



Santa Clara Valley
Habitat Conservation Plan/Natural Community Conservation Plan

**SANTA CLARA VALLEY HCP/NCCP LIAISON GROUP MEETING
THURSDAY, FEBRUARY 17, 2011
SANTA CLARA VALLEY WATER DISTRICT
5700 ALMADEN EXPRESSWAY, SAN JOSE
HEADQUARTERS BUILDING BOARD CHAMBER LOBBY
4:00 to 5:15 PM**

1. Welcome/introductions (2 minutes)---Water District Board Member Don Gage
2. Election of Liaison Group Chair and Vice-Chair (5 minutes)--- Water District Board Member Don Gage
Desired Outcome: Liaison Group selection of a Chair and Vice-Chair
3. Habitat Plan Schedule-related Issues (10 minutes)---Ken Schreiber, Program Manager
 - a. 2011 Plan Schedule
 - b. Draft Plan Review
 - c. Liaison Group Meeting ScheduleDesired Outcome: Discuss the schedule for review of the Draft Plan, Draft EIR/EIS and Draft Implementing Agreement; the anticipated Habitat Plan process for 2011 and 2012; and identify Liaison Group 2011 meeting dates and times.
4. 2011-2012 Habitat Plan Budget (15 minutes)---Lisa Killough, Santa Clara County Lead Staff Representative
Desired Outcome: Reach consensus on the Local Partner budget for budget year 2011-2012.
5. Review of Concepts for Memorandum of Understanding (MOU---previously called the Cooperative Agreement) (35 minutes)---Lizanne Reynolds, Santa Clara County Counsel's Office
Desired Outcome: Review and discuss the reasons for and elements of a MOU prior to a April 2011 Liaison Group review of a recommended MOU.
6. Discussion with Wildlife Agency staff (5 minutes)
Desired Outcome: Share information and, when appropriate, reach common understanding regarding issues of interest.
7. Public Comments (5 minutes)
Desired Outcome: Receive comments from members of the public.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: February 17, 2011

AGENDA ITEM 3

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Habitat Plan Schedule-related Issues

PREPARED BY: Kenneth Schreiber, Program Manager

Purpose of this Staff Report: Provide information on the three schedule items: review of the 2011-2012 Habitat Plan key schedule elements; review of the Draft Plan-related documents; and assist the Liaison Group in setting a 2011 meeting schedule

Next Steps After Liaison Group Review: The Habitat Plan team will continue work toward meeting the work schedules. Schedule updates will periodically be provided to the Liaison Group and the public.

Recommendation: It is recommended that the Liaison Group review and provide comments on the recommended overall schedule and Draft Plan review process and set a meeting schedule for 2011 that includes Liaison Group meetings on April 21 and as needed, June 16, August 18 and October 20, 2011. The need for a meeting in December would be evaluated later in 2011.

Discussion:

a. 2011-2012 Habitat Plan Key Schedule Times

The Habitat Plan process has been guided by the objective of completing the Plan in 2011 with sufficient time for the Wildlife Agencies to take the actions necessary to issue endangered species incidental take permits by the end of the calendar year or early 2012. The related objective is to start day-to-day functioning of the Plan implementation work on July 1, 2012. Receipt of the permits will be conditioned on the Local Partners and the JPA adopting implementing ordinances. The JPA will need to adopt the fee ordinance which must be done no later than 60 days prior to July 1, 2012. Specific schedule items include:

- January through early April 2011---Local Partner advisory and elected bodies review Draft documents and two general community meetings held.
- April 21, 2011---Liaison Group directs the Habitat Plan Team to prepare the Final Habitat Plan (VHP), final EIR/EIS and final Implementation Agreement (IA).
- Late June 2011---Publication of proposed Final VHP, Final EIR/EIS and Final IA.

- July, August and September 2011---Local Partners review and adopt Final VHP, Certify Final EIR/EIS, authorize signing of Final IA, approve JPA (and appoint members) and authorize signing of the MOU.
- Early to mid-October---Implementing Entity (JPA) adopts Final Plan, certifies Final EIR/EIS and authorizes signing the Final IA.
- December 2011/January 2012---Wildlife Agencies prepare Biological Findings, approve Plan-related documents and issue Permits.
- February and March 2012---Local Partners adopt implementing ordinances.
- March or April 2012---JPA adopts implementing ordinances including fee ordinance (no later than 60 days prior to July 1, 2012).
- July 1, 2012---Initiate day-to-day functioning of the Implementing Entity.

b. Public Review of the Draft Habitat Plan, Draft EIR/EIS and Draft Implementing Agreement

The two Community Meetings and initial reviews by several Santa Clara County advisory bodies will have occurred by February 17th. Additional reviews include:

City of Gilroy:

February 23, 2011 Gilroy Community Meeting (4:00 to 6:00 pm at Gilroy Senior Center, 7371 Hanna Street)

March 2, 2011 City Council Study Session (6:00 pm at Gilroy City Hall Council Chambers, 7371 Roseanna Street)

March 28, 2011 City Council review (6:00 pm at Gilroy City Hall Council Chambers, 7371 Roseanna Street)

City of Morgan Hill (all meetings in City Hall, 17555 Peak Avenue, Morgan Hill)

February 22, 2011 Planning Commission (7:00 pm)

March 16, 2011 City Council (7:00 pm)

City of San Jose (all meetings in City Hall, 200 East Santa Clara Street, San Jose):

February 23, 2011 Joint Planning Commission and Parks and Recreation Commission (5:00 pm in Room T-332)

February 28, 2011: City Council CED Committee (1:30 in Wing Rooms 118/119)

March 3, 2011: City Council Study Session (1:30 in City Council Chambers)

County of Santa Clara:

February 17, 2011 County Board Housing, Land Use, Environment and Transportation (HLUET) Committee (10:00 am in County Board Chambers, 70 West Hedding Street, San Jose)

February 23, 2011 County Parks and Recreation Workshop (Lakeview Conference Room, 298 Garden Hill Drive, Los Gatos)

March: County Board with date to be determined

Santa Clara Valley Water District:

March: District Board with date to be determined

Santa Clara Valley Transportation Authority:

Review will occur after completion of other Partner reviews

c. Liaison Group 2011 Meeting Schedule

The Liaison Group has found that meeting at 4:00 pm on the third Thursday of the month has the fewest conflicts with other meetings. Efforts to move the meeting date and time have usually led to conflicts with other meetings and one or more Liaison Group members unable to attend the Liaison Group meeting. Supervisor Cortese has a standing ABAG Executive Committee meeting on the third Thursday of every other month (January, March, etc).

The Liaison Group should establish a 2011 meeting schedule. It is recommended that the Liaison Group set meetings for:

Thursday, April 21---4:00 to 7:30

Thursday, June 16---4:00 to 6:00

Thursday, August 18---4:00 to 6:00

Thursday, October 20---4:00 to 6:00


The longer recommended meeting time in April is based on potential time needed to review public and Local Partner comments on the Draft Plan and other documents currently in the public review process as well as the MOU. The need for a meeting in December will be assessed later in August and/or October.

Attachments: none

Copies: Stakeholders Group



Santa Clara Valley
 Habitat Conservation Plan/Natural Community Conservation Plan

Date: February 17, 2011 AGENDA ITEM 4
 TO: Governing Body Liaison Group
 FROM: Management Team
 SUBJECT: FY 2011/2012 Local Partner Budget Proposal
 PREPARED BY: Lisa Killough, County Staff Lead Representative 

Purpose of this Staff Report: Reach consensus on the Local Partner budget proposal for FY 2011/2012 expenses for the Santa Clara Valley Habitat Plan (Plan).

Next Steps After Liaison Group Review: Each Local Partner will submit a FY 2011/2012 budget proposal consistent with the recommendations in this report and input received from the Liaison Group.

Recommendation: Forward a favorable recommendation to each Local Partner's elected body for the following FY 2011/2012 budget proposal totaling \$650,000 for Plan expenses and \$57,600 for bridge loan repayment:

- Each original MOU partner (County of Santa Clara, Valley Transportation Authority, Santa Clara Valley Water District and City of San Jose) proposes a 20% cost share for FY 2011/2012 equating to **\$130,000** per MOU partner.
- Each Side Agreement partner (cities of Morgan Hill and Gilroy) proposes a 10% cost share for FY 2011/2012 of \$65,000, plus the reimbursement to the County for the FY 2010/2011 bridge loan of \$28,800, equating to **\$93,800** per Side Agreement partner.

Discussion: In planning for the next budget year, the Local Partners must grapple with some critical decisions. In the coming fiscal year, the consultants and Management Team have forecasted that the Local Partners will take final action on the Plan and related documents (EIR/EIS and Implementing Agreement), as well as seek regulatory permits and ordinances necessary to commence Plan implementation. At this juncture, the team estimates that Plan implementation could commence on July 1, 2012, or at the start of FY 2012/13 if all aforementioned milestones are attained in FY 2011/2012.

Accordingly, the FY 2011/2012 Partner cost allocation proposal includes costs necessary to complete the Plan and reimburse the County for prior expenses – it does not include any costs for Plan implementation. Most of FY 2011/2012 costs are known, but there are some *estimated* costs which are

clearly identified. The *estimated* costs are included to: a) provide a project contingency; and, b) ensure that all partners share in the payment, should the additional expense be warranted. In past budget years, the County has paid for additional unanticipated costs and sought partner reimbursement in a future budget year. For FY 2011/2012, the intent is spread this responsibility equally among partners. It is important to note that the FY 2011/2012 includes all costs necessary to reimburse the County for FY 2010/2011 unanticipated expenses and prior year expenses. The following summary was reviewed and approved by the Management Team on January 21, 2011 and February 4, 2011 and includes:

FY 2011/2012 Budget Proposal

Plan Expenses

+ Resources Law Group contract amendment	\$ 80,000
+ Willdan contract amendment	15,000
+ Contract balance from prior years	187,000
2 nd Partner Contractor (\$12K x 12 mos + \$5,000 reimbursables)	149,000
Ken Schreiber (\$5K x 7 mos or ~ 50 hrs/mo)	35,000
Additional plan consulting expenses (estimate)	150,000
Final documents printing	26,000
Notice of Determination Filing (State and County Clerk Fees)	3,000
Miscellaneous Costs (SJMN Notice, services & supplies)	5,000
TOTAL (\$130,000/20%; 65,000/10%)	\$ 650,000

Bridge Loan Reimbursement

+ Cities of Morgan Hill & Gilroy expense (\$28,800 each)	\$ 57,600
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+ Reimbursement to the County for FY 2010/2011 and prior year expenses – see attached Contract Summary

For further background on the calculations for this proposal, please refer to the attached February 1, 2011 Contract Summary – pages 5 to 7.

The proposal includes the reimbursement to the County for the FY 2010/2011 contract amendments (unanticipated expenses) with the Resources Law Group (\$80,000) and Willdan (\$15,000), as well as the reimbursement to the County of outstanding prior year expenses (\$187,000), and the FY 2010/2011 bridge loan to the cities of Morgan Hill and Gilroy (\$57,600 or \$28,800 per city). The \$187,000 prior years expenses include a credit of approximately \$13,000 of unexpended consultant expenses that are anticipated from the Jerry Smith and MIG contracts.

One major component of the FY 2011/2012 budget proposal is to hire a contractor who can help guide the completion of the Plan and act as the contract manager (as the County has been doing on behalf of the partners), while getting familiar with the project, the players and the implementation needs. The idea would be that this contractor could potentially move into the Executive Director role after Plan approval. This arrangement could be mutually beneficial in that the contractor would assist the Partners in completing a very important objective, while having a year to absorb the Plan responsibilities and get invested in the Partner and project needs. The concept of hiring a second contractor would also involve some overlap with Ken Schreiber's services as Ken would be invaluable to help the transition process. However, this overlap would mean that considerably less time would be required of Ken in FY 2011/2012. In response to this idea, Ken has stated an interest in helping the

Partners successfully complete the Plan but not in providing services for implementation. He is supportive of the transitional concept.

The following analysis includes costs necessary to complete the aforementioned tasks in FY 2011/2012. It does not include any implementation expenses, beyond the cost of forming the JPA. However, it is important to note that the Management Team is also currently working on a projection of implementation expenses and income for future budget years, particularly for the period FY 2012/2013 through FY 2015/16. While acknowledging that Plan approval is not assured, the team's parallel analysis is important to the understanding of the potential opportunities and constraints for Plan implementation. It is the intent to forward the Management Team's implementation analysis to the Liaison Group for review and comment at a future meeting.

Attachments: February 1, 2011 Contract Summary
February 1, 2011 Expenditure Summary
FY 2011/2012 Partner Cost Allocation Plan

Copies: Stakeholder Group

Contract Summary – 2/1/11 (Changes from previous summary highlighted in yellow)

Land Use Planning Services (Ken Schreiber) – BC# 4300002851

- Service Agreement + 3 amendments
- 7/1/05 to 6/30/06 (Original Board contract)
- 7/1/05 to 3/31/09 (Amendment #1)
- 7/1/05 to 1/31/11 (Amendment #4)
- **2/1/11 to 6/30/11 (Amendment #5 – Delegation of Authority until 6/30/11)**
- **\$920,250 to date** (**\$130,000**, original contract (FY 2006) + **\$20,000**, Amendment #1 (FY 2006) + **\$420,750**, Amendment #2 (\$153,000 – FY 2007; \$153,000 - FY 2008; \$114,750 – FY 2009) + **\$284,350**, Amendment #3 (\$38,775 – FY 2009; \$155,100 - FY 2010; \$90,475 – partial FY 2011 – thru 1/31/11), Amendment #4 (No change to term or Delegation of Authority date, or overall contract amount; FY 2011 \$12,500 monthly charges to be charged to all partners), **Amendment #5 (\$65,150 – FY 2011)**)
- **FY 2011 Partner contribution total: \$800,250** = \$150,000 - FY 2006; \$123,000 – FY 2007 (\$120,000 + \$3,000 reimbursable expenses); \$123,000 – FY 2008 (\$120,000 + \$3,000 reimbursables); \$123,525 – FY 2009 (\$120,000 + \$3,525 reimbursables); \$125,100 – FY 2010 (\$120,000 + \$5,100 reimbursables); \$155,625 – FY 2011 (\$150,000 + \$5,625 reimbursables)
- Program Manager services for all partners
- **Note:** Two amendments are required for FY 2011 services totaling \$155,625 – Amendment #4, executed in 7/10, covers services from 7/1/10 to 1/31/11. Amendment #5, **executed 1/25/11**, covers services from 2/1/11 to 6/30/11.

Moore Iacofano Goltsman, Inc. (MIG) – BC# 4300002905

- Service Agreement + 1 amendment
- 8/29/05 to 6/30/10 (Original Board contract)
- 8/29/05 to 12/31/11 – Delegation of Authority until 12/31/11 (Amendment #1)
- **\$287,510**
- Facilitation and public outreach services

Jones & Stokes (ICF International) – BC# 4300003645 & BC# 4300002602

- Professional Services Agreement (PSA) – original term 7/1/05 to 6/30/10 (extended to 6/30/11 in 3rd Amendment); not to exceed \$1,757,000; Delegation of Authority until 12/31/11.
- **\$3,013,343 to date** (includes FY 2011 Phase 6 work)
 - *Phase 1 Annual Project Agreement (7/1/05 to 6/30/06) – not to exceed \$843,089*
 - *1st Amendment to the PSA – no change to term or delegation; added \$173,643 for a not to exceed of \$1,930,643*
 - *Phase 2 Annual Project Agreement (7/1/06 to 6/30/07) – not to exceed \$963,238 (including rollover of \$324,648 from Phase 1 and \$638,590 Phase 2 expenses)*

- Phase 3 Annual Project Agreement (7/1/07 to 6/30/08) – not to exceed **\$620,419** (including rollover of \$286,600 from Phase 2 and \$333,819 Phase 3 expenses)
- 2nd Amendment to the PSA – no change to term or delegation; added \$124,868 for nitrogen deposition work for a not to exceed of **\$2,055,511**.
- 3rd Amendment to the PSA – extended term to 6/30/11 with no change to delegation; added \$195,200 for a not to exceed of **\$2,250,711**.
- Phase 4 Annual Project Agreement (7/1/08 to 6/30/09) – not to exceed **\$661,864** (including rollover of \$225,768 from Phase 3 and \$436,096 Phase 4 expenses)
- 4th Amendment to the PSA – no change to term or delegation dates; added \$427,632 for a not to exceed of **\$2,678,343**.
- 1st Amendment to Phase 4 Annual Project Agreement (7/1/08 to 6/30/09) – added \$31,132 for a not to exceed of **\$692,996**.
- Phase 5 Annual Project Agreement (7/1/09 to 6/30/10) – not to exceed **\$396,500**.
- 5th Amendment to PSA – no change to term or delegation dates; added \$95,000 for a not to exceed of **\$2,773,343**.
- 1st Amendment to Phase 5 Annual Project Agreement (7/1/09 to 6/30/10) – added \$95,000 for a not to exceed of **\$491,500**.
- 6th Amendment to PSA –no change to term; delegation date extended to 12/31/11; added \$240,000 for a not to exceed of **\$3,013,343**.
- Phase 6 Annual Project Agreement (7/1/10 to 6/30/11) – not to exceed **\$323,812**.
- Plan preparation services
- Note: Phase 6 Annual Project Agreement, executed in 7/10, includes \$83,812 rollover from Phase 5 and \$240,000 for Phase 6.

Jones and Stokes (ICF International) – PO# 4300006203

- Service Agreement
- 10/22/09 to 6/30/11
- **\$84,412 to date**
- Public outreach program services

CH2M Hill, Inc. – BC# 4300006454

- Professional Services Agreement
- 5/1/10 to 6/30/11 (Delegation of Authority until 6/30/11)
- **\$66,061 to date** (Note: Amount includes balance from closed contract # 4300004474)
- EIR/EIS services

Resources Law Group, LLP – PO# 4300004477

- Non-standard Service Agreement + First Amendment + Second Amendment
- 9/14/07 to 12/31/09 (Original Non-standard Service Agreement)
- 9/14/07 to 12/31/11 (First Amendment)
- Delegation of Authority to County Counsel is on-going and restricted to \$200,000 per year cap

- **\$331,000 to date** (**\$176,000**, original contract + **\$75,000**, First Amendment + **80,000**, Second Amendment)
- Legal services for plan and Implementing Agreement

Jerry Smith – PO# 4400002434 – Contract closed, 2/1/11

- Service agreement + 4 amendments to service agreement
- 7/1/06 to 3/30/09 (Original Service Agreement)
- 7/1/06 to 1/31/11 (Amendment # 4)
- **\$40,000 to date** (**\$9,000**, original contract + **\$6,000**, Amendment # 1 + **\$10,000**, Amendment #2 + **\$10,000**, Amendment #3, + **\$5,000**, Amendment #4)
- Scientific advisor services for fish and aquatic

Albion Environmental, Inc. – PO# 4400002734

- Service Agreement + 4 amendments
- 2/12/07 to 6/30/09 (Original Service Agreement)
- 2/12/07 to 12/31/11 (Amendment #2)
- **\$62,340** (**\$7,340**, original contract + **\$20,000**, Amendment #1 + **\$12,500**, Amendment #2 + **\$7,500**, Amendment #3 + **\$15,000**, Amendment #4)
- Western Burrowing Owl research services

Willdan Financial Services – PO# 4400004567

- Service Agreement + 2 amendments
- 11/18/09 to 6/30/11
- **\$74,172.50 to date** (**\$51,172**, original contract + **\$8,000**, Amendment #1 + **\$15,000**, Amendment #2)
- Economic forecasting services

Contract Totals (as of 2/1/11)• On-Going Contracts Encumbrances

Land Use Planning Services (Partner contributions)	\$ 800,250
MIG, Inc.	287,510
Jones & Stokes (Plan preparation)	3,013,343
Jones & Stokes (4300006203 - Public outreach)	84,412
CH2M HILL	66,061
Resources Law Group	331,000
Albion Environmental, Inc.	62,340
Willdan Financial Services	74,172
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SUBTOTAL ENCUMBRANCES	\$4,719,088

• Closed Contracts Expenditures

Jerry Smith (4400002434 - \$40,000)	\$ 36,355
Science Advisor /Fish & Aquatic Services	
Kenneth Schreiber (4400001417 - \$96,000)	\$ 93,350
Partner Program Manager Services	
CH2M HILL (4300004474 - \$386,451)	320,390
EIR/EIS Preparation	
Raymond White (4400002358 - \$9,000)	5,000
Scientific Advisor	
Sean Barry (4400002435 - \$9,000)	5,111
Scientific Advisor	
SFEI (4400002615 - \$15,000)	14,000
Scientific Advisor	
Willdan (4300003258 - \$185,900)	185,288
Economic modeling	
Kleinschmidt Associates (4400002088 - \$75,430)	56,101
Facilitation & Scientific/Logistical Support	
Kenny Rose (4400002458 - \$11,000)	5,611
Scientific Advisor	
Steve Beissinger (4400002433 - \$9,000)	5,167
Scientific Advisor	
Susan Harrison (4400002357- \$9,000)	5,000
Scientific Advisor	
Joan Florsheim (4400002489 - \$6,000)	5,019
Scientific Advisor	
Jones & Stokes (4300003168; 4300004449 - \$335,129)	280,298
Public Outreach Services	
FY 2007 Science Workshops – Rooms & Mtg Supplies	3,624
Mac Tec Contract (SCVWD expense)	50,000
MOU Facilitator (City of San Jose expense)	10,000
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SUBTOTAL EXPENDITURES	\$ 1,080,314

Projected FY 2010/11 Expenses (as of 6/30/10)

• On-going Contracts Encumbrances	\$4,664,088
• Closed Contracts Expenditures	1,043,959
• County FY 2012/11 Printing Costs	<u>50,000</u>
TOTAL	\$5,758,047

Actual FY 2010/2011 Expenses (as of 2/1/11)

• On-going Contracts Encumbrances (\$95,000 unanticipated)	\$ 4,719,088
• Closed Contracts Expenditures	<u>1,080,314</u>
• County FY 2010/11 Printing Costs	<u>50,000</u>
TOTAL	\$ 5,849,402

FY 2010/2011 Contract Balance Reimbursement to County for Prior Year Expenses

• FY 2010/11 Expenses Projection (as of 6/30/10)	\$ 5,758,047
• FY 2010/11 Revenue Projection	<u>5,558,108</u>
SUBTOTAL	(\$ 199,939)
• Anticipated Contract Cost Savings (as of 12/31/10)	
○ Jerry Smith	\$ 3,645
○ MIG	<u>9,300</u>
TOTAL ESTIMATE FOR FY 2011/12 BUDGET	(~\$ 187,000)

FY 2011/2012 Revenue Projection

• Total Partner Revenue as of 12/31/10 (incl Co bridge loans)	\$ 4,450,460
• Total Grant Revenue (four Section 6 grants)	1,107,648
• Total Proposed FY 2011/12 Partner Contributions (see detail next pg)	<u>650,000</u>
TOTAL	\$ 6,208,108

FY 2011/2012 Expenses Projection

• FY 2010/11 Expenses Projection (as of 6/30/10)	\$ 5,758,047
• FY 2011/12 Expenses Projection (see detail next page)	413,000
○ Resources Law Group contract amendment (\$80,000)	
○ Willdan contract amendment (\$15,000)	
○ 2 nd Partner consultant contract (\$149,000)	
○ Land Use Planning contract (\$35,000)	
○ Additional Plan consulting expenses (\$150,000)	
○ Final printing (\$26,000)	
○ NOD filing costs (\$3,000)	
○ Miscellaneous costs (\$5,000)	
• Anticipated Contract Cost Savings (as of 12/31/10)	<u>(12,945)</u>
TOTAL	\$ 6,208,102

FY 2011/2012 Budget Projection (assumes no implementation expenses, except JPA formation)

• + Resources Law Group contract amendment	\$ 80,000
• + Willdan contract amendment	15,000
• + Contract balance reimbursement (see above)	187,000
• Ex. Director contract (\$12K x 12 mos + \$5,000 reimbursables)	149,000
• Land Use Planning (\$5K x 7 mos or ~ 60 hrs/mo)	35,000
• Additional Plan consulting expenses (estimate)	150,000
• Final printing (detail next page)	26,000
• NOD Filing (State & County Clerk fees)	3,000
• Miscellaneous Costs (SJMN notice, services & supplies)	<u>5,000</u>

TOTAL (\$130,000/20%; \$65,000/10%) **\$ 650,000**

• + Morgan Hill & Gilroy bridge loan (**\$28,800 ea**) \$ 57,600

+ *Reimbursement to the County for FY 2010/2011 and prior year expenses*

Background/Draft Plan Documents – Printing Costs for FY 2010/2011 (as of 12/31/10)

Santa Clara Valley Habitat Plan IA Form # 4182 – IA \$412.81 \$2.30 per book	Santa Clara Valley Habitat Plan Vol 2 Form # 4182 – 2 \$6,733.44 \$37.42 per book
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Santa Clara Valley Habitat Plan EIR / EIS Form # 4182 – EIR \$4,304.76 \$23.94 per book	Santa Clara Valley Habitat Plan Vol 3 Form # 4182 – 3 \$4,387.76 \$24.39 per book
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Santa Clara Valley Habitat Plan Vol 1 Form # 4182 – 1 \$4,485.36 \$24.93 per book	Santa Clara Valley Habitat Plan Vol 4 Form # 4182 – 4 APP \$18,535.41 \$102.98 per book
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Print Total for all 6 Books – 180 Copies/Each (\$215.96/set)	\$ 38,859.54
Print Total for Executive Summary - 350 Copies (~\$5.00/copy)	\$ 1,750.00
CD Supplies – (CDs, Cases, Ink – 260 CDs, \$1.98/CD)	\$ 514.49
Mailing Supplies (Boxes, Envelopes, Packing Tape, etc)	\$ 150.33
Mailing Expenses (Fed Ex, USPS -- <u>estimate</u>)	\$ 2,000.00
San Jose Mercury News Notice	<u>\$ 2,084.64</u>
TOTAL (1/14/11 estimate)	\$ 45,359.00

FY 2011/2012 Printing Cost Estimate (10% increase from FY 2010/11 on unit costs)

Printing costs

Full sets (100 copies x \$238)	\$ 23,800
20% Partners 40 (10 each)	
10% Partners 10 (5 each)	
Liaison Group 8	
OSA 1	
Consultants 5	
DFG 5	
Extra 30	
Partial sets - Vol 1-3, EIR/EIS & IA (12 copies x \$124)	\$ 1,488
USFWS 12	
Vol 4 – Appendix Only (4 copies x \$113)	\$ 452
USFWS 4	
EIR/EIS Only (15 copies x \$26)	\$ 390
State CH 15	
Executive Summary (300 copies X \$5.50)	\$ 1,650
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Print Total	\$ 27,780
CD Supplies (250 CDs, \$2.20/CD)	\$ 550
Mailing Supplies (assumes 50% decrease from FY 2010/11)	\$ 100
Mailing Expenses (assumes 50% decrease from FY 2010/11)	\$ 1,000
Credit for FY 2010/11 Printing Savings	(\$ 4,000)
TOTAL ESTIMATE	\$ 25,430 (~\$26,000)

Background Data on Closed Contracts

Jones and Stokes (ICF International) – BC# 4300003168 & BC# 4300004449

- Professional Services Agreement (PSA) - original term 2/28/06 to 6/30/10; not to exceed \$335,829 (\$310,829 + \$25,000 contingency). Delegation of Authority until 6/30/10.
 - Phase 1 Annual Project Agreement (2/28/06 to 6/30/07) - \$165,514
 - Phase 2 Annual Project Agreement (7/1/07 to 6/30/08) - \$119,175 (including rollover Phase 1 costs of \$11,659 for contract and \$10,572 for contingency and \$96,044 Phase 2 expenses)
 - Phase 3 Annual Project Agreement (7/1/08 to 6/30/09) - \$114,347 (including rollover Phase 2 costs of \$30,204 for contract and \$10,572 for contingency and \$73,571 Phase 3 expenses)
 - Phase 1 expenditures (4300003168) - \$145,630
 - Phase 2 and Phase 3 expenditures (4300004449) - \$134,668
- **\$280,298 spent**
- Public outreach program services

	A	B	C	D	F	G	H	I	J	L	M	O	P	R	S	U	V	X	Y	AA	AC
1			Contract Total	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009		FY 2010		FY 2011		Balance/ (Liquid)	Spent To Date		
2				Encumb	Expense	Encumb	Expense	Encumb	Expense	Encumb	Expense	Encumb	Expense	Encumb	Expense	Encumb	Expense				
3																					
4	On-Going																				
5	Albion		62,340					7,340	1,135	20,000	14,913	12,500	23,343	22,500	22,010		437	502	61,838		
6	CH2M HILL		66,061											66,061	20,549		15,450	30,062	35,999		
7	J&S/Plan		3,013,343			843,089	566,413	963,238	624,785	250,000	509,295	692,996	581,108	491,500	407,930	240,000	202,317	121,495	2,891,848		
8	J&S/Public		84,412											84,412	38,229		7,748	38,435	45,977		
9	Land Use Plan		735,100			150,000	149,924	123,000	123,014	123,000	123,000	123,525	122,745	125,100	124,919	90,475	64,992	25,483	708,594		
10	MIG		287,510			287,510	30,798		50,529				73,881		40,956		28,124	6,900	56,322	231,188	
11	Res Law		331,000							176,000	31,311		67,513		75,000	125,405	63,362	43,409	287,591		
12	Willdan		74,172											59,172	25,082	15,000	20,841	28,249	45,923		
13																					
14	Closed																				
15	J Smith		40,000			9,000		6,000	12,400	20,000	10,330	5,000	9,375		4,250			-3,645	36,355		
16	CH2M HILL		386,451							251,451	193,033		58,418	135,000	68,939			-66,061	320,390		
17	J Florsheim		6,000					6,000	5,019									-981	5,019		
18	Jones & Stokes		335,829			165,514	93,405		44,635	100,000	83,455	114,347	58,803					-55,531	280,298		
19	K Rose		11,000			11,000			5,611									-5,389	5,611		
20	K Schreiber		96,000	96,000	93,350													-2,650	93,350		
21	Kleinschmidt		75,430			75,430	13,830		42,271									-19,329	56,101		
22	R White		9,000			6,000		3,000	5,000									-4,000	5,000		
23	S Barry		9,000			9,000			5,111									-3,889	5,111		
24	SFEI		15,000					15,000	14,000									-1,000	14,000		
25	S Beissinger		9,000			9,000			5,167									-3,833	5,167		
26	S Harrison		9,000					9,000	5,000									-4,000	5,000		
27	Willdan		185,900			185,900	4,000		19,500		109,552		52,236					-612	185,288		
28	*MacTec/SCVWD		50,000	50,000	50,000													0	50,000		
29	*MOU Fac/CSJ		10,000	10,000	10,000													0	10,000		
30	Svcs & Sup		3,624					3,624	3,624									0	3,624		
31																					
32	TOTALS		5,905,172	156,000	153,350	175,1443	858,370	1,136,202	966,801	940,451	1,148,770	948,368	1,014,497	1,058,745	865,437	425,475	382,047		5,389,272		
33																					
34	* Includes 2003 & 2004 Expenses																				

Santa Clara Valley Habitat Plan Contract Summary

Updated 2/1/11

HCP/NCCP COST ALLOCATION FY 2010/11 PROPOSAL --- 2.01.11	Previous Actual	FY 2004/05	FY 2005/06	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	* FY 2010/11	Previous Total FY 2004/05- FY 2010/11	** FY 2011/12 Proposal	TOTAL
GRANTS											
USFWS Section 6		240,384	281,579	401,285	184,400	-	-				1,107,648
LOCAL PARTNER FUNDING											
County of Santa Clara											
Total County Funding		136,226	136,226	123,600	120,559	116,255	89,631	167,595	890,092	130,000	1,020,092
City of San Jose											
Total City Funding (includes MOU facilitator-\$10,000 in 2003)	10,000	133,726	133,726	123,600	116,809	115,005	89,631	167,595	890,092	130,000	1,020,092
SCVWD											
Total District Funding (includes MacTec Contract-\$50,000 in 2004)	50,000	123,726	123,726	123,600	101,809	110,005	89,631	167,595	890,092	130,000	1,020,092
VTA											
Total Authority Funding		136,226	136,226	123,600	120,559	116,255	89,631	167,595	890,092	130,000	1,020,092
City of Gilroy											
Total City Funding		55,000	55,000	61,800	79,949	64,685	44,815	83,797	445,046	65,000	510,046
City of Morgan Hill											
Total City Funding		55,000	55,000	61,800	79,949	64,685	44,815	83,797	445,046	65,000	510,046
HCP/NCCP LOCAL FUNDING	60,000	639,904	639,904	618,000	619,634	586,890	448,154	837,974	4,450,460	650,000	5,100,460
Total Section 6 Funding		240,384	281,579	401,285	184,400						1,107,648
Total											6,208,108
* FY 2010/11 costs include County bridge loans of \$28,800/agency to Gilroy and Morgan Hill. Gilroy and Morgan Hill committed to each pay \$54,997 in FY 2010/11. The County anticipates repayment of the \$28,800/agency in FY 2011/12.											
** FY 2011/12 costs include repayment to County for consultant costs incurred in previous fiscal years, totaling \$282,000.											
Actual FY 2011/12 cost share for County would be \$73,600 (\$650,000 - \$282,000 = \$368,000 x 20% = \$73,600).											
Gilroy and Morgan Hill's costs include the \$65,000 payment for FY 2011/12 (10% share) plus the \$28,800 repayment of the County bridge loan, for a total FY 2011/12 cost of \$93,800 for each city.											



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: February 17, 2011

AGENDA ITEM 5

TO: Governing Body Liaison Group

FROM: Management Team and Local Partner's Attorneys Group

SUBJECT: Memorandum of Understanding (formerly known as the "Cooperative Agreement") re Implementation of the Santa Clara Valley Habitat Plan

PREPARED BY: Lizanne Reynolds, Santa Clara County Counsel's Office

Purpose of this Staff Report: Provide the Liaison Group with an initial overview of the elements of a MOU that Management Team and the Local Partner's Attorneys Group have been working on.

Next Steps After Liaison Group Review: A full draft of the MOU will be provided at the April Liaison Group meeting. The MOU will be forwarded with the proposed JPA wording for Local Partner and Open Space Authority review subsequent to the April Liaison Group meeting.

Recommendation: It is recommended that the Liaison Group review the attached MOU framework and identify questions and issues that are of interest or concern.

Discussion: The Management Team, Attorney Group and Liaison Group members have been discussing the need for a "cooperative agreement" for some time. One of the reasons for this separate agreement is that not all of the Local Partners are members of the JPA. The MOU would also provide a mechanism to recognize the involvement of the Open Space Authority, which is not a Permittee.

The parties to the MOU would be the Local Partners, the JPA, and the Santa Clara County Open Space Authority. The MOU would provide a framework for how the parties intend to work together to address a variety of issues related to implementation of the Habitat Plan, including the following:

- the roles, rights and obligations of the parties;
- how the Local Partners will be compensated for contributions to Habitat Plan implementation responsibilities;
- how the JPA and Local Partners will address potential Habitat Plan and Permit amendments;
- procedures for Local Partner withdrawal from the Habitat Plan/Permits;
- procedures for termination of the Habitat Plan/Permits by all of the Local Partners;

- the JPA’s indemnification and contribution obligations to the Local Partners for lawsuits;
- procedures for addressing the JPA’s failure or inability to perform its obligations;
- JPA contractor selection criteria;
- a nonbinding dispute resolution process; and
- a timeline for addressing post-Permit issues, including dissolving the JPA and transferring its responsibilities to successor(s).

Attachments: *Santa Clara Valley Habitat Plan Memorandum of Understanding—2-9-11*

Copies: Stakeholder Group

Santa Clara Valley Habitat Plan
Memorandum of Understanding

This Memorandum of Understanding (“MOU”) dated _____ (“Effective Date”), is entered into by and among the Santa Clara Valley Habitat Agency (“JPA”), the County of Santa Clara (the “County”), the City of San Jose (“San Jose”), the Santa Clara Valley Water District (“SCVWD”), the Valley Transportation Authority (“VTA”), the City of Gilroy (“Gilroy”), the City of Morgan Hill (“Morgan Hill”), and the Santa Clara County Open Space Authority (“OSA”). The parties may be referred to collectively as the “Parties” and individually as a “Party” in this MOU.

RECITALS

A. The County, San Jose, SCVWD, VTA, Gilroy and Morgan Hill (collectively, “Local Partners”) have been engaged in a lengthy process to develop a joint habitat conservation plan and natural communities conservation plan entitled the “Santa Clara Valley Habitat Plan” (“Habitat Plan”).

B. The purposes of the Habitat Plan include the long-term protection of ecosystems and biodiversity with the geographic area covered by the Habitat Plan, and the provision of incidental take authorization pursuant to the Federal Endangered Species Act and the California Natural Community Conservation Planning Act for local land use and public agency infrastructure activities.

C. The Habitat Plan and the Santa Clara Valley Habitat Plan Implementing Agreement (“Implementing Agreement”) identify certain duties and obligations that must be fulfilled, in whole or in part, by an “Implementing Entity.”

D. The Local Partners determined that it was appropriate to establish a joint powers agency to serve as the Implementing Entity for the Habitat Plan. The Joint Powers Act, Gov. Code § 6500 et seq., requires that all parties to a joint powers agreement have common powers. One of the primary functions of the joint powers agency is to adopt mitigation fees for development projects pursuant to the Mitigation Fee Act, Government Code § 66000 et seq., to help finance Habitat Plan implementation activities. Because only certain of the Local Partners (the County, San Jose, Morgan Hill and Gilroy) have clear authority to adopt mitigation fees, the Local Partners determined that the parties to the joint exercise of powers agreement (“JPA Agreement”) creating the Santa Clara Valley Habitat Agency would be limited to the County, San Jose, Morgan Hill and Gilroy. Nonetheless, because the Implementing Agreement and the Permits associated with the Habitat Plan provide that all Local Partners are responsible for ensuring that the Habitat Plan is fully implemented, all of the Local Partners will play a role in the Santa Clara Valley Habitat Agency.

E. The OSA will also play a critical role in Habitat Plan implementation. It is anticipated that OSA will contribute land to the Habitat Plan Reserve System. The OSA may also undertake management, monitoring and other activities and provide other services related to implementation of the Habitat Plan.

NOW, THEREFORE, the Parties, for and in consideration of the mutual promises and agreements herein contained, agree as follows:

1. Purposes.

The purposes of this MOU are to:

- Further define the roles, rights and responsibilities of the Parties with respect to Habitat Plan implementation activities;
- Explain the relationships between the Parties;
- Establish processes for resolving disputes and addressing other issues that may arise with respect to the Habitat Plan;

[others?]

2. Definitions.

Unless the context otherwise requires, the terms used in this MOU shall have the same definitions as provided in the Implementing Agreement.

3. Local Partner and JPA Roles.

(a) All of the Local Partners are Permittees and parties to the Implementing Agreement. Therefore, all of the Local Partners must ensure that they comply with the Habitat Plan and Permits. However, although each Local Partner must ensure that its own actions comply with the Plan and Permits, the primary responsibilities for implementing the Habitat Plan rests with the JPA. Among other things, the JPA is responsible for ensuring that there is sufficient funding to perform all implementation activities, including activities during the permit term and in perpetuity. Except for paying SCVHP Fees associated with their own projects and, where applicable, collecting SCVHP Fees from private project applicants and transmitting SCVHP Fees to the JPA, the Local Partners are not expected to fund implementation activities. These roles and responsibilities are more fully described in Chapter 8 of the Habitat Plan.

(b) Although VTA and SCVWD are not parties to the JPA Agreement, all of the Local Partners will play an active role in the JPA through, among other things, their representatives on the Governing Board. The fact that VTA and SCVWD are not parties to the JPA Agreement should not be viewed in any way as diminishing their rights and responsibilities with respect to the Habitat Plan or Permits as compared to the County, San Jose, Gilroy and Morgan Hill.

4. OSA Role.

(a) Although OSA is not a Permittee, the Parties anticipate that OSA will play a critical role in contributing land and potentially other resources that will assist with fulfilling Habitat Plan implementation responsibilities. Exhibit __, which is attached hereto and incorporated by reference herein, are the “Principles of Participation in the Santa Clara Valley Habitat Plan” that were adopted by the OSA Board on September 9, 2010.

(b) The JPA and OSA may choose to enter into an agreement whereby “take” authorization under the Permits is extended to OSA in exchange for adequate consideration.

5. Compensation for Local Partner Contributions to Implementation Requirements.

The Local Partners may contribute land, provide services, or undertake other activities (e.g., habitat creation, restoration, monitoring) that fulfill Habitat Plan implementation requirements. The process by which the JPA will evaluate the value of these contributions and give credit to the Local Partners for these “in lieu” activities is set forth in Section 9.4.1 of the Habitat Plan.

6. Implementation Funding Shortfalls.

(a) Although the Parties believe that the cost and funding assumptions in the Habitat Plan are sound, there is always the possibility that there will be funding shortfalls and/or that the costs of implementing the Habitat Plan exceed expectations. As set forth in the Habitat Plan and Implementing Agreement, the JPA is responsible for implementation and any funding shortfalls, and for ensuring that SCVHP Fees keep pace with Habitat Plan implementation costs. Except for SCVHP associated with their own Covered Activities, the Local Partners are not expected to contribute any of their funds toward Habitat Plan implementation.

(b) If there is a funding shortfall, the JPA will take all feasible steps to address the funding shortfall, including but not limited to seeking loans from all possible sources.

(c) If, despite all reasonable efforts, the JPA is unable to address a funding shortfall, the Local Partners will meet and confer regarding how to proceed. Options that may be considered include, but are not limited to, loans from one or more Local Partners to the JPA, relinquishing the permits, and/or amending the Habitat Plan and Permits.

(d) No Local Partner shall be required to provide funding to the JPA. If a Local Partner, in the sole discretion of its governing body, agrees to provide funding to the JPA, it may do so on condition that the JPA either provide the Local Partner with credit toward future SCVHP Fees or repay the loan at a future date.

7. Habitat Plan/Permit Amendments.

(a) There are a variety of reasons why the Local Partners may want or need to amend the Habitat Plan and Permits over the 50-year term, including but not limited to the following:

- to add or remove Covered Species;
- to expand or retract the Permit Area boundaries;
- to add a Permittee;
- to address a significant funding shortfall that cannot be addressed through any feasible means;
- to reflect significant changes in Habitat Plan assumptions (e.g., the amount or timing of “Take”); or
- to provide for additional Covered Activities.

(b) If the JPA or one or more of the Local Partners desires to amend the Habitat Plan and Permits, then that Party shall notify the JPA and all of the Local Partners of this desire and provide an explanation of the proposed amendment and reasons for the amendment.

(c) Upon being notified by the JPA or a Local Partner of a request to amend the Habitat Plan and Permits, the JPA and all Local Partners will meet and confer regarding whether to proceed with the proposed amendment.

(d) The costs associated with any amendment to the Habitat Plan and Permits (including but not limited to preparation, analysis and approval of the amendment documents and implementation responsibilities resulting from the amendment) shall be borne by the Local Partners in manner that reflects the relative benefit of the amendment to each Local Partner. A cost allocation shall be mutually agreed upon by the Local Partners before any costs are incurred in relation to the amendment. Any Local Partner that commences work on an amendment prior to this proceeds at its own risk.

(e) Any decision to seek an amendment to the Habitat Plan and Permits, and the cost allocation associated with the amendment, shall be approved by the governing bodies of all of the Local Partners before any work is begun or any costs are incurred in relation to the amendment. Any Local Partner that commences work on an amendment prior to this proceeds at its own risk.

8. Withdrawal.

(a) If a Local Partner decides to withdraw from the Implementing Agreement and relinquish its Permits, it shall first provide 180 days written notice to the JPA and other Local Partners. Notwithstanding such withdrawal, the withdrawing Local Partner shall remain obligated, to the same extent, if any, that the remaining Parties are obligated, to contribute amounts necessary to pay any debts, liabilities and obligations of the JPA arising from or related to actions taken by the JPA while the withdrawing party was a party to the Implementing Agreement. Upon withdrawal, the withdrawing party shall no longer be a Party to this MOU or a Local Partner, and the term "Parties" and "Local Partners" as used in this MOU shall thereafter mean the remaining Parties and Local Partners to this MOU.

(b) Within 30 days after receiving a notice of withdrawal, the Parties who will remain will meet to discuss whether any amendments to the Habitat Plan, Permits or Implementing Agreement are necessary or appropriate in light of the withdrawal, and to prepare any appropriate amendments for consideration by the governing bodies of the remaining Parties. The requirements of this provision are intended to be in addition to any notice or other requirements set forth in the Implementing Agreement or Permits pertaining to withdrawal from or termination of the Habitat Plan or Permits.

9. Termination by All Local Partners.

If the governing bodies of all of the Local Partners agree to relinquish the Permits and terminate the Implementing Agreement, then the JPA and Local Partners will undertake a process to discuss and resolve the following issues:

- calculating and funding the amounts necessary to pay any debts, liabilities and obligations of the JPA arising from or related to actions taken by the JPA while the Permits and Implementing Agreement were in effect, including but not limited to funding any endowment necessary for ongoing obligations related to Reserve System lands; and
- identifying one or more successor(s) to fulfill the continuing obligations of the JPA.

The dispute resolution process in Section 14 of this MOU may be used for this purpose.

10. Remedies for Habitat Plan/Permit/Implementation Agreement Violations.

(a) Although the Wildlife Agencies will issue separate permits to the JPA and Local Partners, the obligations imposed by the Habitat Plan, Implementation Agreement and Permits operate collectively. Therefore, if the JPA or a Local Partner violates the Habitat Plan, Implementation Agreement or Permits in a way that puts the overall Habitat Plan or Permits at risk or subjects the JPA and/or Local Partners to an enforcement action, then the other Parties may take any and all action against the violating Party to remedy the noncompliance, including but not limited to filing a lawsuit seeking injunctive relief or specific performance.

(b) The Parties shall engage in the dispute resolution process set forth in Section 14 of this MOU prior to filing a lawsuit for an alleged violation. The dispute resolution process is not required, however, if there is a threat of imminent harm to any Party or if the Wildlife Agencies have notified the Parties of their intent to suspend the Permits or undertake other enforcement action.

11. Indemnification.

(a) Except as provided in Section 13(c) of this MOU, the JPA shall indemnify, defend and hold harmless all of the Local Partners and their officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, the adoption, execution, performance or implementation of the Habitat Plan, the EIR/EIS, the Permits, the Implementing Agreement, the JPA Agreement or this MOU. The JPA shall reimburse the Local Partner(s) for all reasonable costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation or action in which the JPA is obligated to indemnify, defend and hold harmless the Local Partner(s) under this Agreement.

(b) Pursuant to Government Code section 895.4, the Local Partners are entitled to indemnity and contribution from the JPA upon any liability arising out of or related to the performance of the Implementing Agreement, the JPA Agreement or this MOU.

(c) It is the intent of the parties that the provisions of this Section 11 provide the broadest possible coverage for the Local Partners. The JPA shall obtain and maintain sufficient insurance to fulfill its obligations in this Section 11.

12. JPA Failure/Inability to Perform.

(a) If, for any reason, the JPA is unable or unwilling to perform its implementation duties, then the Local Partners will meet and confer regarding how to proceed. Options that may be considered include, but are not limited to, recommending that the parties to the JPA Agreement dissolve the JPA and that the Local Partners establish a new implementing entity or reallocate Habitat Plan implementation obligations.

(b) If a particular Local Partner or its representatives to the Governing Board or Implementation Board are preventing the JPA from fulfilling its duties, then the other Local Partners shall notify the governing body of the Local Partner that is preventing the JPA from fulfilling its duties and request that the governing body promptly address the situation. If the situation is not resolved within 60 days, the other Local Partners may seek judicial relief, including but not limited to requesting that the court reform the JPA Agreement without the consent of the Local Partner that is preventing the JPA from fulfilling its duties.

13. Compensation for Services/Activities Provided to JPA.

(a) Due to the necessity and desire to keep Habitat Plan implementation costs as low as possible, the JPA may contract for many goods and services. In procuring goods and services, the JPA will utilize a selection process that is fair, objective and impartial, and is intended to result in the selection of a provider that provides the best value and meets the needs of the JPA. The Parties acknowledge that they are not entitled to any rights or preferences in the JPA's selection process. If a Party believes that it has been treated unfairly during any JPA selection process, it may invoke the dispute resolution process set forth in Section 14 of this MOU.

(b) If a Party provides services to the JPA, it may negotiate with the JPA to be compensated with cash or credits toward SCVHP Fees. The form of compensation may be a factor that the JPA considers during its selection process.

(c) If a Local Partner contracts with the JPA to provide land, services or perform other activities on behalf of the JPA, then any indemnity and defense responsibilities related to that arrangement shall be addressed in the agreement for the particular goods and services, and the indemnification and defense provisions in Section 11 of this MOU shall not apply.

14. Dispute Resolution Process.

In addition to the other provisions of this MOU that require the Parties to engage in the dispute resolution process in this Section, any Party may request that the Parties voluntarily engage in the dispute resolution process set forth in this Section at any time and for any reason related to the Habitat Plan, Permits, Implementing Agreement or any matters related thereto.

(a) Informal Negotiations Before Mediation. Any negotiations the Parties may undertake to resolve disputes before Mediation is initiated are for settlement purposes only and are not binding.

(b) Mediation.

(i) Non-Binding Nature of Mediation. If any dispute or issue related is not resolved through informal negotiations, the Parties agree to attempt to resolve the matter through mediation. Any mediation is voluntary, non-binding, and intended to provide an opportunity for the Parties to arrive at a mutually agreeable solution.

(ii) Initiation of Mediation. Any Party may initiate mediation for any dispute or issue related to this MOU by submitting a written request for mediation to the other Parties involved in the dispute. The request for mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and telephone numbers of those who will represent the Party submitting the request for mediation.

(iii) Selection of Mediator. Within 14 days of receiving a request for mediation, the involved Parties shall meet and confer to select a mediator agreeable to the Parties. Any mediator selected shall have expertise in the area of the dispute and be knowledgeable about the mediation process. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Before accepting an appointment as mediator, the prospective mediator shall be required to disclose all circumstances likely to create a perception of bias or prevent a prompt meeting with the Parties. Upon receipt of such information, the Parties will meet and confer and decide whether to select another mediator.

(iv) Representation During Mediation. The Parties may be represented by persons of their choice, who shall have full authority to negotiate on behalf of the Party they represent. The names, addresses, and telephone numbers of such representatives shall be communicated in writing to all Parties and the mediator.

(v) Time and Place of Mediation. The Mediator shall set the time of each mediation session. The mediation shall be held at any convenient location within Santa Clara County that is agreeable to the mediator and the involved Parties. All reasonable efforts will be made by the Parties and the mediator to schedule the first session within thirty (30) days after selection of the mediator.

(vi) Identification of Matters in Dispute. At least 10 days before the first scheduled mediation session, each involved Party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the mediator's discretion, the memoranda may be mutually exchanged by the Parties.

(vii) Authority of Mediator. The mediator shall not have authority to impose a settlement on the Parties, but will attempt to assist the Parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the

dispute, provided the Parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the Parties, as determined by the mediator.

(viii) Privacy. Mediation sessions are private. The Parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the Parties and consent of the mediator.

(ix) Confidentiality. Confidential information disclosed to a mediator by the Parties or by witnesses in the course of mediation shall not be divulged by the mediator or the Parties. All records, reports, and other documents and information produced during mediation shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or a judicial forum. The Parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceedings any of the following: (a) views expressed or suggestions made by the other Party with respect to a possible settlement of the dispute; (b) statements made by the other party in the course of the mediation proceedings; (c) proposals made or views expressed by the mediator; or (d) whether the other Party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

(x) No Record of Proceedings. There shall be no stenographic or other record of the mediation proceedings.

(xi) Termination of Mediation. The mediation may be terminated in any of the following ways: (a) by the execution of a settlement agreement by the Parties; (b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or (c) by a written declaration of any Party to the mediation that it is terminating the mediation proceedings.

(xii) Interpretation and Application of These Mediation Provisions. The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibilities.

(xiii) Expenses. The expenses of witnesses for each Party shall be borne by the Party producing the witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator, the expenses of any witness called by the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be as agreed by the Parties prior to commencement of the mediation.

15. Term of MOU.

This MOU shall remain in effect until it is terminated by mutual agreement of the Parties.

16. Post-Permit Issues.

The Parties anticipate that the JPA will be dissolved at the end of the 50-year Permit term and that one or more successor entities will need to be identified to fulfill the implementation responsibilities that will continue in perpetuity. In light of this, the Parties agree as follows:

- By no later than the beginning of year 45 of the Permit term, the Parties will begin the process of identifying all implementation responsibilities that will continue beyond the 50-year Permit term and related funding requirements (e.g., endowment for continuing obligations related to Reserve System lands);
- By no later than the end of year 48, the Parties will have identified one or more successor entities to fulfill the implementation responsibilities beyond the 50-year Permit term and a transition plan will have been completed; and
- By no later than the end of year 49, agreements with the successor entity(ies) will be in place and implementation of the transition plan will have begun.

[Additional “boilerplate” items to be added include: notice, choice of law, severability, counterparts]

[Signature block]