

**AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SANTA CLARA
VALLEY WATER DISTRICT
FOR IMPLEMENTATION OF THE SAFE, CLEAN WATER AND NATURAL FLOOD
PROTECTION PROGRAM**

This agreement for implementation of the Safe, Clean Water and Natural Flood Protection Program ("AGREEMENT") effective as of the date last executed below is made and entered into by and between the CITY OF SAN JOSE (hereinafter "PARTNER"), and the SANTA CLARA VALLEY WATER DISTRICT, a special district created by the State of California Legislature (hereinafter "SCVWD"). The PARTNER and SCVWD are collectively the "Parties" and each a "Party" to this AGREEMENT.

RECITALS

WHEREAS, the SCVWD strives toward water resources stewardship to protect and enhance watersheds and natural resources;

WHEREAS, the SCVWD maintains a goal to protect and restore creek, bay, and other aquatic ecosystems;

WHEREAS, the PARTNER is a public agency that desires to undertake the commitments described in the Scope of Work of this AGREEMENT and represents that it is qualified and capable of doing so to further the SCVWD's efforts in achieving the benefits identified in Measure B as described further below;

;

WHEREAS, the Parties have common goals for Santa Clara County and can achieve greater benefits by partnering on efforts that support and ensure the protection, restoration and stewardship of significant habitats in Santa Clara County;

WHEREAS, in November 2012, the voters of Santa Clara County approved Measure B, the Safe, Clean Water and Natural Flood Protection Program ("Measure B"), a SCVWD parcel tax measure;

WHEREAS, Measure B provides funding to the SCVWD, under Priority D2, to "revitalize stream, upland and wetland habitat". The measure identified the funding of community partnerships as a key means to achieving the benefits of Priority D2. Those benefits include:

- Increased viability of native riparian species by reducing competition from non-native, invasive species;
- Improved habitat by installing tidal and riparian plant species;
- Improved ecological function of existing riparian and wetland habitat so it can support more diverse wildlife species;
- Increased wildlife habitat connectivity through improved wildlife corridors; and
- Increased community awareness about the damaging impact that non-native, invasive plants have on local ecosystems;

WHEREAS, the purpose of this AGREEMENT is to establish a mutually beneficial arrangement between the SCVWD and PARTNER to support the implementation of the SCVWD'S Safe, Clean Water and Natural Flood Protection Program, Priority D2: Revitalize Stream, Upland and Wetland

and implementation of the PARTNER'S mission to protect, restore and enhance natural habitats and connecting corridors, watersheds, scenic areas, and other open space resources of regional importance.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

SECTION 1. SCOPE OF WORK.

With funding provided by the SCVWD as set forth herein, the PARTNER shall implement projects that are set forth in the "SCOPE OF WORK", which is attached hereto as EXHIBIT A and incorporated herein by this reference (the "PROJECTS").

SECTION 2. TERM OF AGREEMENT.

The AGREEMENT is effective as of the date last executed below. The term of this AGREEMENT shall begin on its effective date and end five years thereafter, subject to the provisions of SECTION 10, below. Upon written agreement of the Parties, this AGREEMENT may be extended subject to the provisions of SECTION 10, below.

SECTION 3. AGREEMENT FUNDING AMOUNT.

The maximum amount payable by the SCVWD under this AGREEMENT shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) annually for a total not-to-exceed amount of ONE MILLION DOLLARS (\$1,000,000.00). SCVWD shall not be responsible for reimbursing PARTNER for any expenditures in excess of this maximum reimbursable amount without a written amendment to this AGREEMENT. This represents the not to exceed amount and not a guaranteed minimum.

It is further understood and agreed by the Parties that the actual amount disbursed by the SCVWD under this AGREEMENT may be less than the maximum amount allocated to the AGREEMENT. Any disbursement of funds under this AGREEMENT is subject to the prior approval of a Task Order, as specified in Section 4, below.

SECTION 4. TASK ORDERS.

All PROJECTS for which the PARTNER will receive SCVWD funding under this AGREEMENT are subject to future Task Order(s) prepared by the PARTNER and approved by the SCVWD in writing. Prior approval of such Task Orders shall be a condition precedent to payment for any services performed by PARTNER.

SECTION 5. METHOD OF PAYMENT.

Unless otherwise stated in a Task Order, PARTNER will submit invoices monthly for services rendered during that billing period. Final payment for services described in that Task Order will only be paid after all deliverables in that Task Order have been accepted by the SCVWD'S Designated Authorized Representative as identified in section 16. Payment under each of the Task Orders issued under this AGREEMENT is considered as full compensation for all labor, materials, supplies, training, supervision, insurance and equipment necessary to perform the services described

in the Task Orders issued under this AGREEMENT. SCVWD may change its Designated Authorized Representative by providing PARTNER with prior written notice.

SECTION 6. RELATIONSHIP OF PARTIES

The Parties acknowledge and agree that nothing set forth in this AGREEMENT shall be deemed or construed to render the Parties as joint ventures, partners, agents, a joint enterprise, employer-employee, lender-borrower or contractor of each other. Neither Party shall have any authority to employ any person as employee or agent on behalf of the other for any purpose. No Party, nor any person using or involved in or participating in any actions or inactions relating to this AGREEMENT, shall be deemed an employee or agent of the other, nor shall any such person or entity represent himself, herself or itself to others as an employee or agent of the other.

SECTION 7. ASSIGNABILITY.

Neither Party shall assign or transfer any interest in this AGREEMENT without the prior written consent of the other Party, and any attempt by either Party to so assign or transfer any interest in this AGREEMENT shall be void and of no effect.

SECTION 8. NOT USED.

SECTION 9. NONDISCRIMINATION.

PARTNER shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, religious creed, political affiliation, medical condition, genetic information, marital status, parental status, gender, pregnancy, the exercise of pregnancy disability leave, military and veteran status, sexual orientation, actual or perceived gender identity, gender expression, disability, the exercise of family and medical care leave, ethnicity, national origin, ancestry, or the request, exercise, or need for reasonable accommodation in connection with or related to the performance of this AGREEMENT.

SECTION 10. TERMINATION.

- A. Either party shall have the right to terminate this AGREEMENT, without cause, by giving not less than thirty calendar (30) days' written notice of termination to the nonterminating Party.
- B. If either Party fails to perform any of its material obligations ("material breach") under this AGREEMENT, in addition to all other remedies provided by law, the Party claiming material breach may terminate this AGREEMENT immediately upon written notice. The thirty-day notice requirement set forth in section 10.A above shall not apply for any such for-cause terminations.
- C. PARTNER's City Manager is empowered to terminate this AGREEMENT on behalf of PARTNER. SCVWD's Chief Executive Officer is empowered to terminate this AGREEMENT on behalf of the SCVWD.

- D. In the event of termination, PARTNER shall deliver to SCVWD copies of all reports, documents and other work performed and paid for as part of the Services by PARTNER under this AGREEMENT. SCVWD shall pay PARTNER for all Services performed and reimbursable expenses incurred to the date of termination subject to the limitations set forth in section 3 above.
- E. Following termination of this AGREEMENT, when requested in writing by the SCVWD, the PARTNER shall cooperate in good faith with SCVWD and SCVWD's designee to transfer information about, and responsibility for, the PARTNER's work for the SCVWD pursuant to this AGREEMENT to SCVWD's designee including but not limited to sharing, explaining, and responding to inquiries about the PARTNER's work product and methods of achieving the work product. SCVWD shall compensate the PARTNER for all such post-termination work in accordance with the hourly rates set forth in EXHIBIT B or as otherwise determined by SCVWD in its sole and absolute discretion. The provision of this Section 10.E shall survive the termination of this AGREEMENT.

SECTION 11. GOVERNING LAW.

This AGREEMENT, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this AGREEMENT and the transactions contemplated by it, shall be governed by, construed and enforced in accordance with the laws of the State of California. Any suit or proceeding relating to this AGREEMENT, including mediation or other alternative dispute resolution proceedings, shall be brought within Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

SECTION 12. COMPLIANCE WITH LAWS.

SCVWD and PARTNER shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 13. OWNERSHIP OF MATERIALS.

All reports, documents, or other materials developed or discovered by PARTNER or any other person or entity engaged directly or indirectly by it to perform the services required hereunder will be and remain the mutual property of both Parties without restriction or limitation upon their use.

SECTION 14. WAIVER.

SCVWD and PARTNER agree that waiver by either party of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by PARTNER or SCVWD of the performance of any AGREEMENT terms or conditions, in whole or in part, shall not be deemed to be a waiver of any other term or condition, in whole or in part, of this AGREEMENT.

SECTION 15.**PARTNER'S BOOKS AND RECORDS.**

PARTNER shall maintain reasonably sufficient accounting ledgers, books of account, invoices, vouchers, cancelled checks, and other related Service records or documents evidencing Services, or expenditures and disbursements charged to SCVWD for a minimum period of two (2) years from the date of termination or expiration of this AGREEMENT.

Excepting confidential PARTNER records, any records or documents required to be maintained shall be made available for inspection or audit at no cost to SCVWD, upon written request by the Designated Representative. Copies of such documents shall be provided to SCVWD for inspection at no cost to SCVWD. Unless an alternative is mutually agreed upon, the records shall be available at PARTNER's Administrative Offices during normal business hours (Monday through Friday, excluding holidays and other closures, between the hours of 9:00am and 5:00pm).

SECTION 16.**DESIGNATED AUTHORIZED REPRESENTATIVES AND NOTICE**

In all cases where written notice is required under the AGREEMENT, such notice will be given to the Designated Authorized Representative of the Party whom the notice is directed at, that Designated Authorized Representative's respective address are set forth below, unless notification of a change of address is given in writing. Notices under this AGREEMENT shall be in writing and shall be personally served or mailed postage prepaid and return receipt requested, addressed to the respective parties as follows:

To PARTNER:

Dave Sykes, City Manager
City of San Jose
200 East Santa Clara Street, Tower 17th Floor
San Jose, CA 95113

To SCVWD:

Vincent Gin, Deputy Operating Officer
Watershed Stewardship and Planning Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

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

SECTION 17.**NO THIRD-PARTY RIGHTS.**

The Parties do not intend to create rights in, or to grant remedies to, any third-party as a beneficiary of this AGREEMENT or of any duty, covenant, obligation, or undertaking established herein. This AGREEMENT shall not be construed as nor deemed to be an AGREEMENT for the benefit of any third party or parties, and no third-party or parties shall have any right of action herein for any cause whatsoever.

SECTION 18. ENTIRE AGREEMENT

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the Parties as to the specific subject matter contained herein. If the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No AGREEMENT, amendment, modification, understanding or waiver of or with respect to this AGREEMENT or any term, provision, covenant or condition hereof, nor any approval or consent given under or with respect to this AGREEMENT, shall be effective for any purpose unless agreed to in writing and signed by authorized representatives of both Parties to this AGREEMENT.

SECTION 19. SIGNATURES; COUNTERPARTS.

This AGREEMENT may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same AGREEMENT, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both Parties.

SECTION 20. CONSTRUCTION; NEGOTIATED TERMS.

This AGREEMENT shall not be construed as if it had been prepared by any one of the Parties, but rather as if both Parties have prepared it. Each Party has had the opportunity to be advised by legal counsel and other professionals in connection with this AGREEMENT, and each Party has obtained such advice as each Party deems appropriate. The Parties agree that the terms and conditions of this AGREEMENT are the result of negotiations between the Parties and that this AGREEMENT shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professionals participated in the preparation of this AGREEMENT.

SECTION 21. PARTIAL INVALIDITY OR ILLEGALITY.

If any provision of this AGREEMENT, or the application of it to any person or circumstances, shall to any extent be invalid, void or unenforceable, the remainder of this AGREEMENT, or the application of this provision to any person or circumstances other than those as to which it is invalid, void or unenforceable, shall not be affected, and each provision of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law except where such illegal, invalid, void or unenforceable provision is material to the AGREEMENT in which case this AGREEMENT shall be void.

SECTION 22. CAPTIONS.

The captions in this AGREEMENT are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this AGREEMENT or any of the provisions hereof.

SECTION 23. AUTHORITY.

Each Party executing the AGREEMENT on behalf of such entity represents that he or she is duly authorized to execute and deliver this AGREEMENT on the entity's behalf.

SECTION 24. INDEMNIFICATION

Notwithstanding any other provision of this AGREEMENT, PARTNER agrees to indemnify, defend and hold harmless the SCVWD, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including, levies, imposts, assessment, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of PARTNER or its agents. The rights, duties, and obligations of PARTNER as set forth above, survive termination, expiration, completion, and suspension of this AGREEMENT.

IN WITNESS WHEREOF, the Parties hereby execute this AGREEMENT effective as of the last date signed by all Parties below (the "Effective Date").

APPROVED AS TO FORM:

CITY OF SAN JOSE

Jennifer Pousho Date
Senior Deputy City Attorney

Julie-Edmonds Mares Date
Deputy City Manager

APPROVED AS TO FORM AND LEGALITY:

SANTA CLARA VALLEY WATER DISTRICT

Brian Hopper Date
Sr. Asst. District Counsel

Norma Camacho Date
CEO

EXHIBIT A SCOPE OF SERVICES

Total compensation for all approved Task Orders shall not exceed \$200,000 annually. Below is one example of the expected type of funding arrangement with PARTNER, under this AGREEMENT.

:

- Total Potential Support Value (Funding+In-Kind): \$300,000
- Partnership Funding Breakdown: SCVWD up to \$200,000; City up to \$100,000; Total: \$300,000
- In-Kind Support Value: \$100,000

The PARTNER provides many services to the community that revitalizes stream, upland and wetland habitats. The following are targeted services and/or tasks that the PARTNER may provide, upon the written, signed acceptance, by the SCVWD: **Implement the removal of non-native, invasive plants for the purposes of benefiting habitat revitalization within the PARTNER's jurisdiction located in Santa Clara County.**

1. **Planning:** The PARTNER shall make financial preparations, budgets, consultant selection and contracting for vegetation removal. The PARTNER shall identify and obtain any and all necessary approvals, permits, notifications, and CEQA compliance, in a timely manner for implementation.
2. **Field Work:** The PARTNER shall provide all hiring and/or contracting for the required labor and consultant expertise for invasive/exotic vegetation removal. This includes:
 - a) obtaining right of way access (encroachment, fee and/or easement approval, as necessary);
 - b) verifying in the field the location and extent of identifying all vegetation
 - c) all required supplies of approved treatment materials including herbicides;
3. **Mapping:** The PARTNER shall provide field verified, completed electronic GIS files with required metadata that identify the locations and size of the vegetation removal areas. The required District GIS standards can be obtained by contacting **GISsupport@valleywater.org** or directly at **http://gis.valleywater.org/Download/GIS_PRODUCT_STANDARDS.pdf**.
4. **Permitting:** The PARTNER will obtain all necessary regulatory permits to remove invasive species as f in the individual task order.
5. **Procurement – The PARTNER will prepare final contract documents for SCVWD review and will seek procurement for the following:**
 - a) licensed and permitted Contractor to operate within Coyote Creek when conducting this vegetation removal work;
 - b) providing the labor, vehicles and fees (if any) for removal and disposal of the targeted vegetation;
 - c) all required training, quality control, supervision and safety requirements for the successful removal of the targeted vegetation;
 - d) providing a qualified biologist for permit compliance monitoring and any additional regulatory requirements defined in the permits.
6. **Reporting:** The PARTNER shall produce annual reports documenting the work performed including: funds spent to date, project schedule identifying activities performed, tasks completed, work products completed, and the location of the invasive vegetation that has been removed and improvements to habitat achieved with corresponding maps.

In addition to the specific work of funding invasive plant removal mentioned above, the scope of work includes:

7. **Outreach and Educational Opportunities:** The PARTNER maintains parks and other natural areas for the public benefit. The PARTNER also works with many public and private stakeholders on programs that provide public benefits in revitalizing areas with planting native vegetation (grasses, shrubs, trees). The SCVWD can support those activities under this AGREEMENT, as well as activities that provide other services such as outreach opportunities and educational materials on the benefits of non-native invasive plant removal and restoration with native plants to the public, and help distribute materials and information.

The above list of services is not to be considered exhaustive but is for illustrative purposes only.

**Attachment 1
To
EXHIBIT A
Task Order Template**

Task Order Number:_____

Per AGREEMENT for providing habitat revitalization support (“AGREEMENT”) between the Santa Clara Valley Water District (“SCVWD”) and City of San Jose (“PARTNER”), dated_____.

- Amount of Task Order: Not-To-Exceed \$_____
- Upon both execution of this Task Order Number:_____, as set forth in Section 3 of the AGREEMENT and issuance of a notice to proceed by the SCVWD Designated Authorized Representative, the PARTNER is hereby authorized to perform the work described in an individual scope of work based on Exhibit A of this AGREEMENT. Any costs incurred, work performed or expenditures by PARTNER before this Task Order is executed or before the issuance of the notice to proceed will be considered outside the contracted scope of work and may not be eligible for payment.
- Both the scope of services to be performed and the deliverables to be provided under this Task Order are based on Exhibit A and will include:
 - a. PARTNER personnel or subcontractors that will be assigned to complete the work
 - b. The estimated number of hours required to complete the work assigned to each personnel
 - c. The estimated cost of each reimbursable expense, including any applicable fees
 - d. The schedule for completing the scope of services identified in this Task Order
- PARTNER will be compensated at the hourly rates established in this task order. PARTNER agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted in Exhibit A.
- This Task Order will become effective on the date of signature by SCVWD Designated Authorized Representative and PARTNER Designated Authorized Representative, and remain in effect until the earlier of: completion of the tasks set forth in this task order termination of the AGREEMENT.
- PARTNER will perform all services described in Exhibit A of this Task Order in accordance with the terms and conditions of the AGREEMENT.

Signature/Print Name:

**PERSON DESIGNATED AUTHORIZED
REPRESENTATIVE ON BEHALF OF PARTNER**

DATE

Signature/Print Name:

**SANTA CLARA VALLEY WATER DISTRICT
DESIGNATED AUTHORIZED REPRESENTATIVE ON
BEHALF OF SCVWD**

DATE

**Attachment 1
To
EXHIBIT A
Task Order Template**

TASK ORDER NUMBER:_____1____

ATTACH SCOPE OF SERVICES, PROJECT SCHEDULE, DETAILED COST ESTIMATES

Under Task Order 1, the identified project is located within PARTNER owned properties along Coyote Creek from Cochrane Road to San Francisco Bay within City of San Jose jurisdiction._

This task order will include the removal of invasive species up to 12 inches in diameter located within Coyote Creek in City of San Jose jurisdiction or not maintained within SCVWD property limits or easements.

- A. Access: PARTNER will obtain the necessary right of entry permits and agreement with District to include all City owned properties where District does not have an easement which are located along Coyote Creek.
- B. Deliverables: The PARTNER will provide completed electronic GIS files with required metadata (see Exhibit C) that identify the locations and size of the vegetation removal areas.

EXHIBIT B

LABOR RATES

Compensation for services provided under this AGREEMENT will be at local prevailing wages for professional services performed in accordance with the terms and conditions of this AGREEMENT. Each task order presented to the SCVWD will have a detailed budget that complies with local, state and federal labor wage laws. Each task order shall also set forth the hourly rates for the tasks described therein. All task orders under this Agreement must be approved in writing by both Designated Representatives named in this AGREEMENT, or their duly authorized designees.

The maximum amount of compensation to be paid to PARTNER under this AGREEMENT for professional services shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) annually. Any hours worked for which payment would result in a total exceeding the maximum amount of compensation identified in each Task Order needs to be approved in advance in writing by the SCVWD. The Parties agree to use Attachment 1 to Exhibit A: Task Order Template to approve individual task scopes of work, costs and schedules.