OFFICE OF THE CITY ATTORNEY ROBERT E. SHANNON, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

AGREEMENT WITH THE CONSERVATION CORPS OF LONG BEACH

THIS AGREEMENT is made and entered, in duplicate, as of April 1, 2012 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on March 6, 2012, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and the CONSERVATION CORPS OF LONG BEACH, a California nonprofit corporation ("Corps").

WHEREAS, the Corps wishes to provide training in job skills and environmental education to young men and women of the Long Beach area through a program which includes projects in public service conservation work; and

WHEREAS, the City can provide opportunities for public service through meaningful and productive work projects; and

WHEREAS, the Corps shall generally be engaged in projects which preserve, maintain and enhance environmentally important lands and waters; and

WHEREAS, the Corps shall accomplish useful and needed projects throughout the City; and

WHEREAS, the Corps may execute contracts for furnishing the services of the Corps to federal, state, or local agencies and any local or statewide private organization concerned with the objectives of the Corps; and

WHEREAS, the Corps may be reimbursed by the federal government, state or local public agency, or private organization for actual expenses incurred by the Corps for any project;

NOW, THEREFORE, in consideration of the mutual terms and conditions herein, the parties agree as follows:

1. <u>Project Scope</u>. In accordance with Section 14300 of the California Public Resources Code, projects of the Corps ("Projects") shall be directed toward providing opportunities to the public for the use of natural resources and environmentally important public lands and waters, while at the same time providing young men and

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

women with an opportunity for personal development in a variety of basic skills. Projects shall be selected by mutual agreement of City and Corps on the basis of the environmental and natural resource benefits offered, the opportunities for public use, and the value of on-the-job training for corps members.

City recognizes that the resources of the Corps are limited, and the public service conservation work of the Corps may be altered in priority from time to time.

- 2. Term. The term of this Agreement shall commence at 12:01 a.m. on April 1, 2012 and shall terminate at midnight on March 30, 2017. The term of this Agreement may be renewed for one (1) additional five (5) year term at the option of the City Manager or his designee.
- 3. Project Proposal Form. City shall designate and approve Projects to be undertaken on a Project Approval Form containing the information detailed in Exhibit "A", attached hereto and incorporated herein by this reference. In addition, a Project Proposal Form attached hereto and incorporated herein as Exhibit "B" shall be submitted providing a detailed description of the Project.
- City shall hold an orientation meeting with Corps Orientation. personnel at the commencement of the Project to explain the technical aspects, safety considerations, and any other aspects necessary for successful execution of the Project.
- 5. <u>Plans and Specifications</u>. City shall provide complete plans for the Project. The plans shall include, where appropriate, the following:
 - A. Design development:
 - B. Detailed specifications for the Project;
 - C. Civil, structural, electrical, mechanical and plumbing designs, drawings and calculations as required; and
 - D. Construction schedule setting forth time estimates for the Project.
- 6. Project Commencement. The Project Approval Form shall specify which of the following permits, plans and specifications shall be the responsibility of City

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

and which shall be the responsibility of the Corps: approvals and permits required by any other state, federal, or local agency which may be necessary to commence construction or operation of the Project, adequate plans and specifications, sufficient funds, materials, supplies, equipment, adequate technical supervision, and any special labor requirements to complete the Project.

The Corps shall coordinate with trade unions or other labor organizations to resolve problems pertaining to the Project. However, if a problem arises, the Corps may withdraw from the Project having the problems.

7. Program Coordination.

- The City Manager or designee shall coordinate the Project with the Corps and shall render overall supervision of the progress and performance of this Agreement by City.
- B. The Corps' Executive Director shall have overall responsibility for performance of this Agreement and for coordinating with City. If the Executive Director is replaced during the term of this Agreement, the Corps shall notify City immediately of such occurrence. The Executive Director and the Corps staff will fully cooperate with City relating to the Project, areas of concern, and the impact of the Project on residents of City.
- 8. Permission Granted. After a Project Approval Form is approved, the Corps, its contractors, officers, agents, and subcontractors shall have permission to enter upon that certain City-owned real property specified in the Project Approval Form for the purpose set forth in said form. The permission granted by this Section is limited to a reasonable area around the Project site and ingress and egress thereto, and is limited to the dates contemplated for completion of the Project as specified on the Project Approval Form.
- 9. Payment of Costs. The Project shall be undertaken at the Corps' sole cost and expense on a reimbursement basis, except for a Project where City materials and supplies are to be used as specified in the Project Approval Form and

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

except where the parties have agreed in writing to other payment arrangements prior to or simultaneous with approval of a Project.

The Corps understands and agrees that if the actual cost of a Project exceeds the estimated cost on the Project Approval Form, City is not responsible for the difference and shall not reimburse the Corps for any additional costs incurred, unless those additional costs are due to additions or changes to the Project which were requested by City.

- Title to all improvements constructed in 10. Title to Improvements. whole or in part on lands owned or controlled by City shall vest in City upon completion or final inspection of the Project, whichever is sooner.
- 11. Emergencies. Temporary suspension or permanent cessation of a Project may be required due to emergency conditions. Under such circumstances, City and the Corps shall mutually agree on the postponement of a Project and who should bear the costs incurred due to said postponement.
- Time and Progress. The Corps shall begin work on each Project in 12. conformity with the provisions set forth herein and shall work with diligence so as to complete the Project according to the time schedule in the Project Approval Form.

The Corps shall work so that the completed Project shall be comparable to that specified in the Project Approval Form. The Corps and City shall notify each other and obtain approval from each other prior to any change in the time schedule.

Use of Premises. The Corps shall confine construction equipment, 13. the storage of materials and equipment, and the operations of workers to the Project site and areas identified in and permitted by the Project Approval Form and shall not unreasonably encumber same with construction equipment or other materials or equipment.

During the work, the Corps shall keep the Project site and said areas free from accumulations of waste, rubbish, and debris. Upon completion of the Project, the Corps shall remove all waste, rubbish and debris from and about the Project site and said

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

areas as well as all tools, equipment, machinery, and surplus materials, and shall leave the Project site and said areas clean and ready for occupancy by City. Corps shall restore to original condition all property not designated for alteration by this Agreement.

The Corps shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Corps subject any part of the Project or adjacent property to stresses or pressures that will endanger them.

- City, its officials, agents and 14. Rights of Entry and Inspection. employees shall at all times have the right of entry and free access to the Project site and areas identified in and permitted by the Project Approval Form and right to inspect all work done, labor performed, and materials furnished in and about the Project and to inspect all books, contracts, and records of the Corps pertaining to the Project.
- 15. The Corps shall keep the City Manager or Progress Reports. designee informed on all phases of the Project. Until the Project has been completed, the Corps shall make progress reports when milestone dates are achieved or upon request by the City Manager or designee in such detail and at such times as may be reasonably requested.
- 16. Final Inspection. Final inspection and acceptance shall be made at the Project site. City reserves the right to sample, inspect, and test materials throughout the duration of the work, and to reject, in its sole discretion, any materials which are found to be unsatisfactory. The Corps shall replace rejected materials at no cost to the Citv.
- 17. Project Supervision. Work on a Project shall be under the immediate supervision of Corps officials. City may provide such operation supervision, technical assistance, guidelines and inspection as it considers necessary to properly complete the Project.
- 18. Signs. The Corps shall not construct, maintain, place or allow any signs, exhibits, displays, emblems, or logos on the Project site without the prior approval of the City Planning Commission and the City Manager or designee.

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

7

8

9

- 19. Compliance with Laws. The Corps shall comply with all applicable local, state and federal laws, rules, and regulations pertaining to the Project, including but not limited to any environmental specifications on the Project Approval Form.
- 20. Bids Not Required. Because the Projects will be donated to City for the benefit of the citizens of City, and because the Projects are being coordinated and managed by the Corps, and because the Corps is providing a valuable public service to the citizens of City, and because the services of the Corps provide a valid public purpose, and because this Agreement would significantly further the purposes of Public Resources Code, Section 14507.5 establishing community conservation corps, and because this Agreement and the services of the Corps provide the dual benefit of work experience and education training to corps members, placing the Projects contemplated by this Agreement out to competitive bid would be an idle act.
- 21. Performance and Payment Bonds. On or before the date of commencement of a Project, City may require that the Corps obtain a performance bond in the amount of One Hundred Percent (100%) of the estimated cost of the Project, and a payment bond (labor and material bond) in the amount of Fifty Percent (50%) of the estimated cost of the Project if the cost is less than Twenty-Five Thousand Dollars (\$25,000.00) or in the amount of One Hundred Percent (100%) of the estimated cost of the Project if the cost is Twenty-Five Thousand Dollars (\$25,000.00) or more. Said bonds shall name City as joint obligee with the Corps. Nothing contained in this Section shall be deemed to release the Corps from the obligation to keep the Project site free and clear of labor and material liens. The performance bond shall remain in effect until completion of the Project. The payment bond shall remain in effect until the expiration of the time for filing liens or stop notices or until the Project site is free from the effect of such liens. If City requires that the Corps obtain a performance bond or a payment bond (labor and material), or both, the Corps reserves the right to withdraw from the Project after notice to City. If the Corps exercises said right, neither City nor the Corps shall have any further liability to the other with respect to that Project under the terms of this Agreement.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 22. Insurance. As a condition precedent to the effectiveness of this Agreement, Corps shall procure and maintain at Corps' expense for the duration of this Agreement from an insurance company that is admitted to write insurance in the State of California or that has a rating of or equivalent to an A:VIII by A.M. Best and Company the following insurance:
 - Commercial general liability or self-insurance equivalent in coverage (a) scope to an ISO form CG 00 01 11 85 naming the City of Long Beach, its officials, employees, and agents as additional insureds on an endorsement equivalent in coverage scope to an ISO form CG 20 26 11 85 from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out of any manner connected to the Corps' operations or performance under this Agreement in an amount not less than One Million Dollars (\$1,000,000) per occurrence and not less than Two Million Dollars (\$2,000,000) general aggregate. Such insurance shall not exclude or limit coverage for broad form contractual liability, cross-liability protection, independent contractors liability, abuse or molestation liability, or products and completed operations liability.
 - Workers' compensation coverage as required by the California Labor (b) Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness.
 - Commercial automobile liability insurance equivalent in coverage (c) scope to ISO form CA 00 01 06 92 in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage covering Auto Symbol 1 (All Autos).
 - Blanket honesty bond in an amount of Twenty-Five Thousand (d) Dollars (\$25,000).

Any self-insurance program or self-insurance retention must be approved

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

separately in writing by City and shall protect the City of Long Beach, its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City.

Corps shall deliver to City certificates of insurance endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims made" policies are not acceptable unless the City's Risk Manager or designee determines that "Occurrence" policies are not available in the market for the risk being insured. If a "Claims made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days after the expiration or termination of the Agreement. This insurance shall not be deemed to limit Corps' liability relating to performance under this Agreement. City reserves the right to require complete certified copies of said policies at any time. Any modification or waiver of the insurance requirements herein shall be made only with the prior written approval of City Risk Manager. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification provisions of this Agreement.

Corps shall, with respect to services performed in 23. Indemnity. connection with this Agreement, indemnify and hold harmless the City, its Boards, Commissions, and their officials, employees and agents (collectively in this Section, "City") from and against any and all liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses (including attorney's fees, court costs, and expert and witness fees) (collectively "Claims" or individually "Claim"). Claims include allegations and include by way of example but are not limited to: Claims for

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

property damage, personal injury or death arising in whole or in part from any negligent act or omission of Corps, its officers, employees, agents, or anyone under Corps control (collectively "Indemnitor"); Corps breach of this Agreement; misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating in any way to workers' compensation. Independent of the duty to indemnify and as a free-standing duty on the part of Corps, Corps shall defend City and shall continue such defense until the Claim is resolved, whether by settlement, judgment or otherwise.

No finding or judgment of negligence, fault, breach, or the like on the part of Indemnitor shall be required for the duty to defend to arise. Corps shall notify the City of any claim within ten (10) days. Likewise, City shall notify Corps of any claim, shall tender the defense of such claim to Corps, and shall assist Corps, as may be reasonably requested, in such defense.

- 24. Nondiscrimination. In connection with performance of this Agreement and subject to applicable rules and regulations, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. Such actions shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 25. Amendment and Waiver. This Agreement shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this Agreement.
- 26. Governing Law. This Agreement shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of law). Corps shall comply with all laws, ordinances, rules and regulations of and obtain such permits, licenses, and certificates required by all

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

federal, state and local government authorities.

- 27. This Agreement constitutes the entire understanding Integration. between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.
- 28. Ambiguity. In the event of any conflict or ambiguity between this Agreement and any Project Proposal Form, the provisions of this Agreement shall govern.

29. Books and Records.

- The Corps shall maintain ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements for a minimum period of three (3) years, or for any longer period required by law, from the date of any final payment to the Corps on a Project.
- The Corps shall maintain all documents and records which B. demonstrate performance under this Agreement for a minimum period of three (3) vears, or for any longer period required by law, from the date of termination or expiration of this Agreement.
- Any records or documents required to be maintained C. pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the Corps' address shown herein.
- D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of the Corps, City may, by written request, require that custody of the records be given to City and that the records and documents be maintained in City

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Access to such records and documents shall be granted to any party Hall. authorized by the Corps, its representatives, or successors-in-interest.

- Independent Contractor. In performing services hereunder, Corps is 30. and shall act as an independent contractor and not an employee, representative, or agent of City. Corps shall be free to contract for similar services to be performed for others during this Agreement. Corps acknowledges and agrees that a) City will not withhold taxes of any kind from Corps' compensation, b) City will not secure workers' compensation or pay unemployment insurance to, for or on Corps' behalf, and c) City will not provide and Corps is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Corps expressly warrants that neither Corps nor any of Corps employees shall represent themselves to be employees or agents of City.
- Severability of Provisions. If any term or condition of this Agreement 31. is found to be invalid, ineffective, void, or unenforceable for any reason whatsoever, all other terms and conditions shall remain in full force and effect.
- Waiver. The acceptance of work or the payment of any money by 32. City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
- 33. Unforeseen Delays. Neither City nor the Corps shall be deemed in violation of this Agreement if prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, Act of God, acts of public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage or any other circumstance which is not within its control.
- 34. Approval. Whenever the approval of either party is required by this Agreement, that party shall not unreasonably withhold or delay such consent. Whenever in this Agreement the approval of a party is required, such approval shall be in writing and shall be executed by a person having the express authority to grant such approval.

35. <u>Mechanic's Lien</u> . The Corps shall keep the Project site free of any				
mechanic's or materialman's lien. If a mechanic's or materialman's lien is imposed or				
the Project site, the Corps shall: a) Record a valid release of lien; or b) Procure and				
record a lien release bond in accordance with Section 3143 of the California Civil Code				
issued by a surety authorized to do business in California and providing for payment of				
any sum recovered by claimant. Any costs in obtaining relief under this Section shall be				
the sole responsibility of the Corps and shall not be reimbursed by City.				
36 Controlling Law Except where federal law preempts and except with				

- 36. <u>Controlling Law</u>. Except where federal law preempts and except with respect to principles of conflicts of laws, this Agreement shall be governed by and construed pursuant to the laws of the State of California.
- 37. <u>Notice</u>. Any notice required hereunder or desired to be given by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid to the following address of each party:

City: City of Long Beach
Department of Parks, Recreation and Marine
2760 N. Studebaker Road
Long Beach, California 90815-1697

Corps: Conservation Corps of Long Beach 340 Nieto Avenue Long Beach, California 90814 Attention: Executive Director

Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.

- 38. <u>Headings</u>. The various headings and numbers herein and the sequence of provisions hereof are for convenience only, shall not be considered a part hereof, and shall have no bearing on the construction or interpretation hereof.
- 39. <u>Successors and Assigns</u>. This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

28 || ///

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

40. Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be had in a state court in the City of Long Beach or in a United States District Court for the Southern District of California.

- 41. Interpretation. If any questions arise as to the proper interpretation of the terms and specifications or any Project undertaken pursuant to this Agreement, the decision of the City Manager or designee shall be final.
 - 42. Suspension and Termination.
 - City reserves the right to suspend or terminate this Agreement and payment of costs in whole or in part for cause. Cause shall include but not be limited to: (1) Ineffective or improper use of funds; or (2) Failure to comply with any material provision of this Agreement, including exhibits.

If the City elects to exercise its right under this Subsection (A), City shall notify the Corps of City's intent to suspend or terminate the Agreement, specify the reason(s), and furnish a description of corrective action to be taken by the Corps if relying on Subsection (A)(2). The Corps shall have ten (10) calendar days in which to respond. If the Corps does not respond to the satisfaction of City, City may, in its sole discretion, continue, suspend, or terminate the Agreement. Notwithstanding the above, any suspension or termination of this Agreement shall not relieve City of its obligation to defray appropriate costs incurred by the Corps prior to said suspension or termination.

- In addition to the termination remedies described above, B. either party may terminate the Agreement by giving thirty (30) days prior notice to the other party, specifying the date on which termination shall take effect.
- Continuing Rights. Termination or expiration of this Agreement shall 43. not affect rights or liabilities of the parties which accrued pursuant to this Agreement prior to termination or expiration of this Agreement.
- No Peculiar Risk. Corps acknowledges and agrees that the services 44. to be performed hereunder do not constitute a peculiar risk of bodily harm and that no

special precautions are required to perform said services.

2012.



Project Approval Form

The terms, conditions and covenants of the "Agreement by and between the Sponsoring Agency and the Conservation Corps of Long Beach to carry out Community Improvement Activities" are incorporated by reference into this Project Proposal Form. The Conservation Corps of Long Beach agrees to and shall fully comply with said terms, conditions and covenants at all times for the subject herein.

Date:							
Project:							
Description:							
Supervisor(s):	Joyce McDevitt, Deputy Director	Phone: FAX:	(562) 986-1249 (562) 986-9390				
Start Date:	Completion Date		(===)//				
Number of Corpsmembers Required:							
Equipment/Materials Required:							
TOTAL:							
Comments:							
Approval:	Conservation Corps of Long Beach	Date:					
Approval:		Date:					
- M. Ber A. Longs	Sponsoring Agency	Date	Jau.				

Conservation Corps of Long Beach

Project Proposal

Spon	soring A	gency:
Addr	ess:	Phone: FAX:
Spons	sor Repi	resentative:
Proje	ct Title:	
I.	Steps	to Initiate CCLB Project Proposal:
	1.	Complete Project Proposal.
	2.	Mail or deliver to Deputy Director.
	3.	Proposal is received by Deputy Director, and arrangements are made to inspect project site.
	4.	Sponsor and Deputy Director organize logistics and details of project.
	. 5.	Project starting date is scheduled according to needs of Sponsor and availability of CCLB crews.
11.	Projec	t Details and Description of Scope and Purpose:
III.	What	is the Public Benefit of the Project?
IV.	What S	Skills or Training Will Corpsmembers Receive?

Conservation Corps of Long Beach

Project Supervisor:	Joyce McDevitt Deputy Director	Phone: FAX:	(562) 986-1249 (562) 986-9390
Project Duration:			
Project Location:			
Equipment / Materials Re	quired:		
Additional Comments:			
CCLB Authorization:	Deputy Director	Date:	
Sponsor Authorization: _		Date:	
Sponsor Title:			

Conservation Corps of Long Beach

"Preserving the PastConserving for the Future"