conditions:

Section 1. Special Provisions

- A. Grantee will include the Three Creeks Trail, Trestle and Interim Improvements Project funded by the District, with mention of the District and the Grant funding source, the CSC Program special tax of 2000 (Measure B), in at least one write-up in any newspaper, magazine, e-newsletter that the Grantee operates or provides materials to within the Project Performance Period.
- B. Grantee will, upon completion of the Project, make a presentation to the District's Board of Directors on the outcome of the Three Creeks Trail, Trestle and Interim Improvements Project funded by the District through the Trail Grant Program.

Section 2. General Provisions

A. Definitions

1. Acquisition: To obtain fee title or a lesser interest in real property, including a conservation easement or development rights.
2. Agreement: This contract between the District and the Grantee specifying the payment of funds by the District for the performance of the Project Scope within the Project Performance Period by the Grantee.
3. Application: The Trail and Open Space Grant Application and accompanying attachments submitted to the District for the District's Trail Grant Program.
4. Completion: The filing of a Notice of Completion after the fulfillment of agreed upon tasks for the Project by Grantee.
5. Development: The creation, by construction of or addition to existing facilities, of new public access to trails and open spaces. It does not include rehabilitation, restoration, enhancement, preservation, and protection of existing trails.
6. Trail and Open Space Grant Program (Trail Grant Program): The District's CSC Program's Trail and Open Space Grant Program.
7. Project: The proposed Implementation Project identified by Grantee in the Trail Grant Program Application, as set forth in Appendix A, Project Description of this Agreement.
8. Project Grant Amount: The amount allocated by the District per the District's Board action authorizing Grant funds.

9. Project Performance Criteria: The criteria used to measure the progress on the Project as outlined in Appendix A, Project Description, and Appendix F, Status Report Form.
10. Project Performance Period: The Project period commencing with approval by the District's Board of Directors authorizing funding for this Trail Grant Program, on June 28, 2011, and terminating upon Project completion notification by the Grantee, and receipt by Grantee of payment in full from the District, or by December 30, 2015, whichever comes first.
11. Property: The real property described in the Appendix A, Project Description, for acquisition or development with the Project.
12. Total Project Cost: Means the full cost of the Project, including funds from all funding sources, as identified in Appendix C, Project Budget.

B. Project Execution

1. District hereby Grants to Grantee, a sum of money (Grant funds) not to exceed \$450,000, in consideration of, and on condition that, the sum be expended for the sole purpose of carrying out the objectives as set forth in the Project as identified in Appendix A, Project Description, consistent with the terms and conditions set forth in this Agreement.
2. Grantee assumes the obligation to furnish any additional funds to complete the Project. Any significant modification or alteration to the Project must first be submitted to the District's Trail Grant Program Administrator, as identified under Section 3, Financial Provisions, G. Miscellaneous Provisions, Item 5 of this Agreement, in writing for approval. Continued disbursement of funds is dependent on District approval of changes the District deems are significant.
3. Grantee shall complete the Project in accordance with Project Performance Criteria set forth in Appendix A, Project Description.
4. Project schedule may only be adjusted by written agreement signed by both Grantee and District.
5. Grantee shall comply with all local, state and federal applicable current laws, regulations, and ordinances, including, but not limited to, financial requirements, legal requirements for construction contracts, building codes, health and safety codes, laws and codes pertaining to individuals with disabilities, and the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq., Title 14, California Code of Regulations, Section 15000 et. Seq.).
6. Grantee shall provide the District with access to all documents, Project site, and other information necessary to determine if the work is in accordance with the conditions of this Agreement for a period equivalent to required operations and maintenance of the Project under this Agreement or 25 years, whichever is greater.

7. Grantee shall provide for public access to Project facilities after completion in accordance with the intent and provisions of the CSC Program.
8. Grantee shall have (1) fee title, (2) leasehold, (3) other interest, or (4) site access in the Project lands which demonstrates to the satisfaction of the District that the proposed Project will provide public benefits.
9. Grantee must enter into a Joint Use Agreement with the District for use of any District property prior to the advancement or reimbursement of Grant funds for this Project.
10. Grantee shall complete Project by December 30, 2015.
11. Grantee shall maintain and operate the Project for a period of no less than 25 years from date the Notice of Completion is recorded, unless the Joint Use Agreement with the District is terminated sooner. With the prior written approval of the District, Grantee, or Grantee's successor in interest, may transfer the responsibility to maintain and operate the Property in accordance with this Section.
12. Grantee shall use the Property only for the purposes for which the Grant was made and shall make no other use or sale or other disposition of the Property, except as authorized by the District. Any unauthorized use of District Property shall result in loss of Grant funds associated with the Project and shall require payment of funds with interest earned.
13. Grantee shall post signs acknowledging the District's participation in the development of the Project and the use of CSC Program Funds, should there be an implementation component. District to provide sign template(s) to Grantee for use in Project where feasible.
14. Grantee shall invite, in writing, members of the District's Board of Directors to participate in any opening, event or ribbon cutting ceremony associated with the Project. District Board members will be given the opportunity to speak if other officials have speaking roles.

C. Project Administration/Reporting Requirements

1. Grantee shall provide written semi-annual reports (on a fiscal year schedule), using the District's standard form presented in Appendix F, Status Report Form. Reports will be completed and submitted in conjunction with invoicing (Appendix D, Project Invoice) as appropriate.
2. Grantee shall provide one hard copy and one electronic version of items listed in Section 3, Financial Provisions, Item F., Project Completion.
3. **All reports** submitted to the District shall include the following certification page signed by an officer of the Grantee's organization:

"I certify, under penalty of perjury under the laws of the State of California, that the Quarterly/Monthly Status Report and all attachments, signed on [DATE], on behalf of Grantee, were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the loss of the current and future Grant Funding."

4. Semi-annual reporting will end with submittal of Project Completion Packet (see Section 3, Financial Provisions, Item F., Project Completion).

D. Termination of the Agreement

1. Grantee may unilaterally terminate this Agreement at any time prior to District disbursement of Trail Grant Program funds by providing 30-days written notice to District.
2. Failure by Grantee to comply with the terms of this Agreement may be cause for suspension or termination of funding by the District. Additionally, in the event of failure to complete Project, Grantee may be required to repay District for funds received, including interest earned at the District's pooled portfolio monthly interest yield corresponding to the month(s) the funds were due to the District.

E. Indemnification

1. In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rate but, instead, District and Grantee agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this Agreement. No party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this Agreement.

F. Nondiscrimination

1. Anti-Discrimination. The District is an equal opportunity employer and requires all parties it contracts with to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the

Agreement, the District will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any sub-consultant, employee, or applicant for employment, in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay, or other forms of compensation, or against any other person, on the basis of race, color, religion, ancestry, gender, national origin, age (over 40), marital status, medical condition (including cancer), pregnancy, parental status, the exercise of family care leave rights, political affiliation, sexual orientation, gender identity, special disabled veteran status, Vietnam Era veteran and all other Veteran status, or because of a physical or mental disability (including HIV and AIDS). The District's policy must conform with applicable state and federal guidelines, including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of American Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Section 12900 et. Seq.); and California Labor Code Sections 1101 and 1102."

2. All facilities shall be open to members of the public generally during hours specified by the Grantee, except as noted under the special provisions of this Agreement or under provisions of the enabling legislation and/or Program.

G. *Severability.*

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

Section 3. Financial Provisions

A. *Accounting and Audit Requirements*

1. Grantee must maintain an accounting system that accurately reflects fiscal transactions, with the necessary controls and safeguards. Grantee should provide clear audit trails, especially the source of original documents such as, but not limited to, receipts, progress payments, invoices, time cards, etc. **AVOID AUDIT EXCEPTIONS—KEEP ACCURATE RECORDS.**
2. Grantee shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total costs for the proposed work. Grantee shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of the work herein and resolution of all claims arising there from and shall make available at the offices of Grantee, at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the District.

3. Grantee's detailed budget is included as Appendix C, Project Budget.
4. Grantee will be required to clear outstanding fiscal debts with the District prior to receiving Trail Grant Program funding.
5. Grantee must prove eligible for receipt of funds based on the Federal List of Parties Excluded from Federal Procurement or Non-procurement Programs. Exclusion of Grantee from this list, verified at <http://www.arnet.gov/epls>, demonstrates the Grantee's good status regarding suspension and debarment and eligibility for Trail Grant Program funds.
6. Post audits may be performed after Project Completion to determine whether the costs claimed are allowable, allocable, reasonable, and in compliance with the District's Trail Grant Program Guidelines.
7. Grantee is responsible for repayment to District of any Disallowed Cost. Disallowed Costs may be identified through audits, monitoring or other sources of information that become available to the District.
8. Construction costs are deemed "reasonable" if obtained by competitive bidding.

B. Eligible Costs

Total Project Grant Amount shall not exceed \$450,000 and will be disbursed to Grantee as described in Sections 3.D, *Payment Request Process* and 3.E, *Invoicing* below.

1. Only Project related costs incurred during the Project Performance Period, excluding costs incurred during preparation of the Grant application, specified in the contract are eligible for reimbursement. All such costs must be supported by appropriate documentation (see Appendix D, Project Invoice).
2. Personnel or Employee Services – Services of the Grantee's employees engaged in Project execution are eligible costs. These direct labor costs must be computed according to the Grantee's prevailing wage or salary scales and may include fringe benefit costs such as vacation, sick leave and social security contributions that are customarily charged to the Grantee's various projects for which the Grantee has submitted a Benefit Rate Calculation to the District. Indirect overhead is limited to 10% of Salary plus Benefits. Costs charged to the Project must be computed on actual time spent on a Project, and supported by time and attendance records describing the work performed on the Project. Overtime costs may be allowed under the Grantee's established policy; provided that the regular work time was devoted to the same Project.
3. Project costs for non-construction tasks are limited to 15% (fifteen percent) of District contribution to Total Project Cost.

4. Salaries and wages claimed for employees working on Grant funded projects must not exceed the Grantee's established rates for similar positions.
 5. Consultant Services – The costs of consultant services necessary for the Project are eligible. Consultants must be paid by the customary or established method and rate of the Grantee. No consultant fee may be paid to the Grantee's own employees.
 6. Construction Equipment – Equipment owned by Grantee may be charged to the Project for each use. Equipment use charges must be made in accordance with the Grantee's normal accounting practices. The equipment rental rates published by the State Department of Transportation may be used as a guide.
 - a. If the Grantee's equipment is used, a report or source document must describe the work performed, indicate the hours used, and relate the use to the Project.
 - b. The purchase of equipment with Trail Grant Program funds is not permissible.
 7. Construction Supplies and Materials – Supplies and materials may be purchased for a specific project or may be drawn from a central stock, provided they are claimed at a cost no higher than that paid by the grant recipient. Supplies and materials purchased for the construction of a piece of equipment, a structure or a part of a structure may be charged to the Project. If charged, only that cost incurred during the Project Performance Period and attributed to the Project may be claimed.
 8. Signs and Interpretive Aids – The cost of signs, display boards, or other minor interpretive aids relating to the Project are eligible.
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9. Construction – The cost of all necessary construction activities, from site preparation (including demolition, excavation, grading, etc.) to the completion of a structure or facility is eligible.
 10. Acquisition – Costs of acquiring real property are eligible and may include the purchase price of the property, appraisals, surveys, preliminary title reports, escrow fees, title insurance fees.
 11. Relocation Costs – Relocation costs are allowable for projects that result in displacement of any person and/or business. The Grantee must comply with all federal and local laws, as well as the requirements of the State Relocation Act (Chapter 16 Government Code, Section 7260 et seq.), if applicable, even if relocation costs are not claimed for reimbursement.
 12. Other Expenditures – In addition to the major categories of expenditures, reimbursements may be made for miscellaneous costs necessary for execution of the Project. Some of these costs are:

- a. Communications (such as telephone, letters, etc.).
- b. Work performed by another section or department of Grantee's agency.
- c. Transportation costs for moving equipment and/or personnel.

C. *Interest Earned From Advanced Funds*

1. For projects awarded total Grant funding of more than \$75,000, and Grant funds are advanced to the Grantee and a Status Report Form is not submitted within 6 months demonstrating the use of advanced funds, Grantee shall place these funds in a separate interest bearing account, setting up and identifying such account to the District prior to the advance. Interest earned on Grant funds and any Grant funds not expended shall be returned to the District within 60-days of Project Completion.

D. *Payment Request Process*

This Grant Agreement is based on a reimbursement model with options of specific advance payments noted below.

1. After the Grant Agreement has been fully executed, Grantee may request a 10% (ten percent) advance of the Project Grant Amount.
2. If Grantee has requested a 10% (ten percent) advance, this advanced Grant funding will offset actual costs as documented in Appendix D, Project Invoice and Appendix E, Payment Request Form. All advanced Grant funding will be applied to payment request reimbursements before any subsequent funding will be paid.
3. Grantee may submit multiple Payment Request Forms (Appendix E) as necessary, but not more often than monthly.
4. After Grantee completes the Project, Grantee submits the Project Completion Packet (see Section 3, Financial Provisions, Item F.) and the Payment Request Form (Appendix E) for the final payment.

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Payment Request Process

PAYMENT TYPE	WHEN TO SUBMIT IT	SUPPORTING DOCUMENTATION TO SEND TO TRAIL GRANT PROGRAM ADMINISTRATOR
10% (ten percent) Advance (of the total Project Grant Amount)	After the Grant Agreement has been fully executed.	<ul style="list-style-type: none"> Appendix D, Project Invoice Appendix E, Payment Request Form Appendix F, Status Report Form
Payment Request Reimbursement (up to 80% [eighty percent] of the total Project Grant Amount)	<p>After Grantee has spent initial 10% (ten percent) and can provide evidence to show significant progress toward completing Project tasks.</p> <p>Grantee may submit multiple Payment Request Forms as necessary, but not more often than monthly.</p>	<ul style="list-style-type: none"> Appendix D, Project Invoice Appendix E, Payment Request Form Appendix F, Status Report Form For direct expenses, copies of invoices with all attachments shall be submitted For labor costs, copies of Timesheets shall be submitted For Benefits Costs, a Benefits Rate Calculation will be submitted
Final (10% ten percent)	After Grantee has completed the Project	<ul style="list-style-type: none"> Project Completion Packet (see Section 3, Financial Provisions, Item F.) Appendix D, Project Invoice Appendix E, Payment Request Form Appendix F, Status Report Form

E. Invoicing

- The Invoice and Status Report Form (Appendix D) shall accompany the Payment Request Form (Appendix E) and shall incorporate Grantee name and remittance address, a description/itemization of goods or services, dollar amount of goods or services, invoice date and number, and Agreement number. Work performed shall be determined on a per task basis as outlined in the Project Description (Appendix A) and Project Schedule (Appendix B).
- The District shall process and issue a check to Grantee within forty-five (45) calendar days of receipt of an undisputed invoice. Final Grant payment must be processed by December 30, 2015. The District can dispute an invoice or portion of an invoice submitted by Grantee.
- Grantees must submit invoices to the District Trail Grant Program Administrator, and will provide the Agreement number next to the Grantee's name. District Trail Grant Program Administrator will ensure that received invoices are time and date stamped, and logged into an established Project spreadsheet.
- Grantee must obtain and submit invoices from subcontractors showing task, task budget, percentage complete, prior billing if any, current billing, and total billed. The District Trail Grant Program Administrator will complete a Receiving Record (Form FA1226A), along with copies of the

invoice and any Grantee/subcontract supporting documents when submitting invoices to District's Accounts Payable for payment. Project supporting documentation will be consistent with invoicing frequency.

F. Project Completion

1. After Grantee completes the Project, Grantee shall submit the Project Completion Packet to the Trail Grant Program Administrator, which packet shall include:
 - a. Final Payment Request Form (Appendix E).
 - b. Final Invoice (Appendix D) and Status Report Form (Appendix F).
 - c. Notice of Completion (Public Contract type as agreed upon by District and Grantee).
2. District conducts final on-site Project inspection (as deemed necessary).
- * 3. District processes the final payment of funds from the Trail Grant Program for the Project.
4. Project must be fully completed (including processing final payment) by December 30, 2015, or unspent funds will revert back to the District.
5. District may perform an audit of the completed Project.
6. District shall be notified of events, opening ceremonies, or ribbon cuttings associated with Project for inclusion and representation by the District. Invitation will include a speaking role for members of the District's Board of Directors.

G. Miscellaneous Provisions

1. Grantee's waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach by any other term, condition or covenant.
2. This Agreement contains the entire Agreement between District and Grantee relating to the Project. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.
3. This Agreement shall be governed and construed in accordance with the laws of the State of California.
4. This Agreement may be executed in counterparts and will be binding as executed.
5. All changes or extensions to this Agreement must be in writing in the form of an amendment approved by both parties.

6. This Agreement is entered into only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity, or person.
7. All Appendices, A (Project Description), B (Project Schedule), C (Project Budget), D (Project Invoice), E (Payment Request Form), F (Status Report Form), G (Resolution), and H (Insurance Requirements) are hereby incorporated herein by this reference and made a part hereof, as though set forth in full.

H. Agreement Term

1. The term of this Agreement retroactively commenced upon approval by the District's Board of Directors authorizing funding for this Grant, on June 28, 2011. Approval of this Agreement by both parties is necessary for any payment of Grant funds. The Agreement terminates upon Project completion notification by the Grantee and receipt by Grantee of payment in full by the District, or December 30, 2015, whichever comes first.

I. Insurance Provisions

1. During the entire term of the Agreement, Grantee must maintain the insurance coverage described in Appendix H (Insurance Requirements).

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NOTICES

All notices and other communication required or permitted to be given under this Agreement shall be in writing and shall be personally serviced or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To District: Ann Draper
Assistant Operating Officer
Watershed Stewardship Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Contact: Brian Mendenhall
Project Manager
Stream Stewardship Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686
Phone: (408) 265-2607, extension 3093
Fax: (408) 979-5627
E-mail: bmendenhall@valleywater.org

To Grantee

Norberto ~~Nuevas~~ **Duenas**
Deputy City Manager

City of San José
200 E. Santa Clara St.
San Jose, CA 95113

Contact

Dean Casale
Grants Analyst
PRNS
City of San Jose
200 E. Santa Clara St, Tower 9
San Jose, CA 95113
Phone: (408) 793-5567

E-mail: dean.casale@sanjoseca.gov

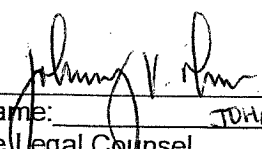
CITY OF SAN JOSE

Date: 12/15/2011

By: 

P
T Norberto Duenas
Deputy City Manager

APPROVED AS TO FORM:


Print Name: JOHNNY PHAN
Grantee Legal Counsel

12/13/2011

SANTA CLARA VALLEY WATER DISTRICT

Date: 1/4/12

By: 

Beau Goldie
Chief Executive Officer

APPENDIX A

PROJECT DESCRIPTION

GENERAL DESCRIPTION

- Project Description
 - 1. Trestle Structure
 - Task 1.1: Project Feasibility
 - Task 1.2: Design
 - Task 1.3: Bid and Award
 - Task 1.4: Construction
 - Task 1.5: Post Construction
 - 2. Interim Trail
 - Task 2.1: Project Feasibility (CEQA)
 - Task 2.2: Design
 - Task 2.3: Construction
- Specific Location of Project
 - The trestle structure is located along a former railway alignment (to be acquired by the City on 12/23/11). The structure spans over Los Gatos Creek, and is accessible from Lonus Street and Coe Avenue in the Willow Glen neighborhood.
 - The interim trail is defined by the former railway alignment is extends from Lonus Street to Minnesota Avenue.
 - The linked map show the project alignment (defined by the dotted green line):
<http://www.sjparks.org/Trails/WillowGlenSpur/images/ThreeCreeksTrailwest.jpg>
- Project Access
 - The project site is accessible from a number of cross streets:
 - Lonus Street
 - Coe Avenue
 - Broadway Avenue
 - Willow Street
 - Bird Avenue
 - Spencer Avenue
 - Milton Way
 - Minnesota Avenue
- Duration of time to complete project
 - 1. Trestle Structure
 - The project is projected to take 14 months to complete. At this time, we expect work to commence in September 2012 and be completed by October 2013.
 - 2. Interim Trail

- The project is projected to take 6 months to complete. At this time, we expect work to commence in September 2012 and be completed by March 2013.
- Plans for project monitoring and maintenance
 - During design and construction, the trestle structure will be fenced to prevent public access.
 - Upon completion of the trestle and interim trail improvements, the project will be open for public use. San Jose allocates \$6,025 per mile for the operation and maintenance of interim trails on an annual basis. For this project, the City has budgeted \$9,720 for the annual operation and maintenance of the project. The city has a maintenance plan for this trail system because it will not be landscaped at this time – the tasks include:
 - Winter – November through February – Area and / or perimeter chemical spraying after first significant rainfall. (Clean up work near Los Gatos Creek will be consistent with SCVWD issued guidelines for work in riparian areas).
 - Spring – April through July – First tractor mowing and hand clearing after perceived last significant rainfall.
 - Summer – July through October – Second tractor mowing and hand clearing (as needed).
 - Fall – October through February – Third tractor mowing and hand clearing (as needed).
 - San Jose will initiate an “Adopt-A-Trail” program with the Save Our Trails organization to support maintenance activities.

TASKS AND SUBTASKS

1. Trestle Structure

- Task 1.1: Project Feasibility
 - Feasibility Study (to include survey work, structural engineer’s review/inspection, geotechnical borings) to produce technical memorandums on the structural inspection, geotechnical investigation and a foundation report by the geotechnical consultant, trestle modification recommendations and cost estimate.
- Task 1.2: Design
- Task 1.3: Bid and Award
 - Prepare construction documents, bidding documents, advertise and award a retrofit / construction contract.
- Task 1.4: Construction
 - Construct improvements.
- Task 1.5: Post Construction
 - Prepare as-built drawings

2. Interim Trail

- Task 2.1: Project Feasibility (CEQA)
 - Conduct environmental review and seek permits (acknowledging change in condition due to State (DTSC) site clean-up that occurred prior to acquisition). Prepare CEQA amendment.
- Task 2.2: Design
 - Prepare "work order" style documents for the procurement and installation of signage and chain-link fencing.
- Task 2.3: Construction
 - Install signage and chain-link fencing with operable gates for maintenance vehicles and 8' opening for public access (at all street intersections). Includes construction contingency.

APPENDIX B

PROJECT SCHEDULE

1. Trestle Structure		
Task 1.1: Project Feasibility – Prepare feasibility study (to include survey work, structural engineer's review/inspection, geotechnical borings)	<u>Duration</u> 6 months	<u>Est. Start Date</u> March 2012
Task 1.2: Design – Prepare construction documents and specifications to support bidding.	6 months	September 2012
Task 1.3: Bid and Award – Advertise, obtain bids and award a retrofit / construction contract.	4 months	March 2013
Task 1.4: Construction - Construct improvements, include management, inspection, lab services and construction contingency.	4 months	July 2013
Task 1.5: Post Construction – prepare as-builts drawings	1 month	November 2013
2. Interim Trail		
Task 2.1: Project Feasibility - Conduct environmental review and seek permits (acknowledging change in condition due to State (DTSC) site clean-up that occurred prior to acquisition). Prepare CEQA amendment.	3 months	March 2012
Task 2.2: Design - Prepare "work order" style documents for the procurement and installation of signage and chain-link fencing.	3 months	June 2012
Task 2.3: Construction - Install signage and chain-link fencing with operable gates for maintenance vehicles and 8' opening for public access (at all street intersections). Includes construction contingency.	1 month	July 2012

APPENDIX C

BUDGET

Organization: City of San Jose										TOTAL PROJECT COST				SCVWD GRANT FUNDING				
Project Title: Three Creeks Trail Trestle and Interim Trail										Total Project Costs (For Service Period)	Grantee Project Contributions	Other Project Contributions	SCVWD Grant Request	TASK 1 Planning	TASK 2 Design	TASK 3 Construction	TASK 4 Project Management	TASK 5 Etc
Personnel Services:										[NOTE: Specific tasks at discretion of Grantee, however, tasks should directly tie to Appendix A.]								
Employee (Classification/Title)	Salary		Hours	Salary		Benefits Rate %	Salaries + Benefits											
	Hourly Rate	Unit of Measure		Amount	Rate		Amount											

APPENDIX D
PROJECT INVOICE

INVOICE

Organization:		Project Title:		Invoice #		Invoice Date:		Service Period:		Date		SCWYD Grant Request		SCWYD Grant Funding																																																																																																																																																																	
Total Project Costs (for Service Period)		Grant Contributions		Other Project Contributions		TASK 1 Planning		TASK 2 Design		TASK 3 Construction		TASK 4 Project Management		TASK 5 Etc																																																																																																																																																																	
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SAMPLE

APPENDIX E
PAYMENT REQUEST FORM

GRANT: Santa Clara Valley Water District Trail and Open Space Grant Program	
AGREEMENT NO.:	GRANTEE:
PROJECT TITLE:	
1. TYPE OF PAYMENT: <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement <input type="checkbox"/> Final	
2. PAYMENT INFORMATION (Round all figures to the nearest dollar):	
a. Project Amount	\$ _____
b. Funds Received to Date	\$ _____
c. Available (a. minus b.)	\$ _____
d. Amount of This Request	\$ _____
e. Remaining Funds After This Payment (c. minus d.)	\$ _____
SEND PAYMENT TO:	
Grantee Name	_____
Street Address	_____
City, State, Zip Code	_____
Attention	_____
3. TYPED OR PRINTED NAME OF PERSON AUTHORIZED IN RESOLUTION: Title	
4. SIGNATURE OF PERSON AUTHORIZED IN RESOLUTION:	Date
FOR SANTA CLARA VALLEY WATER DISTRICT USE ONLY	
5. PAYMENT APPROVAL SIGNATURE:	Date

PAYMENT REQUEST FORM INSTRUCTIONS

The following instructions correspond to items on the Payment Request Form*:

1. Type of Payment—Check appropriate box, and submit this form:

Advance – When an advance is needed, and after the Grant Agreement has been fully executed;

Reimbursement – When Grantee has periodically spent funds to implement the Project, and is requesting reimbursement; or

Final – When Grantee has completed the Project and is requesting the final payment.

2. Payment Information:

- a. Project Grant Amount – The amount of District grant funds allocated to this Project.
- b. Funds Received to Date – Total amount already received for this Project
- c. Available – (a. minus b.)
- d. Amount of This Payment Request – Amount that is requested
- e. Remaining Funds After This Payment – (c. minus d.)

Send Payment to: Grantee Name, Address, and Contact Person

3. Typed or printed name of person authorized in resolution.
4. Signature of person authorized in resolution.
5. Payment approval signature and date—For District staff.

* Please type all entries.

APPENDIX F
STATUS REPORT FORM

ITEM	STATUS	COMMENTS
Project Progress on Schedule (per Appendix B)?		
Community-Based Organizations Involved in the Project		
Evaluation of Public Participation Efforts With the Project		
Trail and Open Space Projects Within 1,000 Feet of the Project		
Discussion of Public Concerns or Opposition (include contact information)		
Next Steps for Project		
Update on Events, Groundbreakings, Open Ceremonies, Speaking Engagements Planned in Association With the Project		

APPENDIX G
RESOLUTION
2011 TRAIL AND OPEN SPACE GRANT PROGRAM

RESOLUTION NO. 75748

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO SUBMIT A GRANT APPLICATION IN THE AMOUNT NOT TO EXCEED \$450,000 TO SANTA CLARA VALLEY WATER DISTRICT UNDER THE 2011 TRAILS AND OPEN SPACE PROGRAM FOR THE THREE CREEKS TRAIL (LOS GATOS CREEK TO GUADALUPE RIVER) INTERIM IMPROVEMENTS PROJECT WITH A LOCAL CONTRIBUTION OF \$200,000, TO ACCEPT THE GRANT IF AWARDED, AND TO NEGOTIATE AND EXECUTE ALL RELATED DOCUMENTS

WHEREAS, the Santa Clara Valley Water District has enacted the Trails and Open Space Grant Program, which provides funds for the acquisition and development of neighborhood, community, and regional parks and recreation lands and facilities; and

WHEREAS, the Santa Clara Valley Water District's Watershed Planning Unit has been delegated the responsibility for the administration of the grant program, setting up necessary procedures; and

WHEREAS, said procedures established by the Santa Clara Valley Water District require San José City Council to certify by resolution the approval of the City of San José to apply for Trails and Open Space Grant Program funds; and

WHEREAS, the City of San José will enter into an Agreement with the Santa Clara Valley Water District, provided that the City of San José has obtained the necessary property interests for the Three Creeks Trail (from Los Gatos Creek to Guadalupe River);

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF SAN JOSE HEREBY:

1. Authorizes the City Manager, or designee, to submit a grant application in the amount not to exceed \$450,000 to Santa Clara Valley Water District under the 2011 Trials and Open Space Grant Program for the Three Creeks Trail (Los Gatos to Guadalupe River) Interim Improvements Project ("Project") with a local contribution of \$200,000 for a total Project cost of \$650,000; and
2. Certifies that the City of San José ("City") has or will have sufficient funds to operate and maintain the Project, provided the City has obtained the necessary interests in real properties for the Project; and
3. Agrees to comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and guidelines for the Project; and
4. Certifies that the City has reviewed, understands, and agrees to the Special Provisions, General Provisions, and Financial Provisions contained in the Agreement; and
5. Delegates the authority to the City Manager, or designee, to conduct all negotiations, execute, and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project; and

6. Authorizes the City Manager, or designee, to resubmit the grant application in subsequent years for the same amount and grant requirements described in the memorandum if the City is unsuccessful in receiving an award with the initial grant application and to negotiate and execute any documents to effectuate the grant.

ADOPTED this 8th day of March, 2011, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE, ROCHA; REED.

NOES: NONE.

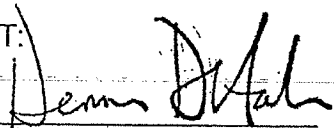
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC
City Clerk

APPENDIX H

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of, or liability to, the Santa Clara Valley Water District ("District"), the Contractor must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

Contractor must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Contractor's insurance agent(s) and/or broker(s), who have been instructed by Contractor to procure the insurance coverage required herein.

In addition to certificates, Contractor must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before the contract commences.** In the event of a claim or dispute, District has the right to require Contractor's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Contractor must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

REQUIRED COVERAGES

1. **Commercial General/Business Liability Insurance** with coverage as indicated:

\$2,000,000 per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage

General Liability insurance must include:

- a. Coverage that is at least as broad as that found in the standard ISO Form CG 00 01.
- b. Contractual Liability expressly including liability assumed under this contract.
- c. If Contractor will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- d. Severability of Interest
- e. Broad Form Property Damage liability

- f. If the standard ISO Form wording for "OTHER INSURANCE," or other comparable wording, is not contained in Contractor's liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and any insurance or self-insurance maintained by District, its Directors, officers, employees, agents or volunteers will be in excess of Contractor's insurance and will not contribute to it.

2. **Business Auto Liability Insurance** with coverage as indicated:

\$2,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

3. **Workers' Compensation and Employer's Liability Insurance**

Statutory California Workers' Compensation coverage covering all work to be performed for the District.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

GENERAL REQUIREMENTS

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s)** Contractor must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Contractor will be notified of such requirement(s) by the District.

(NOTE: Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037. Note: Editions dated 07/04 are not acceptable)

2. **Primacy Clause:** Contractor's insurance must be primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called upon to contribute or share in the loss.
3. **Cancellation Clause Revision:** The Certificate of Insurance **MUST** provide **30 days notice of cancellation, (10 days notice for non-payment of premium)**. **NOTE: The standard wording in the ISO Certificate of Insurance is not acceptable.** The following words must be crossed out or deleted from the standard cancellation clause: "...endeavor to..." AND "...but failure to mail such notice must impose no obligation or liability of any kind upon the company, its agents or representatives."
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key

Rating Guide or a company of equal financial stability that is approved by the District's Risk Management Administrator.

5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Subcontractors:** Should any of the work under this Agreement be sublet, the Contractor must require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractors may insure subcontractors under its own policies.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Contractor for the benefit of the District must not be deemed to release or limit any liability of Contractor. Damages recoverable by the District for any liability of Contractor must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** All coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Contractor agrees on to waive subrogation against the District to the extent any loss suffered by Contractor is covered by any Commercial General Liability policy, Automobile policy, or Workers' Compensation policy, described in Required Coverages above. Contractor agrees to advise its broker/agent/insurer about this provision and obtain any endorsements, if needed, necessary to ensure the insurer agrees.
10. **Non-compliance:** The District reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.
11. **Please mail the certificates and endorsements to:**

**Contract Administrator
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118**

IMPORTANT: On the certificate of insurance, please note either the name of the project or the name of the District contact person or unit for the contract.

If your insurance broker has any questions please advise him/her to call Mr. David Cahen, District Risk Management Administrator at (408) 265-2607, extension 2213.

APPENDIX H

INSURANCE REQUIREMENTS

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Contractor must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

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\$2,000,000 per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage

General Liability insurance must include:

- a. Coverage that is at least as broad as that found in the standard ISO Form CG 00 01.
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APPENDIX H

INSURANCE REQUIREMENTS

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5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall provide a financial

Attachment 1

APPENDIX H

INSURANCE REQUIREMENTS

guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

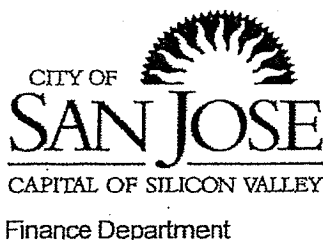
6. **Subcontractors:** Should any of the work under this Agreement be sublet, the Contractor must require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractors may insure subcontractors under its own policies.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Contractor for the benefit of the District must not be deemed to release or limit any liability of Contractor. Damages recoverable by the District for any liability of Contractor must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** All coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Contractor agrees on to waive subrogation against the District to the extent any loss suffered by Contractor is covered by any Commercial General Liability policy, Automobile policy, or Workers' Compensation policy, described in Required Coverages above. Contractor agrees to advise its broker/agent/insurer about this provision and obtain any endorsements, if needed, necessary to ensure the insurer agrees.
10. **Non-compliance:** The District reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.
11. **Please mail the certificates and endorsements to:**

Contract Administrator
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

12. **This insurance will be satisfied with self-insurance as outlined in the attached letter.**

IMPORTANT: On the certificate of insurance, please note either the name of the project or the name of the District contact person or unit for the contract.

If your insurance broker has any questions please advise him/her to call Mr. David Cahen, District Risk Management Administrator at (408) 265-2607, extension 2213.



December 7, 2011

To: Mr. David Cahen, Risk Manager
Santa Clara Valley Water District

Re: City of San José Affidavit of Insurance

Dear Mr. Cahen:

The City of San Jose is self-insured covering third party claims arising out of its general operations (by way of example, commercial general liability, professional liability or automobile liability insurance). Further, the City is also self-insured covering workers' compensation claims. The City also has received the necessary consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the City appropriates funds specifically for the purposes of satisfying valid third party claims and workers' compensation claims, which may potentially be brought against the City. Information concerning these appropriations is a matter of public record and can be obtained from visiting the following website
<http://www.sanjoseca.gov/budget/>.

Should you need any additional information regarding this letter, please feel free to contact me at (408) 975-1438.

Sincerely,

John Dam
Risk & Insurance Manager

RISK & INSURANCE PROGRAM
200 E. Santa Clara Street, 14th Floor
San Jose, CA 95113-1905

Phone: (408) 975-1438
Fax: (408) 286-6492

Attachment 1