

CONFORMED COPY

File No.: 18-0721

Agenda Date: 10/9/2018

Item No.: 6.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Funding Agreement for up to \$8 million under the Safe, Clean Water and Natural Flood Protection Program - Partnerships for the Conservation of Habitat Lands Project D7 with the Santa Clara Valley Habitat Agency.

RECOMMENDATION:

Approve a Funding Agreement with the Santa Clara Valley Habitat Agency for up to \$8 million under the Safe, Clean Water and Natural Flood Protection Program - Partnerships for the Conservation of Habitat Lands Project D7.

SUMMARY:

This memo proposes a partnership agreement with the Santa Clara Valley Habitat Agency (Agency) under the Safe Clean Water Program (Program) -- Project D7, to fulfill the benefits specified by the Program. On July 11, 2017, the Board directed the CEO to negotiate a Project D7 partnership agreement with the Agency to support land acquisition. The Agreement (Attachment 1) incorporates, as its Exhibit B, the Criteria for Allocation of Partnership Funding to the Agency for the Conservation of Habitat Lands to specify how D7 benefits are met through the Valley Habitat Plan (Habitat Plan) implementation.

In November 2012, the voters approved the countywide Safe, Clean Water Program, a 15-year special parcel tax. The Program identified five priorities; the Priority D goal is to Restore Wildlife Habitat and Provide Open Space. Included is Project D7 -- Partnerships for Conservation of Habitat Lands intended to provide up to \$8 million to acquire habitat land to preserve local ecosystems and implement the Habitat Plan.

The Habitat Plan specifies the conditions for a fifty-year incidental take permit for endangered species. This gives the 'co-permittees' - the District, Santa Clara County and the cities of San José, Gilroy and Morgan Hill - long-term regulatory coverage for public and private projects. The Habitat Plan sets fees to compensate for impacts to 19 species. The fees are used by the Agency to acquire preserve areas which are managed to meet requirements specified by the federal Endangered Species Act (ESA), the Natural Communities Conservation Plan per the California Natural Conservation Planning Act (NCCP), and the California Endangered Species Act (CESA).

In May 2013, the Agency was formed to implement the Habitat Plan under a Joint Powers Authority between Santa Clara County and the cities of San José, Gilroy and Morgan Hill; and a MOU (Attachment 2) with the District, the Valley Transportation Authority and the Open Space Authority. Director LeZotte has been the District representative on this Habitat Agency Implementation Board since its inception.

The Habitat Plan has streamlined permit acquisition for District dam, pipeline, and recharge facilities. Critically, the Habitat Plan is the vehicle to fulfill key ESA requirements applicable to the Anderson Dam Seismic Retrofit project. The Habitat Plan identifies mitigation for the Coyote Ceanothus population that will be removed by the construction and specifies acquisition or creation of another population prior to reconstruction of the dam.

FINANCIAL IMPACT:

Funding in the amount of \$1 million dollars of Safe Clean Water Program monies have been budgeted for FY2018/2019, with another \$7 million earmarked for this agreement identified in the Safe Clean Water Program forecast through FY 2025. Additional SCW D7 funding for land acquisition that may be needed would require Board approval and a budget adjustment.

CEQA:

The Santa Clara Valley Habitat Plan, Environmental Impact Report was prepared in August 2012, by the Santa Clara Valley Habitat Agency, the lead agency under CEQA. The District Board of Directors, acting as a responsible agency, adopted the Habitat Plan and the EIR on September 25, 2012; the Habitat Plan identifies acquisition of land to be enrolled under conservation easement as preserve areas.

ATTACHMENTS:

Attachment 1: Funding Agreement

Attachment 2: SCVHP Memorandum of Understanding

UNCLASSIFIED MANAGER:

Kurt Arends, 408-630-2284

October 24, 2018

Mr. Edmund Sullivan
Executive Officer
Santa Clara Valley Habitat Agency
535 Alkire Avenue, Suite 100
Morgan Hill, California 95037

Subject: Funding Agreement for the SCW and Natural Flood Protection Program
Partnership for the Conservation of Habitat Lands, Project No. D7

Reference: SCVWD Board Approval 100918-6.2

Enclosed please find a fully executed original copy of the aforementioned agreement between the Santa Clara Valley Water District and the Santa Clara Valley Habitat Agency which was approved by the Santa Clara Valley Water District Board of Directors on October 9, 2018.

Should you have any questions regarding the enclosed documents, please feel free to contact me at (408) 630-2306.

Sincerely,



Eva Sans
Assistant Deputy Clerk II
Office of Clerk of the Board

Enclosure: (1)

cc: Board Files
Accounting
Contracts
Kurt Arends, Debra Caldon

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**FUNDING AGREEMENT FOR THE
SAFE, CLEAN WATER AND
NATURAL FLOOD PROTECTION PROGRAM
PARTNERSHIPS FOR THE CONSERVATION OF HABITAT LANDS
PROJECT D7
BY AND BETWEEN
THE SANTA CLARA VALLEY WATER DISTRICT
AND THE SANTA CLARA VALLEY HABITAT AGENCY**

This Funding Agreement for the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program) Partnerships for the Conservation of Habitat Lands Project D7 (Project D7) ("AGREEMENT"), for reference dated October 23, 2018, is made and entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a special district of the State of California (hereinafter "DISTRICT") and the SANTA CLARA VALLEY HABITAT AGENCY, a joint powers authority (hereinafter "AGENCY"). The DISTRICT and AGENCY are collectively the "Parties" and each a "Party" to this AGREEMENT.

WHEREAS, the cities of Morgan Hill, Gilroy and San Jose, the County of Santa Clara, the DISTRICT, and the Santa Clara County Valley Transportation Authority adopted, in August 2012, the Santa Clara Valley Habitat Plan Implementing Agreement ("IMPLEMENTING AGREEMENT") which runs for 50 years; and

WHEREAS, the IMPLEMENTING AGREEMENT identifies the DISTRICT as a Permittee along with the other signatories, and provides that Permittees receive federal Endangered Species Act (ESA) incidental take authorization and state coverage for certain "covered species" and "covered activities," including infrastructure projects and operations and maintenance activities, identified in the 2013 Santa Clara Valley Habitat Plan ("Habitat Plan"), that the Permittee intends to implement over the fifty-year permit term; and

WHEREAS, the Permittees agreed to substantial commitments of land, natural resources, financial resources, human resources and other assets to conserve and manage the covered species, their habitats and other natural communities; and

WHEREAS, the IMPLEMENTING AGREEMENT contains detailed terms addressing topics such as implementation roles and responsibilities in Section 6.6 (including dispute resolution), monitoring, adaptive management and changed circumstances in Section 11, funding in Section 13, reporting and information management in Section 14, and remedies and enforcement in Section 16; and

WHEREAS, in November 2012, the voters of Santa Clara County-approved Measure B, the Safe, Clean Water Program, as a countywide special parcel tax for 15 years with a sunset date of June 30, 2028; and

WHEREAS, the Safe, Clean Water Program Project D7 helps the community acquire important habitat land to preserve local ecosystems; and

WHEREAS, the Safe, Clean Water Program Project D7 supports the implementation of the Habitat Plan; and

WHEREAS, the Safe, Clean Water Program Project D7 Key Performance Indicator is to provide up to \$8 million for the acquisition of property for the conservation of habitat lands; and

WHEREAS, the cities of Morgan Hill, Gilroy and San Jose, the County of Santa Clara formed the AGENCY, and the DISTRICT and the Santa Clara County Valley Transportation Authority partnered with the other entities (referred to collectively as "Local Partners") to enter into a Memorandum of Understanding ("MOU") in May 2013, which remains in effect indefinitely; and

WHEREAS, the MOU also details Local Partner and AGENCY roles, remedies, and dispute resolution; and

WHEREAS, the AGENCY, on behalf of the Permittees, is responsible for the implementation of certain permit requirements, including identification of target preserve acquisitions and is working with the Local Partners and interested entities to identify and evaluate possible land acquisitions which would fulfill the goals of the Habitat Plan; and

WHEREAS, the MOU acknowledges that Local Partners may contribute land, provide services, or "undertake other activities (e.g., habitat creation, restoration, monitoring)" that fulfill Habitat Plan implementation requirements, and that Local Partners may, among other things, provide loans or grants to the AGENCY; and

WHEREAS, the Anderson Dam Seismic Retrofit Project is a high priority project that is a covered activity identified by the Habitat Plan; and

WHEREAS, the Anderson Dam Seismic Retrofit Project will impact the federally-listed endangered Coyote *ceanothus*, a white-flowered shrub that is only found in 3 locations in Santa Clara County, and re-construction of the dam will result in removal of a large proportion of one of the existing Coyote *ceanothus* populations that grow on it; and

WHEREAS, the Habitat Plan requires that, prior to the occurrence of impact, a new population of Coyote *ceanothus* must be created, or protected through direct purchase of land or through a conservation easement; and

WHEREAS, the DISTRICT also plans to implement critical infrastructure improvement projects, including pipeline rehabilitation, recycled water delivery expansion and seismic improvements for its water storage facilities; these projects are covered activities that will impact the federally- and state-listed endangered species, and riparian and wetland habitats identified in the Habitat Plan; and

WHEREAS, the Habitat Plan specifies a "Stay-Ahead Provision" (Habitat Plan Section 8.6.1) which requires that the conservation strategy (acquisition of appropriate mitigation property) be implemented at a pace that stays ahead of the impacts on habitat or covered species; and

WHEREAS, the DISTRICT has developed funding criteria for the allocation of Project D7 funds that the AGENCY may utilize as guidelines in its mission, and will also

help achieve DISTRICT objectives; and

WHEREAS, the DISTRICT requests AGENCY participation in the acquisition of properties that could fulfill current and future Valley Habitat Plan mitigation requirements related to the Anderson Dam Retrofit Project and other critical infrastructure projects identified as covered activities in the Habitat Plan.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. RECITALS.

The recitals set forth above are incorporated herein.

SECTION 2. PROJECT FUNDING.

- A. DISTRICT shall provide to AGENCY Safe, Clean Water and Natural Flood Protection Program Priority D7 funds, up to a maximum of \$8 million dollars, for the acquisition of property for the conservation and restoration of habitat lands as identified in the Santa Clara Valley Habitat Plan.
- B. AGENCY shall focus on acquisition (including related administrative costs) of types of properties specified in EXHIBIT A, entitled "PROJECT FUNDING," which is attached hereto and incorporated herein by this reference (the "Projects"). EXHIBIT A is subject to changes based on mutual agreement of the parties and as otherwise necessary due to evolving circumstances.

SECTION 3. EFFECTIVE DATE AND TERM OF AGREEMENT.

This AGREEMENT is effective on the date it is fully executed. The term of this AGREEMENT shall remain in effect until it is terminated or until the funding is fully expended subject to the provisions of SECTION 9.

SECTION 4. REPORTING.

Consistent with Chapter 8, Plan Implementation of the Santa Clara Valley Habitat Plan (August 2012), and specifically Section 8.11, Reporting, AGENCY will prepare annual reports over the term of the Habitat Plan that document permit compliance, conservation actions, management actions, restoration/creation actions, and monitoring results. Specific D7 fund expenditures shall be documented as set forth in Exhibit A.

SECTION 5. RELATIONSHIP OF PARTIES

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

himself, herself or itself to others as an employee or agent of the other.

SECTION 6. ASSIGNABILITY.

The parties agree that the expertise and experience of each of the parties are material considerations for this AGREEMENT. Neither Party shall assign or transfer any interest in this AGREEMENT nor the performance of any obligations hereunder, without the prior written consent of the other Party, and any attempt by either Party to so assign this AGREEMENT or any rights, duties, or obligations arising hereunder shall be void and of no effect.

SECTION 7. INSURANCE REQUIREMENTS.

DISTRICT agrees to have and maintain the policies set forth in EXHIBIT C, entitled "INSURANCE" which is attached hereto and incorporated herein by this reference. These requirements are subject to amendment or waiver if so approved in writing by the AGENCY'S Executive Officer and DISTRICT. DISTRICT agrees to provide AGENCY with a letter of self-insurance before execution of this AGREEMENT.

AGENCY agrees to have and maintain the policies set forth in EXHIBIT C, entitled "INSURANCE," which is attached hereto and incorporated herein by this reference. These requirements are subject to amendment or waiver if so approved in writing by the DISTRICT'S Risk Manager and AGENCY. AGENCY agrees to provide DISTRICT with a copy of said policies, certificates, and/or endorsements before execution of this AGREEMENT.

SECTION 8. NONDISCRIMINATION. AND EQUAL OPPORTUNITY

DISTRICT and AGENCY shall comply with all applicable federal, state, and local laws and regulations concerning nondiscrimination and equal opportunity in contracting and shall not in the performance of this AGREEMENT, provision of services, allocation of benefits, accommodation in facilities, or employment of personnel discriminate, in any way, against any person on the basis of race, sex/gender, color, age, religion, sexual orientation, actual or perceived gender identity or orientation, mental or physical handicap or disability, ethnicity, national origin, medical condition, political beliefs, organizational affiliations, or marital status in connection with or related to the performance of this AGREEMENT.

The DISTRICT and the AGENCY are both governmental entities and equal opportunity employers in the performance of the AGREEMENT, both will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the

request, exercise, or need for reasonable accommodation.

SECTION 9. TERMINATION.

- A. Either party shall have the right to terminate this AGREEMENT, without cause, by giving not less than thirty calendar (30) days written notice of termination to the nonterminating Party, except that if a property acquisition is in escrow, the AGREEMENT may not be terminated prior to the close of escrow.
- B. If either Party fails to perform any of its material obligations ("material breach") under this AGREEMENT, in addition to all other remedies provided by law, the Party claiming material breach may terminate this AGREEMENT immediately upon written notice. The thirty-day notice requirement set forth in section A above shall not apply for any such for-cause terminations.
- C. AGENCY's Executive Officer is empowered to terminate this AGREEMENT on behalf of AGENCY. DISTRICT's Chief Executive Officer is empowered to terminate this AGREEMENT on behalf of the DISTRICT.
- D. In event of termination by either party, the provisions of the 2013 MOU shall govern, but the funding shall continue for any acquisitions in progress, consistent with subsection (A) above, and any restoration projects in progress.

SECTION 10. GOVERNING LAW.

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

SECTION 11. COMPLIANCE WITH LAWS.

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

SECTION 12. WAIVER.

DISTRICT and AGENCY agree that waiver by either party of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by AGENCY or

DISTRICT of the performance of any AGREEMENT terms or conditions, in whole or in part, shall not be deemed to be a waiver of any other term or condition, in whole or in part, of this AGREEMENT.

SECTION 13. BOOKS AND RECORDS.

- A. DISTRICT and AGENCY shall maintain reasonably sufficient accounting ledgers, books of account, invoices, vouchers, cancelled checks, and other related records or documents for a minimum period of two (2) years from the date of termination of this AGREEMENT.

- B. Excepting confidential records, any records or documents required to be maintained shall be made available for inspection or audit at no cost to either party, upon written request by the Executive Officer or CEO, Finance Officer, and Counsel. Copies of such documents shall be provided at no cost. Unless an alternative is mutually agreed upon, the records shall be available within the County of Santa Clara at the offices of DISTRICT or AGENCY during normal entity hours of operation (Monday through Friday, excluding holidays and other closures, between the hours of 9:00am and 5:00pm only).

SECTION 14. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed postage prepaid and return receipt requested, addressed to the respective parties as follows:

To AGENCY: Edmund Sullivan, Executive Officer
Santa Clara Valley Habitat Agency
535 Alkire Avenue, Suite 100
Morgan Hill, CA 95037

To DISTRICT: Norma J. Camacho, CEO
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

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

SECTION 15. NO THIRD-PARTY RIGHTS.

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

SECTION 16. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

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

SECTION 17. SIGNATURES; COUNTERPARTS.

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

SECTION 18. CONSTRUCTION; NEGOTIATED TERMS.

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

SECTION 19. PARTIAL INVALIDITY OR ILLEGALITY.

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

SECTION 20. CAPTIONS.

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

SECTION 21. AUTHORITY.

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

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

"DISTRICT"

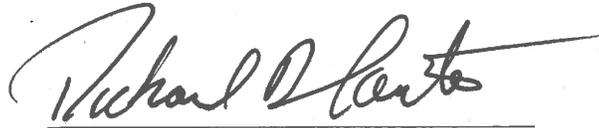
APPROVED AS TO FORM
AND LEGALITY:

SANTA CLARA VALLEY WATER DISTRICT



JOSEPH ARANDA
Assistant District Counsel

Date: October 11, 2018



RICHARD P. SANTOS
BOARD CHAIR

Date: October 9, 2018

"AGENCY"

APPROVED AS TO FORM:

SANTA CLARA VALLEY HABITAT AGENCY



VALERIE J. ARMENTO
General Counsel

Date: 10/17/2018



EDMUND SULLIVAN
EXECUTIVE OFFICER

Date: 10/23/2018

EXHIBIT A

PROJECT FUNDING

The Safe, Clean Water, D7 Project Fund can provide up to \$8 Million for the acquisition of property for the conservation of habitat lands.

The AGENCY shall acquire property for the conservation of habitat lands consistent with the DISTRICT'S established funding criteria (Exhibit B). Beginning in FY 2018-19, the DISTRICT shall deposit \$1 million with the AGENCY, which shall be set aside in a segregated account for the purposes of this AGREEMENT. The account shall be referred to as the D7 Project Fund and annual report regarding expenditures shall be documented and reported as specified below.

Eligible Expenditures

Eligible expenditures of the D7 Project Funds include twenty percent for administrative costs anticipated to be incurred in conjunction with the land acquisition process.

Administrative cost categories anticipated to be incurred for AGENCY property acquisitions are:

1. Property Appraisal
2. Phase 1 and/or Phase 2 Environmental Assessments
3. Infrastructure (i.e. roads, grazing related, buildings, etc.) Assessments
4. Title Reports & Title Insurance
5. Property Insurance
6. Broker's Fees
7. Legal Fees
8. Transaction Costs
9. Interest on any loans secured to purchase property (from NGOs such as Moore Foundation, Conservation Legacy Fund, or POST).
10. Property Surveys
11. Biological Surveys
12. Potential Demolition of Buildings etc.
13. AGENCY staff time related directly to land acquisition as specified in the MOU.

Reporting and Accountability

The AGENCY process for the development of an annual budget, and accounting and reporting practices is specified in Sections 11 and 18 of Joint Exercise of Powers Agreement Creating the AGENCY. In addition, DISTRICT Board members serve on the Implementation Board and participate in the budgeting and financial review process. Fund expenditures will be tracked and reported to the AGENCY Governing Board and Implementation Board through the existing budget and reporting process. The AGENCY will add the D7 Project Fund proposed expenditures as a budget line item for Governing Board adoption in June; each September the AGENCY will document D7 expenditures by cost category as part of the End of Year Report of the previous year for Governing Board and Implementation Board review and approval.

Additional D7 funding requests may be made to the DISTRICT Board of Directors and should include a fiscal and program progress report, or if associated with a specific land acquisition amount a description of the acquisition.

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EXHIBIT B

D7 FUNDING CRITERIA

Safe, Clean Water and Natural Flood Protection Program

In November 2012, the voters of Santa Clara County-approved Measure B, the Safe, Clean Water and Natural Flood Protection Program, as a countywide special parcel tax for 15 years with a sunset date of June 30, 2028.

The Safe, Clean Water Program identified five priorities: Priority D is “Restore Wildlife Habitat and Provide Open Space.” The eight projects under Priority D restore and protect wildlife habitat and provide opportunities for increased access to trails and open space. Funding for Priority D pays for control of non-native, invasive plants, revegetation of native species, and maintenance of previously revegetated areas. Other projects include removal of fish barriers, improvement of steelhead habitat and stabilization of eroded creek banks.

Funding from Project D7 helps the community acquire important habitat land to preserve local ecosystems. The project supports implementation of the Valley Habitat Plan, a multi-agency agreement that pools mitigation dollars to purchase large areas of habitat land for conservation.

The D7 Key Performance Indicator is to provide up to \$8 million for the acquisition of property for the conservation of habitat lands.

The Criteria for Allocation of Partnership Funding for the Conservation of Habitat Lands is provided herein.

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**Safe, Clean Water Program Project D7
Criteria for Allocation of Partnership Funding to the Santa Clara Valley Habitat Agency for the Conservation of Habitat Lands**

Safe, Clean Water Criteria		Scoring Objective	Scoring Metric(s)	Assessment Methodology		
Partnership fulfills elements of the Habitat Plan (HP) Conservation Strategy	Proposed partnership supports HP reserve system design and assembly principles to fulfill the requirements of the permit.	Proposed partnership or acquisition helps achieve: <ul style="list-style-type: none"> Protect 100 miles of streams Creation or restoration of ponds or freshwater wetlands Supports Conservation Strategy -- Natural Community Level and Species Level Goals 	Proposed partnership/area is identified in the HP reserve design or other published critical habitat or recovery plan.	Partnership area is identified as Low or not in the HP Land Acquisition Strategy.	Partnership area is identified as Medium in the HP Land Acquisition Strategy.	Partnership area is identified as High in the HP Land Acquisition Strategy.
Contributes to the recovery of special status species			Addresses critical habitat or species need(s) as specified by an adopted Recovery Plan or Habitat Conservation Plan, which have more importance.	Proposed enhancement for single species	Habitats to support several species or critical habitat or species' need as identified by a formally adopted plan.	Proposed project addresses documented critical habitat or species needs
Coordinates regional mitigation projects, resulting in less fragmented conservation lands that are more beneficial for wildlife and the environment.	Assesses how many organizations would benefit and how does the project improve coordination and/or landscape linkages between key habitat areas and existing protected areas		Funding sources and/or ability to support reduced fragmentation of conservation areas.	Grantee funding only (in addition to District grant) isolated project or acquisition.	Multiple funding sources (in addition to District grant) project or acquisition reduces fragmentation of conservation areas.	Multiple funding sources (in addition to District grant) and supports connection or enhancement of existing preserve areas.
Fulfills a portion of the District's commitment to the HP.	Fulfills Endangered Species Act (ESA)/California ESA requirements or conditions for implementation of key District covered activities		Objectives of the proposal support implementation of specific District or key partnership projects specified in the HP.	Proposed project is not a covered activity or is outside HP or Recovery Plan area.	N/A	Project would support or expedite implementation of a Safe, Clean Water project.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the indemnification of either Party in this AGREEMENT, each Party shall maintain the following insurance coverage through self-insurance coverage, commercial insurance or a combination of both (1) commercial general liability with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; (ii) workers' compensation providing statutory coverage; and (iii) professional errors and omissions liability with limits of liability not less than one million dollars (\$1,000,000) per occurrence/aggregate; AGENCY acknowledges and agrees that the DISTRICT is self-insured for the above.

SANTA CLARA VALLEY HABITAT PLAN

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into by and among the Santa Clara Valley Habitat Agency ("Agency"), the County of Santa Clara (the "County"), the City of San Jose ("San Jose"), the Santa Clara Valley Water District ("SCVWD"), the Santa Clara 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. The County, San Jose, SCVWD, VTA, Gilroy and Morgan Hill are collectively referred to as "Local Partners."

RECITALS

- A. The 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 within 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 ("Agency 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, including potential contributions of land to the Habitat Plan Reserve System and/or potentially undertake management and monitoring, and/or 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;

2. EFFECTIVE DATE

The following conditions must occur before this MOU will go into effect: 1) the Implementing Agreement must be fully executed; and 2) all parties must execute this MOU. The effective date of this MOU will occur at the date when both of the above mentioned conditions have been fulfilled.

3. DEFINITIONS

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

4. LOCAL PARTNER AND AGENCY 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 Agency. Among other things, the Agency 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 Agency, the Local Partners are not required 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 Agency Agreement, all of the Local Partners will play an active role in the Agency through, among other things, their representatives on the Implementation Board of the Agency. The fact that VTA and SCVWD are not parties to the Agency Agreement should not be viewed in any way as diminishing their rights and responsibilities established in the Habitat Plan or Permits.

5. OSA ROLE

- (a) Although OSA is not a Permittee, the Parties anticipate that OSA may contribute 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) While the OSA is not a Permittee under the Habitat Plan, the OSA has the option to apply for take authorization under the Plan as a Participating Special Entity. To receive this take authorization, the OSA would follow the procedures outlined in the Habitat Plan, including approval by the Implementing Entity and the Wildlife Agencies. To anticipate this, the estimated impacts of OSA activities on the covered species will be included in the Plan. Any Habitat Plan fees due would be offset by an equivalent value of OSA land being concurrently incorporated into the Habitat Plan Reserve System.

6. 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 Agency 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.

7. IMPLEMENTATION FUNDING SHORTFALLS

- (a) Although the Local Partners 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 Agency is responsible for implementation and any funding shortfalls, and for ensuring that SCVHP fees keep pace with Habitat Plan implementation costs. Except for SCVHP fees associated with their own Covered Activities, the Local Partners are not required to contribute any of their funds toward Habitat Plan implementation.
- (b) If there is a funding shortfall, the Agency 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 Agency 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 Agency, grants from Local Partners, government agencies or non-governmental entities, relinquishing the permits, and/or amending the Habitat Plan and Permits.
- (d) No Local Partner shall be required to provide funding to the Agency. If a Local Partner, in the sole discretion of its governing body, agrees to provide funding to the Agency, it may do so on the condition that the Agency either provide the Local Partner with credit toward future SCVHP Fees or repay the loan at a future date.

8. 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 Agency or one or more of the Local Partners desires to amend the Habitat Plan and/or Permits, then that Local Partner shall notify the Agency and all of the other Local Partners of this desire and provide an explanation of the proposed amendment and reasons for the amendment.
- (c) Upon being notified by the Agency or a Local Partner of a request to amend the Habitat Plan and Permits, the Agency 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 a 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.

9. 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 Agency, the other Local Partners and the OSA. 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 Agency arising from or related to actions taken by the Agency 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) The OSA may withdraw from the MOU upon ninety (90) days written notice to the Agency and the Local Partners. Upon withdrawal, the OSA shall no longer be a Party to this MOU, and the term "Parties" as used in this MOU shall thereafter mean the remaining Parties and Local Partners to this MOU.
- (c) 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.

10. TERMINATION BY ALL LOCAL PARTNERS

If the governing bodies of all or some of the Local Partners agree to relinquish the Permits and terminate the Implementing Agreement, then the Agency 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 Agency arising from or related to actions taken by the Agency 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 Agency.

The dispute resolution process in Section 15 of this MOU may be used for this purpose.

11. REMEDIES FOR HABITAT PLAN/PERMIT/IMPLEMENTATION AGREEMENT VIOLATIONS

- (a) Although the Wildlife Agencies will issue separate permits to the Agency and Local Partners, the obligations imposed by the Habitat Plan, Implementation Agreement and Permits operate collectively. Therefore, if the Agency 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 Agency and/or Local Partners to an enforcement action, then the other Parties may take any and all commensurate and reasonable 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 15 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.

12. INDEMNIFICATION AND INSURANCE

- (a) Except as provided in Section 14(c) of this MOU, the Agency shall indemnify, defend and hold harmless all of the Local Partners and the OSA 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 Agency Agreement or this MOU provided, however, that this obligation by the Agency shall not apply to; (1) reckless, intentional, or willful conduct leading to personal injury, or (2) any claims, demands, damages, costs, expenses or suits by one party to this MOU against one or more other parties relating to an alleged breach of either agreement. The Agency shall reimburse the Local Partner(s) and the OSA for all reasonable costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation or action in which the Agency is obligated to indemnify, defend and hold harmless the Local Partner(s) and the OSA under this MOU. Any indemnified party may elect to provide its own defense at that party's own expense.

- (b) It is the intent of the Parties that the provisions of this Section 12 provide the broadest possible coverage for the Local Partners. The Agency shall obtain and maintain insurance to provide sufficient coverage to fulfill its obligations under this Section.
- (c) Each Local Partner shall require that any consultant hired to implement this MOU obtain and maintain insurance policies to provide sufficient coverage to fulfill its obligations under this Section.
- (d) If any claim, liability, loss, injury or damage for which the Agency is obligated to indemnify, defend and hold harmless the Local Partner(s) and the OSA pursuant to this Section 12 is filed or incurred before the Agency is formed, has sufficient revenues or obtains sufficient insurance to fulfill its obligations under this Section 12, then the Local Partner(s) may bear their own their reasonable costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation or action in which the Agency is obligated to indemnify, defend and hold harmless the Local Partner(s) and the OSA under this Section 12 and recover them from the Agency at a future date, and the Agency shall not raise any defenses related to the timeliness of such a claim for recovery (e.g., statute of limitations, laches) against the Local Partner(s) or the OSA.

13. AGENCY FAILURE/INABILITY TO PERFORM

- (a) If, for any reason, the Agency 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 Implementing Agreement dissolve the Agency 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 Agency from fulfilling its duties, then the other Local Partners shall notify the governing body of the Local Partner that is preventing the Agency 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 Implementing Agreement without the consent of the Local Partner that is preventing the Agency from fulfilling its duties.

14. COMPENSATION FOR SERVICES/ACTIVITIES PROVIDED TO AGENCY

- (a) Due to the necessity and desire to keep Habitat Plan implementation costs as low as possible, the Agency may contract for many goods and services. In procuring goods and services, the Agency 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 Agency. The Parties acknowledge that they are not entitled to any rights or preferences in the Agency's selection process. If a Party believes that it has been treated unfairly during any Agency selection process, it may invoke the dispute resolution process set forth in Section 15 of this MOU.
- (b) If a Party provides services to the Agency, it may negotiate with the Agency to be compensated with cash or credits toward SCVHP Fees. The form of compensation may be a factor that the Agency considers during its selection process.
- (c) If a Party contracts with the Agency to provide land, services or perform other activities on behalf of the Agency, 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 12 of this MOU shall not apply.

15. 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. The intent of this provision is to provide an informal dispute resolution measure which is alternative to a court action.

- (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. Any Party may notify any other Party of a disagreement or dispute regarding provisions of the Habitat Plan, Permits, Implementing Agreement or any matters related thereto. That notifying Party shall first request discussion among all the Parties. The dispute may be informally resolved by consensus of the Parties. Only after proceeding through such an informal dispute resolution process described in this Section may a Party seek mediation as described in Section 15 (b).
- (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 not longer than 10 pages 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 involved 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 the sole responsibility of the Agency.

16. TERM OF MOU

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

17. AMENDMENT OF MOU

This MOU may be amended only by written agreement executed by all of the Parties.

18. POST-PERMIT ISSUES

The Parties anticipate that the Agency 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.

19. REMEDIES FOR BREACH

If a Party shall default on any obligation contained in this MOU, such default shall not excuse any Local Partner from fulfilling its respective obligations under this MOU. Any Party shall be entitled to pursue any and all legal and equitable remedies against any other Party in response to any alleged default under this MOU. Any and all of the remedies provided to the Parties hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Parties to any or all other remedies.

20. SEVERABILITY

If any court determines that a part, term, or provision of this MOU is illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected by that determination.

21. SUCCESSORS; ASSIGNMENT

This MOU shall be binding upon and shall inure to the benefit of the successors of the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties.

22. NOTICES

Notices to the Parties shall be sufficient if delivered as follows:

County of Santa Clara
County Executive
70 W. Hedding Street, 11th Floor, E. Wing
San Jose, CA 95110

City of San Jose
City Manager
200 East Santa Clara St.
San Jose, CA 95113

City of Gilroy
City Administrator
7351 Rosanna St.
Gilroy, CA 95020

City of Morgan Hill
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

Santa Clara Valley Water District
Chief Executive Officer
5700 Almaden Expressway
San Jose, CA 95118

Santa Clara Valley Transportation Authority
General Manager

3331 North First St.
Building B. Second Floor
San Jose, CA 95134

Santa Clara County Open Space Authority
General Manager
6980 Santa Teresa Boulevard, Suite 100
San Jose, CA 95119

With a copy to:

County Counsel
County of Santa Clara
70 W. Hedding St., 9th Floor, E. Wing
San Jose, CA 95110

San Jose City Attorney
City of San Jose
200 East Santa Clara St.
San Jose, CA 95113

Gilroy City Attorney
City of Gilroy
7351 Rosanna St.
Gilroy, CA 95020

Morgan Hill City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

District Counsel
Santa Clara Valley Water District
5700 Almaden Expressway
San Jose, CA 95118

General Counsel
Santa Clara Valley Transportation Authority
3331 North First St.
San Jose, CA 95134

Open Space Authority Legal Counsel
Wittwer & Parkin, LLP
147 S. River St., Suite 221
Santa Cruz, CA 95060

23. SECTION HEADINGS

All Section headings contained herein are for reference only and are not intended to define or limit the scope of any provision of this MOU.

24. COUNTERPARTS

This MOU may be executed in counterparts and so executed shall constitute one MOU which shall be binding upon all Parties. A photocopy of the fully executed MOU shall have the same force and effect as the original.

25. SIGNATURES

By affixing his/her signature below, each of the persons signing this MOU warrants and represents that he/she has read and understands the MOU, that he/she is authorized to sign this MOU, and that the Party on behalf of whom he/she signs agrees to be bound by its terms.

COUNTY OF SANTA CLARA

By: [Signature]
Jeffrey V. Smith, County Executive

Date: 4/26/13

APPROVED AS TO FORM:
~~Lori E. Pegg, Acting County Counsel~~
~~Orry P. Korb,~~

By: [Signature]
Lizanne Reynolds, ~~Acting~~ County Counsel
Deputy

Date: 4-26-13

CITY OF SAN JOSE

By: _____
Debra Figone, City Manager

Date: _____

APPROVED AS TO FORM:
Richard Doyle, City Attorney

By: _____
Vera Todorov, Senior Deputy City Attorney

Date: _____

CITY OF GILROY

By: _____
Thomas J. Haglund, City Administrator

Date: _____

APPROVED AS TO FORM:

By: _____
Linda Callon, City Attorney

Date: _____

CITY OF MORGAN HILL

By: _____
J. Edward Tewes, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Danny Wan, City Attorney

Date: _____

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COUNTY OF SANTA CLARA

By: _____
Jeffrey V. Smith, County Executive

Date: _____

APPROVED AS TO FORM:
Lori E. Pegg, Acting County Counsel

By: _____
Lizanne Reynolds, Acting County Counsel

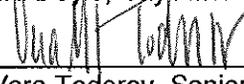
Date: _____

CITY OF SAN JOSE

By:  _____
Debra Figone, City Manager

Date: 4/11/13

APPROVED AS TO FORM:
Richard Doyle, City Attorney

By:  _____
Vera Todorov, Senior Deputy City Attorney

Date: 4/11/2013

CITY OF GILROY

By: _____
Thomas J. Haglund, City Administrator

Date: _____

APPROVED AS TO FORM:

By: _____
Linda Callon, City Attorney

Date: _____

CITY OF MORGAN HILL

By: _____
J. Edward Tewes, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Danny Wan, City Attorney

Date: _____

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COUNTY OF SANTA CLARA

By: _____
Jeffrey V. Smith, County Executive

Date: _____

APPROVED AS TO FORM:
Lori E. Pegg, Acting County Counsel

By: _____
Lizanne Reynolds, Acting County Counsel

Date: _____

CITY OF SAN JOSE

By: _____
Debra Figone, City Manager

Date: _____

APPROVED AS TO FORM:
Richard Doyle, City Attorney

By: _____
Vera Todorov, Senior Deputy City Attorney

Date: _____

CITY OF GILROY

By: _____
Thomas J. Haglund, City Administrator

Date: 4/15/13

APPROVED AS TO FORM:

By: _____
Linda Callon, City Attorney

Date: _____

CITY OF MORGAN HILL

By: _____
J. Edward Tewes, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Danny Wan, City Attorney

Date: _____

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COUNTY OF SANTA CLARA

By: _____
Jeffrey V. Smith, County Executive

Date: _____

APPROVED AS TO FORM:
Lori E. Pegg, Acting County Counsel

By: _____
Lizanne Reynolds, Acting County Counsel

Date: _____

CITY OF SAN JOSE

By: _____
Debra Figone, City Manager

Date: _____

APPROVED AS TO FORM:
Richard Doyle, City Attorney

By: _____
Vera Todorov, Senior Deputy City Attorney

Date: _____

CITY OF GILROY

By: _____
Thomas J. Haglund, City Administrator

Date: _____

APPROVED AS TO FORM:

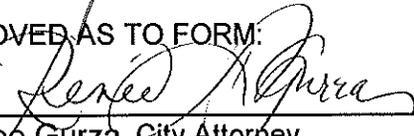
By: _____
Linda Callon, City Attorney

Date: _____

CITY OF MORGAN HILL

By:  _____
Steve Rymer, City Manager

Date: 4/18/13

APPROVED AS TO FORM:
By:  _____
Renee Gurza, City Attorney

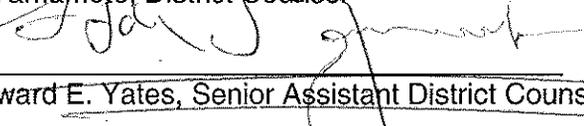
Date: 4/18/13

SANTA CLARA VALLEY WATER DISTRICT

By: 
Beau Goldie, Chief Executive Officer

Date: 4/16/13

APPROVED AS TO FORM:
Stanly Yamamoto, District Counsel

By: 
~~Edward E. Yates, Senior Assistant District Counsel~~

Date: 4/12/13

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: _____
Michael T. Burns, General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Robert Fabela, General Counsel

Date: _____

SANTA CLARA COUNTY OPEN SPACE AUTHORITY

By: _____
Andrea Mackenzie, General Manager

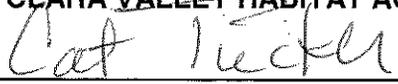
Date: _____

APPROVED AS TO FORM:

By: _____
William P. Parkin, Legal Counsel

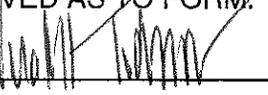
Date: _____

SANTA CLARA VALLEY HABITAT AGENCY

By: 

Date: 5/16/13

APPROVED AS TO FORM:

By: 

Date: 5/16/2013

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Beau Goldie, Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

By: _____
Stanly Yamamoto, District Counsel

Date: _____

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: Michael T. Burns
Michael T. Burns, General Manager

Date: 4/15/13

APPROVED AS TO FORM:

By: Robert Fabella
Robert Fabella, General Counsel Counsel

Date: 4/11/13

SANTA CLARA COUNTY OPEN SPACE AUTHORITY

By: _____
Andrea Mackenzie, General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
William P. Parkin, Legal Counsel

Date: _____

SANTA CLARA VALLEY HABITAT AGENCY

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Date: _____

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Beau Goldie, Chief Executive Officer

Date: _____

APPROVED AS TO FORM:
Stanly Yamamoto, District Counsel

By: _____
Edward E. Yates, Senior Assistant District Counsel

Date: _____

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: _____
Michael T. Burns, General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Robert Fabela, General Counsel

Date: _____

SANTA CLARA COUNTY OPEN SPACE AUTHORITY

By: Andrea Mackenzie
Andrea Mackenzie, General Manager

Date: 4/17/13

APPROVED AS TO FORM:
By: William P. Parkin
William P. Parkin, Legal Counsel

Date: 4/17/13

SANTA CLARA VALLEY HABITAT AGENCY

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Date: _____

**Principles of Participation
in the Santa Clara Valley Habitat Plan**

These principles are to be used later for a side agreement between the Santa Clara County Open Space Authority (OSA) and the Santa Clara Valley Habitat Plan (Habitat Plan, or Plan) Implementing Entity, once the Entity is established:

- 1) The OSA states its willingness to cooperate and partner with the Habitat Plan Implementing Entity to help implement the Plan successfully. The OSA recognizes that acquisition of habitat is consistent with its mission as an open space agency.
- 2) The OSA is not a permittee under the Habitat Plan. However, the OSA has the option to apply for take authorization under the Plan as a Participating Special Entity. To receive this take authorization, the OSA would follow the procedures outlined in the Habitat Plan, including approval by the Implementing Entity and the Wildlife Agencies. To anticipate this, the estimated impacts of OSA activities on the covered species will be included in the Plan. Any Habitat Plan fees due would be offset by the value of land acquired by the OSA to date and incorporated into the Habitat Plan Reserve System.
- 3) The OSA has no specific funding commitment towards the Habitat Plan. However, the OSA commits to working with the Habitat Plan Implementing Entity for the duration of the permit to pursue joint land acquisition that is mutually beneficial to each agency on a case-by-case basis and help the Implementing Entity meet its local land acquisition commitments in cooperation with other local agencies, non-profit organizations, and foundations. The OSA intends to leverage its funds to acquire an estimated 5,000 acres for inclusion in the Reserve System, and will make efforts to acquire an additional 2,500 acres for the Reserve System, if feasible. Roles for the OSA in land acquisition may include cooperating on land management issues, brokering a land purchase but not owning it, contributing lands to a Habitat Plan acquisition and owning the land, or owning and managing land acquired by the Implementing Entity in exchange for management funding. The OSA's acquisitions and funding that is ultimately committed to the Habitat Plan are not to be used for mitigation, but are to be allocated instead to species recovery and conservation on an ecosystem-wide basis under the Natural Community Conservation Plan (NCCP) portion of the Habitat Plan.
- 4) Any lands that the OSA acquires in partnership with the Implementing Entity would meet the requirements of the Habitat Plan including a conservation easement and incorporation into a reserve unit management plan. The conservation easement would require management in perpetuity by the Implementing Entity consistent with the Habitat Plan and allow for compatible public access such as unpaved multi-use trails. The OSA does not expect to be directly reimbursed for the cost of land acquisition or conservation easement dedication for land that it continues to own; the OSA's evaluation of projects on a case-by-case basis allows the OSA to consider the financial benefits the OSA will receive through grant funding under the Plan and funding for management before granting a conservation easement.

