

**AGREEMENT BY AND BETWEEN
THE COUNTY OF SANTA CLARA AND
THE SAN JOSE CONSERVATION CORPS
FOR ROADSIDE MAINTENANCE OF CALTRANS FACILITIES**

THIS AGREEMENT ("Agreement") is made and entered into the last date it is fully executed ("Effective Date"), by and between the County of Santa Clara, a political subdivision of the State of California ("County"), and the San Jose Conservation Corps, a non-profit 501(c)(3) organization (Tax ID: 77-0155997) with its principal place of business located at 1560 Berger Drive, San Jose, California 95112 and 2650 Senter Road, San Jose, California 95111 ("SJCC"). The County and SJCC are collectively referred to herein as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, California Labor Code section 1720.4(a)(1), (2) and (3) states that the public works prevailing wage requirements of Labor Code sections 1720 through 1861 do not apply to work performed by volunteers or paid volunteer coordinators of a 501(c)(3) tax-exempt organization or work performed by corpsmembers of the California Conservation Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Public Resources Code section 14507.5; and,

WHEREAS, SJCC has provided County with assurances that it is a Community Conservation Corps certified by the California Conservation Corps pursuant to Public Resources Code section 14507.5 and provides job-skill training, work experiences and environmental education to young men and women ("corpsmembers") under this state-certified program ("Conservation Corps Program"); and,

WHEREAS, under this Conservation Corps Program (per Public Resources Code section 14507.5), corpsmembers engage in recycling and litter abatement projects, as well as projects that accomplish the conservationist and other purposes described in Public Resources Code section 14300, subdivisions (a) to (h), and that assist agencies of local government and other nonprofit community organizations in developing, rehabilitating, and restoring parklands, recreational facilities, and other community resources; and,

WHEREAS, the work contemplated herein will be performed under this Conservation Corps Program by corpsmembers who are eighteen (18) years of age or older and supervised by experienced and qualified SJCC paid coordinators; and,

WHEREAS, SJCC understands and agrees that so long as the work is performed by volunteers or corpsmembers engaged in Conservation Corps Program activities, then the California prevailing wage requirements will not apply to such work; however, if County or any state or regulatory agency determines that California prevailing wage requirements do apply, then SJCC shall fully comply with all such requirements with respect to said work; and,

WHEREAS, the County wishes to support SJCC's participation in the Conservation Corps Program by providing opportunities and experiences to corpsmembers as further explained below.

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NOW, THEREFORE, in consideration of the mutual promises contained here, and valuable consideration the receipt of which is hereby acknowledged, the Parties agree to the foregoing and as follows:

AGREEMENT

1. SCOPE OF WORK: AUTHORIZATION

- a. SJCC shall supervise all work performed under this Agreement and all work shall be performed by and through corpsmembers and volunteers ("Work"), which may include, but is not limited to litter clean-up, landscaping, vegetation management, removal of non-hazardous homeless encampment debris or illegal dumping within the State right of way where such work is contemplated under Public Resources Code Section 14507.5. All work to be performed is described in Exhibit A, Scope of Work.
- b. The California Department of Transportation ("Caltrans") will identify and assign work site locations to SJCC and County. SJCC shall provide County a monthly invoice listing work performed in conformance with work site locations provided by Caltrans pursuant to work identified in Exhibit A, Scope of Work.
- c. The Maximum Compensation Limit for all Work performed under this Agreement shall not exceed \$6,677,813.77 as more particularly described in Section 5 below.

2. PERFORMANCE OF WORK

- a. Notice to Proceed
Following SJCC's receipt work assignments by Caltrans SJCC may commence the Work. SJCC will coordinate site access, work hours and parking with the Caltrans Project Manager.
- b. Scope of Work
SJCC will perform the Work described in Exhibit A, Scope of Work within the time specified therein. Except as specified in Exhibit A, Scope of Work and unless mutually agreed to otherwise by both parties, SJCC will provide any and all Materials required or needed to fully perform and complete the Work.
- c. Notification
SJCC will notify County and Caltrans promptly of any condition, occurrence, or event coming to its attention that may affect SJCC's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the Work by the date required in the Agreement, or that changes the Work from that which SJCC should have reasonably anticipated as inherent in the Work.

VENDOR'S COPY

3. STANDARD OF WORK

In connection with the performance of any Work pursuant to this Agreement:

a. Number of Workers

SJCC will provide a sufficient number of corpsmembers and/or volunteers to complete the Work ordered within the applicable time frames established in the Scope of Work.

b. Skill of Workers

SJCC will ensure that all corpsmembers and volunteers have appropriate supervision, training, tools, safety and equipment needed to perform and complete all Work on time, including but not limited to full compliance at all times with all applicable California occupational, safety, health and environmental laws and standards.

c. SJCC's Obligations to Workers

SJCC will provide for and pay all its workers, employees and corpsmembers, including all taxes, wages, compensation, contributions, and benefits (such as, but not limited to, workers' compensation benefits), which SJCC is required to pay under applicable laws. County shall not be liable to SJCC or to any of SJCC's workers, corpsmembers or employees for SJCC's failure to perform its compensation, contribution, wage, benefit or tax obligations. SJCC shall indemnify, defend, and hold County harmless from, for and against any and all such obligations, responsibilities and requirements relating in any way to the payment and/or nonpayment of taxes, contributions, wages, compensation or benefits and SJCC will comply with all associated governmental regulations, including the filing of all necessary reports and returns. Any workers used to perform any of the Work, other than volunteers and corpsmembers, shall be paid in accordance with California prevailing wage laws.

d. Project Point of Contact

SJCC will designate a project point of contact who will be responsible for all communications with County and supervise the day to day on-site activities of SJCC.

4. CHANGE PROCEDURE AND AUTHORIZATION

a. Change Order

The County may, from time to time, and at any time during the Term hereof request a change in the Work required under the Agreement. County's requests for changes must be in writing and identified as a "change order" ("Change Order") and will reference the applicable Agreement for ease of tracking. The Change Order will identify the Work or schedules to be changed.

b. Procedures

As soon as practical after SJCC's receipt of the Change Order, the Parties will meet as necessary to discuss the change and to ascertain its cost and schedule impacts, if any. If the County decides to implement a Change Order request, or revise the Agreement due to

unforeseen delay or conditions that necessitate a change or delay in the Work as described in Section 2.b above, the County will issue written direction, which shall describe the change, delineate the cost, schedule, and other impacts of the change and the payment terms for any price increase. Only the County Project Manager or designee has the authority to direct changes, and such written direction shall be binding on both Parties. In no event may the cost of the Work as modified by a Change Order or Change Orders exceed the Maximum Compensation Limit (as described in Section S(a) of this Agreement below).

5. COMPENSATION

a. Maximum Compensation Limit

The maximum compensation payable under this Agreement is \$6,677,813.77 ("Maximum Compensation Limit"). The sum of all compensation payable under all Project Approval Forms and Change Orders shall not exceed the total Maximum Compensation Limit. If SJCC performs Work that exceeds the Maximum Compensation Limit, SJCC does so at SJCC's own risk and County shall not be liable or responsible for such Work or any payments or costs associated with such Work.

b. Payments on Invoices

SJCC will submit to County invoices that reference the applicable Caltrans work site location and certify that the Work was performed in accordance with this Agreement. The payment will be based on a lump sum payment at completion of Work upon County's acceptance of Work. If the Work has been accepted by County, then County will make payments to SJCC within forty-five (45) days after the date of Work acceptance so long as County has received SJCC's invoice for such Work. Invoices will be emailed to vanessa.marcadejas@cep.sccgov.org. Acceptance of the Work shall be solely determined by County.

c. Reimbursable Expenses

When travel is authorized as a reimbursable expense, SJCC agrees to comply with the Santa Clara County travel policies and guidelines, where applicable, for all travel, lodging and meal reimbursements arising from the performance of this Agreement. Detailed travel policy requirements and limitations will be provided upon request. Only those expenditures made by SJCC with County's advance written approval, are payable as reimbursable expenses under this Agreement.

d. No Additional Compensation

Notwithstanding anything to the contrary expressed or implied elsewhere in this Agreement or in any Payment Approval Form, no additional services, deliverables or work made necessary, in whole or in part, by any fault, act or omission of SJCC, or any of its corpsmembers, consultants, contractors, agents, coordinators, employees or volunteers, to perform its duties, responsibilities or obligations under this Agreement, shall be compensated as additional service or work under this Agreement or by way of amendment or change order.

e. Release of All Claims

Prior to final payment under any Payment Approval Form, SJCC must execute and deliver to County a release of all claims (including all those of consultants and contractors) arising under the Payment Approval Form, other than such claims, if any, as may be specifically excepted from the release for the reasons and in the amounts stated in the release as approved by County.

- f. SJCC compensation rates are hourly rates and are per person. SJCC compensation rates are included in Exhibit A attached hereto and incorporated herein by this reference (the "Compensation Rate"). The Compensation Rate reflected in Exhibit A includes overhead and administrative costs. However, all invoices shall break down this Compensation Rate to show exact wages, overhead and administrative costs reflected in the Compensation Rate.

g. Compensation Changes

During the Term of this Agreement, and not more often than once a year, the Director of the Consumer and Environmental Protection Agency, or his or her designee, may authorize modifications to SJCC's Compensation Rate (i.e., amendments to Exhibit A), if SJCC provides sufficient justification for the prevailing increase, as reasonably determined by the Director of the Consumer and Environmental Protection Agency, or his or her designee. The increase will be documented by written amendment to Exhibit A. At no time, however, shall the Maximum Compensation Level of \$6,677,813.77 be exceeded for the Term, regardless of any Compensation Rate increases or adjustments.

h. Disputed Amounts

If an invoiced amount is disputed in good faith by County then, until resolution of the dispute occurs, County may suspend disputed payments and toll the running of time for default or breach by: (a) paying the undisputed amount, if any; and (b) sending a written statement of exceptions to SJCC for the remaining disputed amount. All of SJCC's obligations shall continue unabated during the duration of the dispute resolution.

6. REVIEW OF RECORDS

a. Accounting System & Records Retention

SJCC must maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments for services authorized under this Agreement. SJCC must retain such records for three (3) years from expiration or termination of this Agreement, or until all claims, if any, have been disposed of, whichever period is longer.

b. County's Right to Review Accounts

Upon service of a written notice to SJCC, County, and persons authorized by County, have the right, but not the obligation, at any reasonable time and place to examine, audit, and make copies of books, records, documents, accounting procedures and practices affecting the

performance or administration of this Agreement or any Project Approval Form, affecting any changes or modifications to this Agreement or any Project Approval Form, or involving or relating to the Work, operations or services to be performed or performed under this Agreement or any Project Approval Form. SJCC shall fully cooperate with all such reviews and audits and shall ensure its employees, consultants and contractors do the same. Such audit and review rights shall continue for a minimum of three (3) years from the date of termination, cancellation or expiration of this Agreement or any Project Approval Form, whichever is longer.

7. TERM

This Agreement shall begin on April 1, 2019, contingent upon receiving Notice to Proceed from the County, and will terminate on April 30, 2022, unless earlier terminated under Section 11 of this Agreement. All Work must be completed within the Term of this Agreement, and all invoices submitted to County within 2 months from the expiration of the Term.

8. TAXES AND CHARGES

SJCC is responsible for payment of all taxes, fees, wages, compensation, contributions and charges applicable to the conduct of SJCC's business and for all Work performed.

9. COUNTY INSPECTIONS AND FINAL ACCEPTANCE

County's Project Manager or designee will inspect the Work, identify deficiencies, if any, and, when appropriate, accept the Work on behalf of the County. County reserves the right to use CalTrans inspection of Work when determining final acceptance of work.

10. SJCC INSPECTIONS AND SAFETY

a. Primary Responsibility

SJCC understands and accepts full responsibility and liability for all performance, requirements and obligations of the Agreement. SJCC warrants and represents that it:

- i. Will read each work assignment and come to a full understanding of the facilities, difficulties, and restrictions attending performance of the Work; and
- ii. Prior to commencing Work, SJCC will investigate the site to determine the conditions and difficulties that may be encountered, including the availability of labor and materials to be provided, of the character, quality and quantities of Work to be performed, the safety required for all workers and the public that may encounter the Work in progress, and of the requirements of this Agreement.

b. SJCC Agreement with County Employees

Neither SJCC nor any director, employee or agent of SJCC, or its vendors or workers, may knowingly, without prior written notification thereof to County, enter into any business

relationship with any employee or agent of County unless such person is acting for and on behalf of County.

11. TERMINATION

a. Termination for Convenience

County shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days written notice of termination. The notice shall specify the effective date and the scope of the termination.

b. Termination by Default

If SJCC fails to perform any of its material obligations under this Agreement as solely determined by County, in addition to all other remedies provided by law, County may terminate this Agreement immediately upon SJCC's receipt of County's written notice.

c. Termination Authority

The Director of the Consumer and Environmental Protection Agency is delegated authority to terminate this Agreement on behalf of the County under any of the provisions of this Agreement.

d. Consequences of Termination

In the event of termination, SJCC must deliver to County copies of all documents, samples, and other Work performed by SJCC under this Agreement. SJCC may retain a copy for its records. Upon receipt of the documents, SJCC shall be compensated based on the satisfactory completion of Work provided, as solely and reasonably determined by County.

e. Budget Contingency

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. This Agreement is additionally contingent upon the appropriation of sufficient funding by CalTrans to compensate County for the services covered by this Agreement. If funding is reduced or deleted by the County for the Work covered by this Agreement, or if funding is reduced or deleted by CalTrans for compensation to the County for Work covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount of compensation.

12. INSURANCE

SJCC shall comply with all provisions of the attached insurance requirements set out in Exhibit "B", entitled "Insurance Requirements" which is attached hereto and incorporated herein by this reference. SJCC shall provide and maintain at its own expense, during the Term of this Agreement, or as may be further required herein, the insurance coverage set forth in Exhibit "B". SJCC will provide the Worker's Compensation Certification, also included in Exhibit "B".

13. SEVERABILITY; NO WAIVER

If any provision of this Agreement or any specific application of it shall be deemed invalid or unenforceable, the remainder of this Agreement or the application of it in other circumstances shall not be affected. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. No delay or omission in the exercise of any right or remedy of either Party on any default by the other Party shall impair such a right or remedy or be construed as a waiver. No failure, partial exercise or delay on the part of the County in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

14. INDEPENDENT CONTRACTOR

SJCC, in the performance of this Agreement, is an independent contractor. SJCC must maintain complete control over all workers performing any of the Work or SJCC operations. Neither SJCC nor any person retained or used by SJCC may represent, act, or purport to act as the agent, representative or employee of County. Neither SJCC nor County is granted any right or authority to assume or create any obligation on behalf of the other.

15. NO ASSIGNMENT

SJCC shall not assign this Agreement or any of the rights, benefits, liabilities, responsibilities, obligations or performance of this Agreement, in whole or in part, without the prior written consent of County. Any attempt by SJCC to make such an assignment is void in its entirety and shall be a material breach of this Agreement.

16. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

SJCC shall comply with the following:

1. Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
2. Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including

but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

3. Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
4. Definitions: For purposes of this Subsection H, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.
5. Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Contractor affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Contractor violated an applicable wage and hour law or pay equity law. Contractor further affirms that it has satisfied and complied with or has reached Agreement with the County regarding the manner in which it will satisfy any such final judgments.
6. Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice

required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

7. Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.
8. Pay Equity Notification: Contractor shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Contractor for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Contractor's Employees and Job Applicants.
9. Material Breach: Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:
 - i. Suspend or terminate any or all parts of this Agreement.
 - ii. Withhold payment to Contractor until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
 - iii. Offer Contractor an opportunity to cure the breach.
10. Subcontractors: Contractor shall impose all of the requirements set forth in this Subsection H on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

17. GOVERNING LAW, JURISDICTION, AND VENUE

This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions shall be exclusively vested in state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

18. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

SJCC assigns to the County all rights, title, and interest in, and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of or payment for goods, materials, services or Work performed or provided pursuant to this Agreement.

19. FIRE PREVENTION

SJCC shall comply with Cal-Fire's Fire Prevention Policy attached hereto as Exhibit "C".

20. INTEGRATED PEST MANAGEMENT

SJCC shall comply with the County's Integrated Pest Management Ordinance attached hereto as Exhibit "D".

21. HAZARDOUS MATERIAL

SJCC shall not cause, nor shall SJCC allow or permit any of the SJCC employees, coordinators, workers, corpmembers or volunteers to cause, any Hazardous Material (as defined below) to be sold, offered for sale, released, brought upon, kept, used, stored, generated or disposed of, in, on or about County property or facilities. If such Hazardous Material is brought upon or used on or near County properties or facilities, SJCC shall immediately cause such Hazardous Material to be cleaned up, handled and removed in compliance with all laws. SJCC shall immediately notify County when SJCC learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about any County property or facility. SJCC shall further comply with all laws requiring notice of such releases or threatened releases to all governmental or quasi-governmental agencies and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that there is a release of Hazardous Material, SJCC shall, without cost to County and in accordance with all laws and regulations, return the County property and facilities to the condition immediately prior to the release. In connection therewith, SJCC shall afford County a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material and shall not settle any such violation without the full consent of County. For purposes hereof, "Hazardous Material" means (1) material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, safety, welfare or the environment, including but not limited to consumer safety and health; (2) any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Premises or are naturally occurring substances in the Premises; any chemical, content or product failing to meet the applicable standards imposed by regulation or other law falling within the jurisdiction of the U.S. Consumer Product Safety Commission, the US. Department

of Transportation, the U.S. Environmental Protection Agency, the U.S. Federal Trade Commission, the U.S. Food and Drug Administration, U.S. Department of Agriculture, or any local or state agency or department of equivalent or similar jurisdiction or authority; and/or any other similarly regulated product, substance or chemical containing regulated levels of lead, phthalates, bloodborne pathogens, bio-waste, medical waste, pesticides, those products for which a pesticidal claims is made, and/or pharmaceuticals; and/or (3) any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. Notwithstanding the foregoing, SJCC may permit the use of cleaning materials and fuel in reasonable consumer quantities provided that such uses would not be required to be remediated by the relevant local, state or federal authorities and provided SJCC complies fully and ensures that all others comply fully with all applicable local, state and federal laws pertaining to such use; by way of example, and not by way of limitation, the introduction of gasoline powered motor vehicles onto roads or in parking lots would be permitted so long such vehicles do not release gasoline in quantities that would require remediation and are otherwise in full compliance with local, state and federal laws.

22. INDEMNIFICATION

SJCC shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. SJCC shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

23. RELATIONSHIP OF COUNTY AND SJCC

The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as joint venturers, partners, agents, a joint enterprise, employer-employee, or lender-borrower. SJCC shall have no authority to employ any person as employee or agent on behalf of County for any purpose. Neither SJCC nor any person using or involved in or participating in the use of County facilities, real property or personal property shall be deemed an employee or agent of County, nor shall any such person represent himself or herself to others as an employee or agent of County.

24. COUNTY NO SMOKING POLICY

SJCC and its employees, agents and subcontractors, shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within thirty (30) feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

25. PROHIBITION OF ALCOHOL

Sale, distribution, promotion, advertising and use of any type of alcohol is strictly prohibited.

26. NUTRITION GUIDELINES

The work contemplated and authorized under this Agreement does not include the right to sell, offer for sale any food or beverage of any kind, including coupons, discounts or other reference materials in relation to food, food services or beverages of any kind. Where applicable, if SJCC desires to sell or offer for sale any such food, beverage, reference materials or coupons, then County's nutrition guidelines shall apply and SJCC must first obtain the prior written approval of County for any such activity.

27. MECHANICS LIENS

If, because of any act or omission of SJCC or any of the SJCC Representatives, any mechanic's lien or other lien, charge or order for the payment of money are filed against any portion of the County facilities or real property, SJCC shall at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from County; and SJCC shall indemnify and save harmless County against all resulting costs, liabilities, suits, claims and demands, including legal fees and court costs, resulting.

28. CONFLICT OF INTEREST

SJCC shall comply, and it shall require its respective contractors, employees, agents, corpsmembers, volunteers, representatives, subcontractors and consultants (each and collectively, the "SJCC Representatives") to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

- a. In accepting this Agreement, SJCC covenants, warrants, represents and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. SJCC further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest. SJCC, including but not limited to its employees, contractors, subcontractors and consultants, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.
- b. If the disclosure provisions of the Political Reform Act are applicable to any individual employed or engaged by SJCC providing service or deliverables under this Agreement, SJCC shall ensure that such individual understands that he or she is subject to the Act and shall

conform to all requirements of the Act and other applicable laws and regulations including, as required, filing of Statements of Economic Interests within 30 days of commencing any work pursuant to this Agreement, annually by April 1, and within 30 days of their termination or cessation of work pursuant to this Agreement.

- c. SJCC shall disclose to County any financial or other interests, whether adverse or otherwise, which SJCC may have or propose to have in any company, organization, individual, asset or activity which may have a bearing on the subject matter of this Agreement.

29. CONSTRUCTION

This Agreement shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

30. CONTRACT EXECUTION AND COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered a method described herein. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

31. ENTIRE AGREEMENT; GOVERNING LANGUAGE

This Agreement constitutes the entire agreement by and between the Parties with respect to the subject matters hereof, and supersedes all prior understandings and agreements relating thereto. This Agreement comprises the complete and final expression of the rights, obligations, duties, and undertakings of the Parties and sets forth all consideration, covenants, understandings and inducements pertaining thereto. Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern. No alteration, amendment, waiver, cancellation or other change in any term or condition of this Agreement shall be valid or binding on either Party unless the same has been agreed to in writing and signed by both Parties.

32. SUBCONTRACTORS

If any obligation is performed for or on behalf of SJCC through a contractor, volunteers, service providers or subcontractor, SJCC will remain fully responsible for the performance of all obligations under this Agreement and SJCC will be solely responsible for all payments due to its service providers, contractors and subcontractors. No contract, subcontract or other agreement entered into by SJCC with any third party in connection with this Agreement, will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to

such arrangement. No contractor or subcontractor will be deemed a third-party beneficiary for any purposes under or to this Agreement.

33. NON-EXCLUSIVE AGREEMENT

SJCC agrees that this Agreement is non-exclusive and County may at any time, in its sole discretion, enter into other agreements with other parties for the same or similar services or work and for any purpose deemed to be in the best interest of the County.

34. AUTHORITY

SJCC represents and warrants to County that (i) SJCC has the full right, power and authority to enter into this Agreement and to perform each and all of the terms, provisions, covenants, agreements, matters and things herein provided to be performed by SJCC hereunder, (ii) each individual executing this Agreement on behalf of SJCC, is duly authorized and directed to execute and deliver this Agreement by the respective governing body(ies) of SJCC, and (iii) upon the due execution and delivery hereof, this Agreement shall constitute the legal, valid and binding obligation of SJCC enforceable by its terms.

35. CHANGES OR AMENDMENTS TO AGREEMENT

This Agreement sets forth all agreements by and between the Parties as to the subject matter herein. No modification or amendment shall be valid unless set forth in writing and signed by County and SJCC.

36. PARAGRAPH HEADINGS

The headings and captions of the various paragraphs and sub-paragraphs hereof are for convenience only, and they shall not limit, expand or otherwise affect the construction or interpretation of this Agreement.

37. CUMULATIVE REMEDIES

The rights and remedies of the Parties to this Agreement, whether pursuant to this Agreement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

38. BACKGROUND CHECK

- a. SJCC acknowledges and agrees that the services and work contemplated by this Agreement may involve interaction with or occur in or around minors or other vulnerable populations and as such County may, but is not obligated to, require SJCC to perform any background checks County determines necessary before such SJCC employees, coordinators, workers, corpsmembers or volunteers may perform any of the services or Work contemplated under this Agreement, and SJCC shall so comply. A failure of any such person to pass such a background check shall be grounds for prohibiting such person from performing any of the work contemplated under this Agreement.
- b. For any work or services performed under this Agreement may involve or necessitate supervisory

or disciplinary authority over minors, SJCC shall not use any person or persons to perform such work or service where he, she or they have been convicted of any offense identified in California Public Resources Code Section 5164. SJCC shall verify and certify to County that such person or persons have not been so convicted. SJCC shall fully indemnify, defend, and hold harmless County for any such hiring or enrollment. SJCC shall immediately notify County in writing of any violation of this provision.

- c. SJCC shall also not use any person or persons to perform any Work under this Agreement where such services require contact with children or involve food handling, unless SJCC has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code.

39. CONTRACTING PRINCIPLES

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board of Supervisors, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all SJCC shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the SJCC, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

40. NO THIRD-PARTY BENEFICIARIES

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

41. NOTICE

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U.S. Mail, or sent via courier service, addressed to the respective Parties as follows:

To County: Consumer and Environmental Protection Agency
 Attn: Vanessa Marcadejas, Clean Water Program Manager
 1553 Berger Dr., Building 1
 San Jose, CA 95112

To SJCC: San Jose Conservation Corps
 Attn: Dorsey Moore, Executive Director/CEO
 1560 Berger Drive
 San Jose, CA 95112

The Parties may change their respective addresses by written notice to the other Party.

WITNESS THE EXECUTION HEREOF on the days and year set forth below:

COUNTY OF SANTA CLARA:



S. Joseph Simitian, President
Board of Supervisors

Date: MAR 19 2019

SAN JOSE CONSERVATION CORPS:


DocuSigned by:

DORSEY MOORE, Executive Director, CEO

Date: 3/11/2019

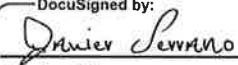
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST :


Tiffany Lennear
Assistant to the Clerk Board of Supervisors

Date: MAR 19 2019

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:

Javier Serrano
Deputy County Counsel

Date: 3/11/2019

Exhibits:

- A - Scope of Work
- B - Insurance Requirements
- C - Cal-Fire Prevention Policy
- D - Integrated Pest Management Ordinance

42. CALIFORNIA PUBLIC RECORDS ACT

All documents and records provided to or made available to County under this Agreement or any Project Approval Form become the exclusive property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted by SJCC to County, and SJCC expressly claims that such information falls within one or more CPRA exemptions, SJCC must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the County will make reasonable efforts to provide notice to SJCC prior to such disclosure. If SJCC contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before the County deadline to respond to the CPRA request. If SJCC fails to obtain such a remedy before the County responds to the CPRA request, County will disclose the requested information and shall not be liable or responsible for such disclosure. SJCC agrees that it shall defend, indemnify and hold County harmless for, from and against any and all Claims that may or do result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by SJCC or SJCC's contractors, consultants, employees, agents or representatives.

43. NO PERMITTED USE OF COUNTY OF SANTA CLARA NAME

SJCC shall not publicize or use, or allow anyone else to use, the name, trade name, trade dress, seal, logo or other proprietary information of County in any manner.

44. INTEGRATION

This Agreement supersedes any prior understandings or written or oral agreements between the Parties respecting the within subject matter.

45. MISCELLANEOUS

a. Survival of Provisions

Those Sections and provisions that by their nature should survive termination, cancellation or expiration of this Agreement, shall so survive, including but not limited to Sections 6; 8 through and including 17; 22 through and including 24; and, 28 through and include 46.

b. Authority of Director of the Consumer and Environmental Protection Agency

Where this Agreement requires or permits County to act and no officer of the County is specified, County's Director of the Consumer and Environmental Protection Agency, or his or her designee, has the authority to act on County's behalf.

ATTACHMENT I

SCOPE OF WORK

The County of Santa Clara (County) and the California Department of Transportation (Caltrans) are the parties to this Agreement.

The County, through its contract with San Jose Conservation Corps (SJCC), a nonprofit organization, will establish a Work Crew Program as described below. This Attachment is the written authorization and written approval as described in Paragraphs 17 and 19 of the County's Agreement with CalTrans. The Drug-Free Workplace Certification of Paragraph 20 is hereby assigned to SJCC, whose employees are performing the work.

Work Crew Program (WCP)

A Work Crew of six at-risk youths between the ages of 18-25 will receive educational, on-the-job training. Under a Work Crew Supervisor, the Work Crew will perform roadside maintenance tasks, including, but not limited to, litter and debris removal, weed abatement, plant, restoration, and minor storm-damage repairs.

WCP Components:

- A. County will administer the WCP in accordance with direction and requirements of Caltrans, performed at various locations within Santa Clara County State rights-of-way.
- B. County will contract with the SJCC for the direct program operations.
- C. Caltrans will identify and assign work site locations.
- D. A Work Crew will work 8 hours per day, 5 days a week, Monday-Friday, excluding holidays.
- E. SJCC shall provide equipment, material, personal, and service as listed below.

County agrees to ensure SJCC shall provide including but not limited to the following services:

- A. Provide four (4) Work Crews of six-employee each, plus one Crew Supervisor for each Work Crew, at each location to perform Roadside maintenance along Caltrans rights-of-way in Santa Clara County on various State routes.
- B. Work Crews will pick up litter, clear debris, brush and trees, replant vegetation, repair and clear drainage ditches, and maintain the rights-of-way.
- C. The Crew Supervisor shall conduct a safety meeting with all members of the Work Crew before initially beginning work, whenever the type of job changes, and every ten (10) working days to ensure the practice of safe working habits for the Project.
- D. SJCC shall ensure that all drain and drop inlets shall be covered during the course of the clearing operation.
- E. SJCC shall report any identified structural defects to any drain to the Contract Manager.
- F. Clear unwanted, unsightly, dead, and overgrown brush and trees within the rights-of-way.
- G. Trim or remove brush and trees that may obstruct visibility.
- H. Trim or remove trees in areas of deer and/or other wild game crossing for motorist visibility.

- I. Remove brush, trees and other debris within the rights-of-way in ditches, channels, and natural gullies leading to cross-highway drainage.
- J. Make firebreaks at fence lines and where appropriate adjacent to road shoulders in lieu of spraying, grading, mowing, or disking.
- K. Remove fire tinder within the rights-of-way (e.g., dead grass and fallen limbs.)
- L. Plant natural vegetation on erodible cut and fill slopes and any other areas subject to erosion.
- M. Restore and reseed slopes. Clean culverts and restore ditches.
- N. Remove and restore plants in landscaped areas.
- O. Manually control weeds.
- P. Restore water systems.
- Q. Clean up back side of landscape areas along streets and frontage roads. Clean brush and weeds; remove debris from unimproved rights-of-way.
- R. Pick up litter within State rights-of-ways.
- S. Remove homeless encampments on State rights-of-way.
- T. Provide all labor, standard tools including power tools, equipment, transportation, and training to perform work.
- U. SJCC shall be responsible for all workers compensation, accident, and medical insurance and will be considered responsible for normal safety considerations of the Work Crews.

County agrees to ensure SJCC shall provide including but not limited to the following equipment and material:

- Standard safety uniforms
- Personal safety gear
- Standard tool compliments
- Chainsaws
- Weed eaters
- Brush Cutters
- Porta-potty trailer

CALTRANS agrees to provide including but not limited to the following equipment and materials:

- Trash bags for disposal of debris
- Vehicles to haul and dispose of brush and trash bags.
- All BMP erosion control materials
- Required safety training to the crew supervisors
- Appropriate lane closures

**County of Santa Clara, Clean Water Program
 Caltrans Litter and Weed Removal Program
 37 month Payment Schedule**

A. Project Budget

Crew Size at 6 Corps members plus Supervisor per crew
 Schedule of 8 hour days x 5 days per week x (approximately) 52 weeks per year.
 Payment for work done by crew employees shall be on a straight time basis.
 Any overtime owed is SJCC's sole responsibility.

Daily Crew Rate	Hours	Rate	Total
Crewmembers	48	\$ 34.00	\$ 1,632.00
Supervisor	8	\$ 50.65	\$ 405.20
TOTAL DAILY CREW RATE			\$ 2,037.20
5 days per week			\$ 10,186.00
Cost per Crew per Year (52.0 weeks)			\$ 529,672.00
Four crews per year cost - fiscal year [2018/2019]			\$ 1,513,637.48
Four crews per year cost - fiscal year [2019/2020]			\$ 2,270,456.64
Four crews per year cost - fiscal year [2020/2021]			\$ 2,270,456.64
Four crews per year cost - fiscal year [2021/2022]			\$ 756,819.29
Total Project Cost			\$ 6,811,370.05

PROJECT BUDGET

Crew Labor	\$6,677,813.77
County of Santa Clara Administrative	\$133,556.28
TOTAL PROJECT COST	\$6,811,370.05

B. Hourly Rate Detail - Year 1 [2018/2019]

Crewmember		
Wage		16.33
Benefits		2.65
Program Supervision & Support		4.22
Operating Expenses		4.48
Administration		6.32
Total Corpsmember Hourly Billable Rate	\$	34.00
 Supervisor		
Wage		25.00
Benefits		9.13
Program Supervision & Support		3.83
Operating Expenses		3.31
Administration		9.38
Total Supervisor Hourly Billable Rate	\$	50.65

B. Hourly Rate Detail - Year 2 [2019/2020]

Crewmember		
Wage		17.47
Benefits		2.84
Program Supervision & Support		4.52
Operating Expenses		4.79
Administration		6.76
Total Corpsmember Hourly Billable Rate	\$	36.38

Supervisor		
Wage		26.75
Benefits		9.77
Program Supervision & Support		4.10
Operating Expenses		3.54
Administration		10.04
Total Supervisor Hourly Billable Rate	\$	54.20

B. Hourly Rate Detail - Year 3 [2020/2021]

Crewmember		18.70
Wage		3.03
Benefits		4.83
Program Supervision & Support		5.13
Operating Expenses		7.24
Administration	\$	38.93
Total Corpsmember Hourly Billable Rate		

Supervisor		
Wage		28.62
Benefits		10.45
Program Supervision & Support		4.38
Operating Expenses		3.79
Administration		10.74
Total Supervisor Hourly Billable Rate	\$	57.99

B. Hourly Rate Detail - Year 4 [2021/2022]

Crewmember		
Wage		20.00
Benefits		3.25
Program Supervision & Support		5.17
Operating Expenses		5.49
Administration		7.74
Total Corpsmember Hourly Billable Rate	\$	41.65

Supervisor		
Wage		30.63
Benefits		11.18
Program Supervision & Support		4.69
Operating Expenses		4.05
Administration		11.49
Total Supervisor Hourly Billable Rate	\$	62.05

**County of Santa Clara, Clean Water Program
Caltrans Litter and Weed Removal Program
Payment Schedule (Estimated*)**

Month	Paid to County of Santa Clara
1	\$ 75,700.51
2	\$ 179,742.16
3	\$ 179,742.16
4	\$ 179,742.16
5	\$ 179,742.16
6	\$ 179,742.16
7	\$ 179,742.16
8	\$ 179,742.16
9	\$ 179,742.16
10	\$ 192,324.11
11	\$ 192,324.11
12	\$ 192,324.11
13	\$ 192,324.11
14	\$ 192,324.11
15	\$ 192,324.11
16	\$ 192,324.11
17	\$ 192,324.11
18	\$ 192,324.11
19	\$ 192,324.11
20	\$ 192,324.11
21	\$ 154,891.42
22	\$ 205,786.80
23	\$ 205,786.80
24	\$ 205,786.80
25	\$ 205,786.80
26	\$ 205,786.80
27	\$ 205,786.80
28	\$ 205,786.80
29	\$ 205,786.80

30	\$	205,786.80
31	\$	205,786.80
32	\$	205,786.80
33	\$	6,801.89
34	\$	220,191.87
35	\$	220,191.87
36	\$	220,191.87
37	\$	96,243.41

TOTAL \$ 6,811,370.05

* FOR PLANNING PURPOSES, THE ABOVE QUANTITIES ARE ESTIMATES ONLY. NO GUARANTEE IS MADE OR IMPLIED AS TO THE EXACT QUANTITY THAT WILL BE NEEDED. PAYMENT SHALL NOT EXCEED TOTAL CONTRACT AMOUNT.

EXHIBIT B-2 (revised)

INSURANCE REQUIREMENTS FOR
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall 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:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies 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 County's Insurance Manager.

EXHIBIT B-2 (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2 (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

EXHIBIT B-2 (revised)

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

**Santa Clara County
Parks and Recreation Department
Roads and Airport Department
Fire Prevention
Operational Procedure**

**When Mowing, Disking and Performing Hot Work
In Non-Irrigated
Grass, Brush or Forest
Covered Areas of the County**

**In Cooperation With
The California Department of Forestry
And Fire Protection
Santa Clara Unit**

Revised August 2012

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2. Fire Season and Other Risk Periods Defined
3. Operational Procedures and Required Equipment
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5. Equipment Inspection and Record Keeping
6. Initial and Annual Refresher Training
7. Applicable Laws and Regulations
8. Contact Information

Attachment A: Weather Monitoring Form

1. Procedural Objective

It is the objective of the County of Santa Clara Parks and Recreation Department (Parks) and the Roads and Airports Department (Roads) to be in compliance with all codes, regulations, and ordinances pertaining to fire prevention standards.

This document serves as a procedural guideline for the Parks and Roads Departments when performing mowing, disking and hot work operations in the non-irrigated grass, brush or forest covered areas of Santa Clara County.

Hot Work includes metal cutting, torching, grinding or welding activities.
Mowing and Disking includes metal blade contact with non-irrigated ground areas with sufficient vegetation that the risk of fire exists.

The following equipment and activities are expressly excluded from these procedural guidelines at all times of the year, so long as the Department inspects all equipment annually, prior to commencement of fire season; maintains inspection records that demonstrate that the equipment's engine is properly equipped with a spark arrester that is in effective working order per California Public Resource Code § 4442 a); and, keeps a radio and round point shovel in the vicinity of the work:

- Blower
- String Trimmer
- DR String Trimmer Mower
- Articulating Hedge Trimmer
- Chainsaw
- Pole Pruner
- Grading Activity on Cleared Fire Roads
- Track Ripping Activity on Cleared Motorcycle Park Tracks
- Billy Goat Mower (smaller mower used by Roads)
- Generator Use

The Departments are encouraged to complete as many mowing, disking and hot work projects in the non-irrigated grass, brush or forest covered areas of the County prior to the drying of flammable vegetation if such work is practical and does not lead to the spread of invasive plant species. Early mowing prior to annual/perennial native grass seed set removes the plant competition cover and allows for growth of invasive species which flower later in the year.

2. "Fire Season" and "Non-Fire Season Risk Period" Defined

A) For purpose of this document, "Fire Season" is defined as the following:

1) The period of the year, which may change from year to year, during which wildfires are likely to occur, spread, and do sufficient damage to warrant organized fire control measures as declared by Cal Fire.

a) All procedural guidelines contained in this document will be followed for non-excluded activities at all times during declared fire season regardless of weather monitoring readings.

B) For purposes of this document, "Non-Fire Season Risk Period" is defined as the following:

1) Anytime of the year, when weather monitoring indicates that relative humidity is less than 30%.

a) All procedural guidelines contained in this document will be followed during non-fire season for non-excluded activities anytime relative humidity is less than 30%

3. Operational Procedures and Required Equipment

DURING FIRE SEASON, OPERATIONS Involving Mowing, Disking or Hot Work which will be CONDUCTED WITHIN OR ADJACENT TO NON-IRRIGATED GRASS, BRUSH OR FOREST AREAS WILL BE CONDUCTED USING THE FOLLOWING PROCEDURES:

A) Prior to Commencement of Operations:

1) Staff will secure the current fire conditions from Santa Clara County Communications via radio or by calling (408) 299-2507.

a) **No OPERATIONS shall occur within 24 hours preceding a predicted Red Flag Day AS DETERMINED BY Cal Fire.** Once a Red Flag has been lifted, work can resume following these guidelines.

2) Staff will assess current weather conditions at the planned

Exhibit C

site of operation every two hours.

a) In the event one of the following readings are noted, Operations shall not begin, or will cease IMMEDIATELY!

- THE RELATIVE HUMIDITY IS AT OR BELOW 30%
- SUSTAINED WIND SPEEDS REACH 10 MPH

3) If ambient temperature reaches 80 degrees fahrenheit at any time during the operation, weather samples must be taken hourly.

B) Required Equipment:

1) During Fire Season, THE FOLLOWING EQUIPMENT MUST BE IMMEDIATELY AVAILABLE AT the Actual JOB SITE:

- One serviceable round point shovel with an overall length of not less than 46 inches; and,
- One (5 gallon) water backpack pump fire extinguisher; and,
- One weather sampling device.

2) In addition, a Non-divertible Truck-mounted Water Pump and Trained Observer is Required For High Risk Activities:

All high-risk activities must have a non-divertible water pump equipped truck with a trained observer assigned to the operation in lieu of a backpack water pump.

a) High Risk Activities Include the Following:

- (i) Flailing, Disking, Operating Brush Hog Equipment and Grading in heavy brush areas. (Heavy brush areas are those where bare mineral soil is not visible).

3) A Non-divertible Truck mounted water pump and Trained Observer is Not Required for Low Risk Activities:

Low risk activities do not require a non-divertible water pump equipped truck or trained observer. However, weather monitoring must still be followed. And, a shovel, a backpack water pump and weather-sampling device must still be immediately available

Exhibit C

at the actual job site.

a) Low Risk Activities Include the Following:

- (i) Cutting, Grinding, Torching and Welding is a low risk activity so long as there is a 10' clearance. (If a 10' clearance cannot be achieved, then the work must be adequately shielded to prevent sparks from flying from the work site into adjacent vegetation.

Mowing light grass immediately adjacent to irrigated lawns where natural fire breaks like roads, creeks or paved paths are present is a low risk activity.

Cutting new trails with a Sweco, or other type of Grading equipment for new trail construction if the equipment pushes dirt over existing vegetation and any risk of spark or ignition is minimal.

DURING NON- FIRE SEASON, OPERATIONS CONDUCTED WITHIN OR ADJACENT TO GRASS, BRUSH OR FOREST AREAS WILL BE CONDUCTED USING THE FOLLOWING RULES:

A) Prior to Commencement of Operations:

1) Weather Samples will be taken at the job site.

- a) If relative humidity is more than 30% operations can proceed without further weather monitoring or other fire fighting devices.
- b) If relative humidity reading is less than 30% the preceding operational rules for fire season will be followed.
- c) If relative humidity drops below 30% and sustained winds exceed 10 MPH, operations will cease.

4. Trained Observer and Truck Mounted Water Pump Requirements

- A) When a trained observer is required under these procedural guidelines, the observer must be familiar with the work being performed; how to conduct weather monitoring; how to use the water pump equipment; and, how to use a vehicle and/or hand held radio.

Exhibit C

- B) The trained observer must remain in the immediate area of the truck with the mounted water pumper; and, the truck must remain in the immediate area of the work activity being monitored.
- C) The trained observer will actively watch for sparks caused by the equipment and shall notify the person conducting the actual work to cease activity when sparks are observed. If the cause of the spark can be identified and eliminated work may resume; otherwise, work must stop until the cause of the sparking can be rectified.
- D) Should a spark ignite dry vegetation the trained observer shall stop the work, and call County Communications to report the location of the fire.

5. Equipment Inspection and Record Keeping

- A) Prior to declared Fire Season of each calendar year, the Parks and Roads Departments will inspect all of their assigned combustible engine equipment that is intended for use in or adjacent to any grass, brush or forested areas within the County.
 - 1) The equipment must have a working spark arrestor that meets the requirements of section 4442 of the Public Resource Code.
 - 2) Equipment that has not been inspected shall not be used in the noted areas.
- B) Hired or contracted private equipment must meet the requirements of this operational plan.
 - 1) The provider of the equipment or the contractor who owns the equipment shall certify in writing that the equipment has been properly inspected and meets the requirements of these guidelines.
- C) The Parks Department and the Roads Department will maintain maintenance and inspection records for their equipment related to this plan and make them available for inspection by Cal Fire upon request.
- D) Upon completion of a mowing or disking operation, equipment operators shall inspect the equipment onsite and remove any build up of potentially combustible material prior to leaving the area. This serves the dual strategy of preventing invasive weed seed dispersal, and potential combustible material build-up.

Exhibit C

- 1) If a piece of equipment needs to be parked in the field, it shall be parked on mineral soil whenever possible.
- 2) The equipment shall be inspected for possible build-up of combustible material, and possible sources of heat.
- 3) If the equipment has a hot undercarriage, the ground shall be wetted prior to parking, and staff will confirm that the equipment has cooled prior to leaving the equipment unattended.

6. Initial and Annual Refresher Training

A) Initial Training

Prior to commencing work that falls within these procedural guidelines staff will receive initial training in the proper use of the piece of equipment being used; how to follow the procedural guidelines of this policy as it applies to that piece of equipment; the use of the water pumper; and, the use of the weather sampling device from either their direct supervisor or a designated training coordinator.

- 1) This initial training occurs throughout the year as new employees are hired. All initial training records shall be kept in the employees training record and shall be made available to Cal Fire for inspection upon request.

B) Annual Refresher Training

All staff performing work that falls within these procedural guidelines will also receive annual refresher training on the guidelines, the use of the water pumper, and the weather sampling device.

- 1) Site senior staff and/or supervisors will meet once a year prior to fire season to review the procedural guidelines and training materials. A representative from Cal Fire will be invited to this meeting and may elect to attend in order to discuss the guidelines and answer any questions.
 - 2) Within two weeks of this meeting, senior and/or supervisory staff will meet with their direct reports who conduct work that fall within these guidelines and conduct a field site training.
- 1) Annual refresher training will occur in or about the month of April

Exhibit C

each year. All refresher training records shall be kept in the employees training record and shall be made available to Cal Fire for inspection upon request.

7. Applicable Laws and Regulations

CALIFORNIA HEALTH AND SAFETY CODE REFERENCE SECTIONS:

H&S §13001 - Causing Fire

"Every person is guilty of a misdemeanor who, through careless or negligent action, throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may cause a fire, in any place where it may directly or indirectly start a fire, or who uses or operates a welding torch, tar pot or any other device which may cause a fire, who does not clear the inflammable material surrounding the operation or take such other reasonable precautions necessary to insure against the starting and spreading of fire."

H&S § 13005 - Engine Without Exhaust Spark Arrester

"Every person is guilty of a misdemeanor who:

- (a) Sells, offers for sale, leases, or rents to any person any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels, if either:
 - (1) It is specifically designed for use in harvesting or moving grain or hay or for use on land covered with any other flammable agricultural crop, unless the exhaust system of the engine is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.
 - (2) It is not specifically designed for any of the uses described in paragraph (1) but could be used for any of those uses, unless the person provides written notice to the purchaser or bailee at the time of sale or at the time of entering into the lease or rental contract stating that the use or operation of the engine on any flammable agricultural cropland is a violation of subdivision (b), unless the exhaust system is equipped with a spark arrester in effective working order or

Exhibit C

the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

- (b) Operates or causes to be operated any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels in harvesting or moving grain or hay, or on land covered with any other flammable agricultural crop, unless the engine is equipped with a spark arrester maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code”.

Spark arrester, as used in this section, is as defined in Section 4442 of the Public Resources Code. Spark arresters attached to the exhaust system of engines on equipment or vehicles, as described in this section, shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material. Motortrucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to the provisions of paragraph (2) of subdivision (a) if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

H&S § 13007 – Liability For Negligent Starting Of Fire

“Any person who personally or through another willfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire”.

CALIFORNIA PUBLIC RESOURCE CODE REFERENCES SECTIONS:

PRC § 4427 - Limits on Work When Burning Permits Required

“During any time of the year when burning permits are required in an area pursuant to this article, no person shall use or operate any motor, engine, boiler, stationary equipment, welding equipment, cutting torches, tarpots, or grinding devices from which a spark, fire, or flame may originate, which is located on or near any forest-covered land, brush-covered land, or grass-covered land, without doing both of the following:

- (a) First clearing away all flammable material, including snags, from the area around such operation for a distance of 10 feet.

Exhibit C

- (b) Maintain one serviceable round point shovel with an overall length of not less than forty-six (46) inches and one backpack pump water-type fire extinguisher fully equipped and ready for use at the immediate area during the operation”.

Section 4427 (b) of the Public Resource Code also requires these tools to be carried on each piece of equipment and that they be kept in a serviceable condition.

PRC § 4442 – Spark Arrestor Required

“(a) Except as otherwise provided in this section, no person shall use, operate, or allow to be used or operated, any internal combustion engine which uses hydrocarbon fuels on any forest-covered land, brush-covered land, or grass-covered land unless the engine is equipped with a spark arrester, as defined in subdivision (c), maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire.”

PRC § 4443 – Spark Arrestor Placement And Exclusions

“(b) Spark arresters affixed to the exhaust system of engines or vehicles subject to this section shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material.

(c) A spark arrester is a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that uses hydrocarbon fuels or which is qualified and rated by the United States Forest Service.

(d) Engines used to provide motive power for trucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to this section if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

(e) Turbocharged engines are not subject to this section if all exhausted gases pass through the rotating turbine wheel, there is no exhaust bypass to the atmosphere, and the turbocharger is in effective mechanical condition.”

8. CONTACT INFORMATION

**County Communications
Weather Conditions** (408) 299-2507

**Cal Fire
Morgan Hill Headquarters** (408) 779-2121

ANY Fire Emergency 9-1-1

Division B28 - INTEGRATED PEST MANAGEMENT AND PESTICIDE USE

CHAPTER I. - GENERAL PROVISIONS

Sec. B28-1. - Intent and purpose.

The County, in carrying out its operations, finds it necessary from time to time to use pesticides on County property. The intent of this division is to protect the health and safety of County employees and the general public, the environment, and water quality, as well as to provide sustainable solutions for pest control on County property. The Board of Supervisors hereby finds and declares that it shall be the policy of the County of Santa Clara to eliminate or reduce pesticide applications on County property to the maximum extent feasible. Preference shall be given to available non-pesticide alternatives, where feasible, before considering the use of pesticides on County property.

This division concerns the application of pesticides to property owned by the County of Santa Clara only, and does not concern the application of pesticides to property that is not owned by the County of Santa Clara.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-2. - Definitions.

Whenever used in this division, the following terms shall have the meanings set forth below:

- (a) *Antimicrobial pesticides* are pesticides, such as disinfectants and sanitizers, that are intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or protect inanimate objects (for example floors and walls), industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.
- (b) *Approved list* is the list of pesticides authorized by the County IPM Coordinator for use on County property developed in accordance with Section B28-5.
- (c) *Carbamates* means esters on N-methyl carbamic acid, which inhibit cholinesterase.
- (d)

Contract is a binding written agreement, including but not limited to a contract, permit, license or lease between a person, firm, corporation or other entity, including a governmental entity, and the County of Santa Clara which grants a right to use or occupy property of the County or which provides pest management services.

- (e) *County Executive* is the County Executive or his or her designee of the County of Santa Clara.
- (f) *Demonstration site* is a specific area or site designated by a department to evaluate the use of a pest management strategy.
- (g) *Department* is any agency or department of the County of Santa Clara. Department does not include the vector control district or any other local, state, or federal agency.
- (h) *Departmental IPM coordinator* is someone designated by a department head to coordinate the department's IPM program.
- (i) *County IPM Coordinator* is the person designated by the County Executive to implement and oversee the County of Santa Clara's IPM program.
- (j) *Feasible* means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.
- (k) *Integrated pest management (IPM)* is a decision-making process for managing pests using monitoring to determine pest-caused injury levels and combining biological control, cultural practices, mechanical and physical tools, and chemicals to minimize pesticide usage. The method uses extensive knowledge about pests, such as infestation thresholds, life histories, environmental requirements, and natural enemies to complement and facilitate biological and other natural control of pests. The method uses the least hazardous pesticides only as a last resort for controlling pests.
- (l) *IPM technical advisory group (IPM TAG)* is the technical advisory group to the County for the IPM program and is further described in Section B28-9.
- (m) *Organophosphates* means organophosphorus esters, which inhibit cholinesterase.
- (n)

Pest is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except certain insects, viruses, bacteria, or other microorganism on or in living man or living animals).

- (o) *Pesticide* is any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment. Pesticide for purposes of this division does not include antimicrobial agents.
- (p) *Posting* is to place signs as identified in Section B28-7 to inform employees and the public of pesticide use at a given site.
- (q) *Signal words* are the words used on a pesticide label—Danger, Warning, Caution—to indicate level of toxicity.
- (r) *Toxicity Category I pesticide product* is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category I under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.
- (s) *Toxicity Category II pesticide product* is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category II under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-3. - General exemptions.

- (a) This division shall not apply to the use of any pesticide for the purpose of improving or maintaining water quality at any County owned or operated drinking water treatment plants, wastewater treatment plants, reservoirs, and related collection, distribution, and treatment facilities.
- (b) This division shall not apply to any use of pesticides on County property by any department when performing pest management or pesticide activities authorized by state or federal laws or regulations.
- (c) This division shall not apply to the use of pesticides by the vector control district.

- (d) This division shall not apply to antimicrobial pesticides or pesticides used to control pests in or on living humans or animals.
- (e) This division shall not apply to existing contracts except as provided in Section B28-10.
- (f) This division shall not apply to contracts under negotiation at the time this division becomes effective for a period of five years.

(Ord. No. NS-517.70, 5-21-02)

CHAPTER II. - PESTICIDE MANAGEMENT

Sec. B28-4. - County integrated pest management (IPM) program.

- (a) The County IPM Coordinator shall oversee and coordinate implementation of the IPM program.
- (b) The IPM program shall include, but not be limited to, the following:
 - (1) Identify staff member(s) responsible for program implementation;
 - (2) Acquaint County workers with the IPM approach and new pest management strategies, as they become known;
 - (3) Inform the public of the County's effort to reduce pesticide use;
 - (4) Respond to questions about the County's pest management program and practices;
 - (5) Conduct ongoing educational programs, where appropriate;
 - (6) Maintain records and evaluate program effectiveness;
 - (7) Develop and maintain the approved list of pesticides.
- (c) Departments shall implement the IPM program consistent with the IPM practices outlined below. Where feasible, departments shall consider a range of potential treatments for the pest problem and employ non-pesticide management tactics first, consider the use of chemicals only as a last resort, and select and use chemicals in accordance with the provisions of this division. The IPM practices shall include ways to:
 - (1) Monitor pests to determine pest population size, occurrence, and natural enemy population, if present. Identify decisions and practices that could affect pest populations. Keep records of monitoring results;

- (2) Set treatment levels for each pest at each site based on how much biological, aesthetic or economic damage the site can tolerate;
- (3) Determine the most effective treatment time, based on pest biology and other variables, such as weather, seasonal changes in wildlife use and local conditions;
- (4) Design construction and building remodels to reduce or eliminate pest habitats and improve efficiency in facility and landscape maintenance and sanitation;
- (5) Reduce pest incidences by modifying management practices such as watering, mulching, fertilizer use, and pruning;
- (6) Modify pest ecosystems, including waste management and food storage, to reduce pest food, living space, and access;
- (7) Use physical controls such as hand-weeding, traps and barriers, heat and cold;
- (8) Use biological controls such as introducing or enhancing pests' natural enemies;
- (9) When indoors, use baits or least toxic methods of pest control rather than sprays;
- (10) Monitor treatment to evaluate effectiveness;
- (11) Maintain records as set forth in Section B28-8.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-5. - Pesticide use.

- (a) *Approved list.* The County IPM Coordinator shall develop the approved list using a set of criteria that will be developed with the review and input of the IPM TAG. The criteria will take into account environmental and human health hazards, principles of the IPM approach, and technically based methods, conditions, and specifications for pesticide use. The County IPM Coordinator shall maintain the list of approved pesticides that may be used on County property. The approved list shall be reviewed and updated at least annually. The IPM Coordinator may amend this list as needed at any time as long as the products are consistent with the established criteria. These amendments shall be communicated to the IPM TAG in writing at the quarterly meetings.

(b) *Specific exemptions.* An exemption may be obtained from the County IPM Coordinator for use of a product not on the approved list as follows:

(1) One-year exemptions. The County IPM Coordinator may grant a specific exemption, with limited conditions for use, for a one-year period upon a written request showing that a department has:

- a. Identified the need for use;
- b. Made a good-faith effort to find alternatives to the pesticide;
- c. Identified or demonstrated that effective economic alternatives to the pesticide do not exist for that particular use; and
- d. Developed a reasonable plan for investigating alternatives to the pesticide during the exemption period.

(2) An exemption may be continued beyond the one-year period by filing a new request for exemption as required in Subsection (b)(i) above.

(3) The County Executive shall have the discretion to revoke any exemption.

(c) *Emergency use of pesticides.*

(1) A department responsible for maintenance of a site or facility may apply to the County IPM Coordinator for an emergency pesticide use exemption in the event that a pest outbreak poses an immediate threat to public health or may cause significant economic damage.

(2) If the County IPM Coordinator cannot respond to the application in a timely manner, the departmental IPM coordinator submitting the application may authorize the one-time emergency use of the required pesticide and provide notice of the emergency application to the County IPM Coordinator in writing within 48 hours.

(3) Posting of emergency use of pesticides shall be at the time of pesticide application and comply with all other posting requirements.

(4) Reporting of the exemption and pesticide use will comply with all other reporting requirements as stated in Section B28-8.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-6. - Restriction on the use of pesticides.

Except for the use of pesticides exempted pursuant to Section B28-3, pesticides granted an exemption pursuant to Section B28-5(b) or 5(c) or pesticides on the approved list per Section B28-5(a), no department shall use any of the following types of pesticides. A list of the pesticides and pesticide products identified in (b) through (g) below shall be on file with the County IPM Coordinator.

- (a) Toxicity Category I or II pesticide products.
- (b) Any pesticide containing a chemical identified by the State of California as a chemical known to the State to cause cancer or reproductive or developmental toxicity pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986.
- (c) Pesticides identified by the State of California on the Groundwater Protection List (Food and Agricultural Code § 13145(d)).
- (d) Pesticides classified by active ingredient as organophosphate type pesticides as identified by the United States Environmental Protection Agency (Office of Pesticide Programs, Document 735-F-99-14, May 1999), or California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database.
- (e) Pesticides containing carbamate-type chemicals (California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database).
- (f) Any pesticide classified as a human carcinogen, probable human carcinogen or possible human carcinogen by the United States Environmental Protection Agency, under procedures established in "Proposed Guidelines for Carcinogen Risk Assessment," EPA/600/P-92/003C, April 1996, or equivalent documents.
- (g) Any pesticide group officially designated by the California Environmental Protection Agency Department of Pesticide Regulation or by the United States Environmental Protection Agency as posing significant hazard to human health or the environment.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-7. - Posting of pesticide use.

(a) Except as provided for in Section B28-5(c) and Section B28-7(b), any department that uses or authorizes the use of a pesticide shall comply with the following posting procedures:

- (1) Signs shall be posted at least three days before application of the pesticide and remain posted at least four days after application, except for baits and emergency use of pesticides, which are posted at the time of treatment in accordance with Section B28-5(c)(3) above and Subsection (b)(3) below;
- (2) For buildings and/or landscaped areas adjacent to buildings, signs shall be posted at main entry points where the pesticide is applied;
- (3) For open areas, signs shall be posted in highly visible locations around the perimeter of the area where the pesticide is applied;
- (4) For vehicles used primarily by County staff, signs shall be posted at areas where vehicles are obtained or posting information shall be given to the primary drivers.
- (5) Signs shall contain the:
 - a. Trade name and active ingredient of the pesticide product;
 - b. Target pest;
 - c. Date of posting;
 - d. Date(s) of anticipated pesticide use; the date(s) of actual pesticide use will be posted at the main entrance, park office, or designated site;
 - e. Signal word indicating the toxicity category of the pesticide product;
 - f. Date for re-entry of staff and the public to the area treated if applicable;
 - g. Name and contact number for the department responsible for the application.
- (6) Signs shall have a standard design that is easily recognizable by the public and workers;

(b) Exemptions to posting.

- (1) Departments shall not be required to post signs in accordance with Section B28-7(a) in right-of-way locations and other areas that the general public does not use for recreational purposes.

- a.

Each department that uses pesticides in such locations shall provide a public access telephone number for information about pesticide applications. The public access telephone number shall be posted in a prominent location at the department's main office building.

Information provided shall include all the items in Subsection (a)(5) above.

- (2) Any pesticide granted an emergency exemption by the County IPM Coordinator shall not be required to be posted prior to treatment. However, all other requirements for posting as set forth in Section B28-7(a) shall be followed.
- (3) Any pesticide bait placed in a container or trap, or applied as a gel or paste in a crack or crevice shall not be required to post signs prior to treatment. Baits, used indoors, shall be posted in the vicinity of application. Baits, used outdoors, shall be posted in the main office, park office, or a designated site. Signs shall be posted according to the requirements as set forth in Section B28-7(a).
- (4) The County IPM Coordinator may in his or her discretion grant necessary exemptions to the posting requirements.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-8. - Record keeping and reporting.

- (a) Each department that uses pesticides shall keep records of pest management activities, including information about demonstration sites and exemptions. A copy of this information shall be placed in a centralized record keeping area in each department. Where feasible, this information shall be kept in a notebook or electronic equivalent maintained in each occupied building. Each pest management activity such as pesticide application, trapping or inspection shall be recorded and, when applicable, include at least the following information:
 - (1) Target pest and extent of problem;
 - (2) Product name, active ingredients, EPA registration number, formulation, and quantity of pesticide used;
 - (3) Site of the pesticide application;
 - (4) Date of pesticide application;

- (5) Name of person conducting pest management activity;
 - (6) Application equipment number, if applicable;
 - (7) Prevention and other non-chemical methods of control recommended or used, and;
 - (8) Evaluation of effectiveness.
- (b) The departmental IPM coordinator shall keep the following:
- (1) Records of pesticide use;
 - (2) A copy of the label of all pesticides used; and,
 - (3) The material safety data sheet for each pesticide used.
- (c) Each department that uses pesticides shall submit a summary of pest management records required in Section B28-8(a) and (b) to the County IPM Coordinator at least quarterly.
- (d) Pest management records, including pesticide use records, are all public records.
- (e) Pesticide use records shall be kept indefinitely until an electronic database tracking system has been established.

(Ord. No. NS-517.70, 5-21-02)

CHAPTER III. - IPM IMPLEMENTATION

Sec. B28-9. - Implementation of County Integrated Pest Management Ordinance.

- (a) This division shall be phased-in over one to two years in order to provide adequate time for developing the approved list, documenting current IPM practices and/or reductions, and identifying and implementing alternate pest management measures. The County IPM Coordinator shall develop a timetable and format for departments to each submit a plan for implementing this division.
- (b) A technical advisory group (TAG) shall be formed and shall meet at least four times per year to review the County's IPM program and provide comments to the County Executive. The following representatives will be invited to participate on the TAG: two from Pesticide Alternatives of Santa Clara County; one from the Santa Clara Valley Water District; one from the County Agricultural Commissioner; one from the Santa Clara County Pollution Prevention Committee; one County employee representing a labor organization; and one representative from each of the following Santa Clara County agencies and departments: Roads and Airports, Parks

and Recreation, the General Services Agency, Valley Health and Hospital System, and Occupational Safety and Environmental Compliance. The Board of Supervisors may at their discretion make changes to the composition of the group as deemed necessary.

- (c) The IPM Coordinator shall provide a quarterly report to one or more Board-designated committees on the status of the IPM program including information about pest problems, pesticide use, list of exemptions, goals and progress, staff training and public education, and anticipated changes that may affect pesticide use.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-10. - County contracts and easements.

- (a) Except as provided in (i) below, when a department enters into a new contract (see Section B28-2(d)) or amends an existing contract to extend the term of the contract for more than six months beyond the current term and any optional extension periods, the contract shall require compliance with the provisions of this division including those relating to pesticide restrictions, record keeping, and reporting.
 - (1) The County Executive may grant an exemption for up to five years from contract compliance with all or part of the provisions of this division in the event compliance would negatively impact County revenues, prevent the highest and best use of an asset as determined by the County Executive, or where it is demonstrated that full compliance cannot be achieved. Notice of any exemption granted pursuant to this Subsection (1) shall be given to the applicant and to the IPM TAG. The notice shall state that any person dissatisfied with the decision of the County Executive may file an appeal with the Clerk of the Board within 15 calendar days of the date of the notice. The appeal will first be heard before the County's Housing, Land Use, Environment, and Transportation Committee, which Committee shall make a recommendation to the Board of Supervisors. The decision of the Board of Supervisors shall be final.
- (b) A contractor, or department on behalf of a contractor, may apply for exemptions authorized under Section B28-5(b) and (c), and this Section B28-10.
- (c)

When a department enters into a new lease in which the County is occupying or using property not owned by the County (and thus not within the definition of contract in Section B28-2(d)), the County shall use reasonable efforts to negotiate the use of IPM practices as part of that lease.

- (d) In current leases in which the County is occupying or using property not owned by the County, the County shall encourage the use of IPM practices whenever practical.
- (e) When the County is granted an easement, the maintenance of the easement shall be in compliance with this division if consistent with the terms of the easement.
- (f) A process, which incorporates a request for qualifications, shall be used in the selection of all contractors for pest management services and shall be in compliance with County contracting policies and state law. The County IPM Coordinator and the TAG may participate in the process. All contractors applying for pest management services shall submit a pest management plan, which outlines how they will comply with the IPM Ordinance. The plan shall give preference to prevention and other non-pesticide or least toxic methods of pest control.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-11. - Pesticide purchases.

All pesticide products and pest control services that include pesticide applications shall comply with this division and be purchased through the County Procurement Department, not using the petty cash or direct pay methods.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-12. - Policy and guidelines.

The County Executive may recommend policy for Board approval and issue guidelines to implement this division.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-13. - No criminal penalties or sanctions.

The provisions of Section A1-28 of the Santa Clara County Ordinance Code shall not apply to this division; nor shall any person, or government official, board, commission, or agency be responsible for any criminal penalties for any violation of the division.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-14. - No civil liability for violations of this chapter.

This division and the provisions are directory, and are intended to set forth goals and program elements for management of pests and pesticide use. This chapter is not intended to create a standard of civil liability for the acts or failure to act of the County and its employees and contractors. No person, government official, board, commission, or agency shall be liable in any civil action or proceeding for damages for violation of any of the provisions of this division.

(Ord. No. NS-517.70, 5-21-02)
