

**AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE
AND
CLEAN TECH OPEN**

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public agency ("AGENCY"), CLEAN TECH OPEN, a California non-profit corporation ("CONSULTANT") AND ACTERRA ACTION FOR A SUSTAINABLE EARTH, a California non-profit corporation ("ACTERRA").

RECITALS

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from the date of final execution of this AGREEMENT as written above, to March 31, 2010, inclusive, subject to the provisions of SECTION 13 of this AGREEMENT. It is understood and agreed that CONSULTANT has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If AGENCY accepts and approves the services provided by CONSULTANT prior to the date of this AGREEMENT, AGENCY agrees to compensate CONSULTANT for those services in accordance with the terms of this AGREEMENT. However, in no event shall CONSULTANT be compensated for work performed for AGENCY prior to June 1, 2009.

Contract Number: _____
(to be filled in only by Redevelopment
Agency Contracts Administration)

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The total compensation to be paid to CONSULTANT, including payment for services, supplies, materials, and equipment provided by CONSULTANT, if any, shall not exceed FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) pursuant to the payment terms set forth in EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Payments to CONSULTANT by AGENCY shall be made within thirty (30) days after receipt of CONSULTANT's itemized invoice. Request for payment may be mailed to:

Redevelopment Agency of the City of San Jose
Attention: Don Burrus, Project Coordinator
P.O. Box 720847
San Jose, CA 95172

or the request for payment may be submitted electronically to: sira_ap@sanjoseca.gov.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of AGENCY.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder, without the prior written consent of AGENCY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. SUBCONSULTANTS.

A. Notwithstanding Section 7 above, CONSULTANT may use subcontractors in performing the work under this AGREEMENT based upon prior written approval by AGENCY.

B. CONSULTANT shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. AGENCY assumes no responsibility whatsoever concerning such compensation.

C. CONSULTANT shall change or add subcontractors only with the prior written approval of the AGENCY's Project Coordinator.

SECTION 9. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless AGENCY and City, their officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by AGENCY and City shall not operate as a waiver of such right of indemnification. All of CONSULTANT's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT.

SECTION 10. INSURANCE REQUIREMENTS.

A. Pursuant to a financial sponsorship agreement, ACTERRA provides certain administrative and related services to CONSULTANT, including but not limited to the purchase of insurance to cover CONSULTANT's activities and obligations. CONSULTANT and ACTERRA have requested and AGENCY has agreed to allow ACTERRA to provide maintain the policies set forth in EXHIBIT E, entitled "INSURANCE REQUIREMENTS", which is attached hereto and incorporated herein. ACTERRA, agrees, by its signature below, to assume the obligation to provide such coverage for CONSULTANT's activities and obligation. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide AGENCY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 11. NONDISCRIMINATION.

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

SECTION 12. CONFLICT OF INTEREST.

CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this AGREEMENT. CONSULTANT shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this AGREEMENT. AGENCY shall have the right to treat any violation of this Section as a material breach of this AGREEMENT, and shall have the right to terminate the AGREEMENT and pursue any and all legal or equitable remedies for said breach of this AGREEMENT.

SECTION 13. TERMINATION.

A. AGENCY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.

B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, AGENCY may terminate this AGREEMENT immediately upon written notice.

C. AGENCY's Executive Director is empowered to terminate this AGREEMENT on behalf of AGENCY.

D. In the event of termination, CONSULTANT shall deliver to AGENCY copies of all reports, documents, and other work prepared by CONSULTANT under this AGREEMENT, if any, and upon receipt thereof, AGENCY shall pay CONSULTANT for services performed and supplies, materials, and equipment provided by CONSULTANT to the date of termination.

SECTION 14. GOVERNING LAW.

AGENCY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 15. COMPLIANCE WITH LAWS.

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

SECTION 16. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by AGENCY, or as required by law.

SECTION 17. OWNERSHIP OF MATERIALS.

All reports, documents, electronic equivalents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of AGENCY without restriction or limitation upon their use.

SECTION 18. WAIVER.

CONSULTANT agrees that waiver by AGENCY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by AGENCY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 19. CONSULTANT'S BOOKS AND RECORDS.

A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, supplies, materials, or equipment provided to AGENCY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.

B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit, at no cost to AGENCY, at any time during regular business hours, upon written request by the AGENCY's General Counsel, Executive Director, Director of Finance/Budget, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to AGENCY for inspection at the AGENCY office when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

D. Where AGENCY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, AGENCY may, by written request by any of the above-named officers, require that custody of the records be given to AGENCY and that the records and documents be maintained at the AGENCY office. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

SECTION 20. GIFTS.

A. CONSULTANT is familiar with AGENCY's prohibition against the acceptance of any gift by an AGENCY officer or designated employee, which prohibition is found in the San Jose Municipal Code.

B. CONSULTANT agrees not to offer any AGENCY officer or designated employee any gift prohibited by said Code.

C. The offer or giving of any prohibited gift shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies AGENCY may have in law or equity, AGENCY may terminate this AGREEMENT for such breach as provided in SECTION 13 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

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

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. NOTICES.

Other than requests for payment pursuant to Section 5 of this Agreement, all notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To AGENCY: The Redevelopment Agency of the City of San Jose
Don Burrus, Project Coordinator
200 East Santa Clara Street
San Jose, CA 95113

To CONSULTANT: Clean Tech Open
Attention: Rex Northern
2395 Broadway Street
Redwood City, CA 94063

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against AGENCY, its officers or employees shall also be served in the manner specified above to the following address:

Redevelopment Agency of the City of San Jose
Richard Doyle, General Counsel
200 East Santa Clara Street
San Jose, CA 95113

Notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or, if mailed, three (3) days after deposit in the mail.

SECTION 24. VENUE.

In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, or if federal jurisdiction is appropriate, in the United States District Court for the Northern District of California, San Jose, California.

SECTION 25. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

SECTION 26. SEVERABILITY.

If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this AGREEMENT, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 27. REPRESENTATION OF AUTHORITY.

A. The person executing this AGREEMENT on behalf of CONSULTANT does hereby represent and warrant that CONSULTANT is a duly authorized and existing California non-profit corporation, that CONSULTANT has, is and shall remain during the term of this AGREEMENT qualified to do business in the State of California, that CONSULTANT has full right, power and authority to enter into this AGREEMENT and to carry out all actions contemplated by this AGREEMENT, that the execution and delivery of this AGREEMENT were duly authorized by proper action of CONSULTANT and no consent, authorization or approval of any person is necessary in connection with such execution, delivery and performance of this AGREEMENT except as have been obtained and are in full force and effect, and that this AGREEMENT constitutes the valid, binding and enforceable obligation of CONSULTANT. Upon AGENCY's request, CONSULTANT shall provide AGENCY with evidence reasonably satisfactory to AGENCY confirming the foregoing representations and warranties.

B. The person executing this AGREEMENT on behalf of ACTERRA does hereby represent and warrant that ACTERRA is a duly authorized and existing California non-profit corporation, that ACTERRA has, is and shall remain during the term of this AGREEMENT qualified to do business in the State of California, that ACTERRA has full right, power and authority to enter into this AGREEMENT and to carry out all actions contemplated by this AGREEMENT, that the execution and delivery of this AGREEMENT were duly authorized by proper action of ACTERRA and no consent, authorization or approval of any person is necessary in connection with such execution, delivery and performance of this AGREEMENT except as have been obtained and are in full force and effect, and that this AGREEMENT constitutes the valid, binding and enforceable obligation of ACTERRA. Upon AGENCY's request, ACTERRA shall provide AGENCY with evidence reasonably satisfactory to AGENCY confirming the foregoing representations and warranties.

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

"AGENCY"

THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

APPROVED AS TO FORM:

Associate Counsel

By:_____

Harry S. Mavrogenes
Executive Director

200 East Santa Clara Street
San Jose, CA 95113
(408) 535-8500

"ACTERRA"

ACTERRA ACTION FOR A
SUSTAINABLE EARTH

"CONSULTANT"

CLEAN TECH OPEN

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

2395 Broadway Street
Redwood City, CA 94063

Telephone:_____

Employer I.D. No._____

EXHIBIT A

RECITALS

- A. The AGENCY is presently engaged in redevelopment activities in its various Industrial Redevelopment Project Areas.
- B. The specialized requirements of said redevelopment activities are from time to time more efficiently satisfied by the retention of private professional contractors.
- C. The AGENCY has determined that CONSULTANT possesses such specialized professional skill and ability.
- D. The Board of Directors of AGENCY has delegated approval to the Executive Director of the selection of CONSULTANT.

EXHIBIT B

SCOPE OF SERVICES

CONSULTANT is a non profit business development organization of entrepreneurs, academics, investors and companies, working together to accelerate the development of clean industrial technology startups. CONSULTANT plans and implements various educational and networking events for clean technology startups.

CONSULTANT shall provide to AGENCY services necessary to plan, prepare, promote and implement a Clean Tech Accelerator event to be held July 17-19, 2009 in the Rincon de Los Esteros Redevelopment Project Area ("Event").

SECTION 1. GENERAL.

- A. The performance of all services by CONSULTANT shall be to the satisfaction of the AGENCY.
- B. All of the services to be furnished by CONSULTANT under this AGREEMENT shall be of the professional standard and quality which prevail among consultants of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.
- C. CONSULTANT shall coordinate all services with the AGENCY, the City of San Jose ("City") and Work2Future program staff, as necessary.
- D. CONSULTANT shall attend all meetings as directed by AGENCY and as necessary in order to complete all services contemplated herein to the satisfaction of AGENCY.

SECTION 2. BASIC SERVICES.

- A. CONSULTANT shall provide all services necessary to plan, organize, promote, implement and coordinate the Event.
- B. The Event shall be held July 17-19, 2009 in the Rincon de Los Esteros Redevelopment Project Area.
- C. Consistent with the 2004-2005 Redevelopment Area Implementation Plan, the Event shall provide programs and assistance which facilitate and encourage the development of private start-up industrial opportunities, including start-up opportunities.

- D. The Event shall include mentoring and educational assistance for clean technology start-up ventures. The Event shall offer seminars on topics including business plans, technology, business financing and fundraising.
- E. The Event shall provide opportunities for AGENCY staff, City of San Jose Office of Economic Development or other City representative and the Executive Director of the Environmental Business Cluster to address the attendees.
- F. The Event shall include opportunities for the participants to obtain AGENCY promotional materials regarding the AGENCY's Industrial Project Areas and programs intended to assist and attract private industrial development in the redevelopment areas.
- G. All CONSULTANT marketing and advertising in electronic or print media produced in conjunction with the Event shall acknowledge AGENCY support. AGENCY, shall provide the logo and/or verbiage to be used for AGENCY acknowledgements in, but not limited to, printed brochures/directories, ads, posters, fliers, internet, television, and radio. The size and prominence of any AGENCY acknowledgement shall be proportional to the amount of support provided by AGENCY compared to the support provided by major sponsors for the particular Event. In this regard, in order that AGENCY may have prior approval, CONSULTANT shall provide AGENCY prior to publication, printing, airing or recording of any acknowledgement a draft of the design or text of said acknowledgement together with evidence of AGENCY proportional support for the Event. This acknowledgement shall be maintained in publications related to Clean Tech Open events throughout the remainder of 2009; in addition, the AGENCY's Environmental Business Cluster shall be identified as the in-kind incubator sponsor for 2009 for the California Region, and the San Jose Prize for Green Innovation shall be listed as an in-kind sponsorship and both will be recognized as such for all remaining Clean Tech Open events for the calendar year 2009.
- G. CONSULTANT shall provide AGENCY with a list of all attendees including attendee contact information.
- H. CONSULTANT shall meet or conference with AGENCY staff regarding results of the EVENT.

EXHIBIT C

SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT. CONSULTANT shall provide all services set forth in EXHIBIT B hereto prior to March 31, 2010.

EXHIBIT D
COMPENSATION

- A. The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including payment for professional services, supplies, materials, and equipment provided by CONSULTANT, shall not exceed FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00), payable in a lump sum upon completion of services.

- B. No reimbursable expenses are allowed. There shall be no separate payments by AGENCY of subcontractors or other expenses.

EXHIBIT E

INSURANCE REQUIREMENTS

ACTERRA, at ACTERRA'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CLEAN TECH OPEN, its agents, representatives, employees or subconsultants.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. Workers' Compensation insurance as required by the California Labor Code.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. **Minimum Limits of Insurance**

ACTERRA shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code.

EXCEPTION: If, however, the CONSULTANT does not have any employees and does not wish to cover himself or herself for WORKERS' COMPENSATION, the CONSULTANT shall sign the following statement as well as the contract itself to affect a fully initiated contract:

CONSULTANT hereby represents and warrants that it does not have, nor intend to have for the full term of this AGREEMENT, any employees. Furthermore, the CONSULTANT does not wish to obtain or be covered

under any WORKERS' COMPENSATION insurance coverage and, therefore, is signing this statement in lieu of providing the above required WORKERS' COMPENSATION COVERAGE.

CONSULTANT:

By: _____

Name: _____

Title: _____

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City's Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, City, their officers, employees, agents and contractors; or ACTERRA shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

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

Commercial General Liability Coverage:

The AGENCY, the City, their officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of, CLEAN TECH OPEN; premises owned, leased or used by CLEAN TECH OPEN.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to AGENCY.

F. Verification of Coverage

CONSULTANT shall furnish the AGENCY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to Riskmgmt@sanjoseca.gov, or mailed to the following postal address or any subsequent email or postal address as may be directed in writing by the City's Risk Manager:

City of San Jose – Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor Wing
San Jose, CA 95113-1905

G. **Subconsultants**

ACTERRA shall include all CLEAN TECH OPEN's subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT F
SPECIAL PROVISIONS

There are no special provisions.