

**JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE SANTA CLARA VALLEY HABITAT AGENCY**

[_____, 2012]

SANTA CLARA VALLEY HABITAT AGENCY JOINT EXERCISE OF POWERS AGREEMENT

This Joint Exercise of Powers Agreement (“Agreement”) is entered into by and among the County of Santa Clara, a political subdivision of the State of California (the “County”), the City of San Jose, a municipal corporation duly organized and existing under the laws of the State of California (“San Jose”), the City of Gilroy, a municipal corporation duly organized and existing under the laws of the State of California (“Gilroy”), and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California (“Morgan Hill”). The parties may be referred to collectively as the “Parties” and individually as a “Party” in this Agreement.

RECITALS

A. The Parties have been engaged in a lengthy process with other public entities duly organized and existing under the laws of the State of California, including the Santa Clara Valley Water District (“Water District”), and the Valley Transportation Authority, (“VTA”), to develop a joint habitat conservation plan and natural communities conservation plan entitled the “Santa Clara Valley Habitat Plan” (“Habitat Plan”). The Parties and the Water District and VTA are collectively referred to in this Agreement as the “Permittees” or “Local Partners.”

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 certain covered activities, including local land use and public agency infrastructure activities.

C. The Habitat Plan and that certain agreement entitled 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 (the “Implementing Entity”). Therefore, the Permittees have a common interest in creating such an Implementing Entity, which shall be the Agency created hereby.

D. The Joint Exercise of Powers Act (“JPA Act”), Government Code section 6500 *et seq.*, authorizes the Parties to create a joint exercise of powers entity that has the power to jointly exercise any powers common to the Parties, and it has been determined that establishing a joint powers agency to fulfill the obligations of the Implementing Entity is to their mutual advantage and would benefit all of the Permittees.

E. The JPA Act requires that a joint powers agency may only exercise those powers that are common to all parties. The ability to establish mitigation fees for development projects within the Habitat Plan Study Area is a critical and necessary component of ensuring that there is sufficient funding for Habitat Plan implementation activities. Accordingly, as provided in the Implementing Agreement, one of the primary functions of the Implementing Entity is to establish mitigation fees. Only the County, San Jose, Morgan Hill and Gilroy have authority to adopt

mitigation fees for development projects pursuant to the Mitigation Fee Act, Government Code section 66000 *et seq* (the "Mitigation Fee Act"). Therefore, only the County, San Jose, Morgan Hill and Gilroy are parties to this Agreement.

F. Each Party is a public agency as defined in Government Code section 6500. In addition to other powers that are common to the Parties, each Party has the power to undertake and perform all of the duties and obligations that are to be fulfilled by the Implementing Entity pursuant to the Habitat Plan, Implementing Agreement and this Agreement.

G. It is the intent of the Parties that the Agency shall be solely liable for any and all claims, demands, damages, costs, expenses or liability arising out of, related to, or in connection with, this Agreement or any Habitat Plan implementation activities undertaken by or under the direction of the Agency, and that the Local Partners shall have no such liability.

H. Because the Implementing Agreement and the Permits associated with the Habitat Plan provide that all Permittees are responsible for ensuring that the Habitat Plan is fully implemented, all Permittees will play an integral role in the Agency, including but not limited to representation on the Implementation Board. In conjunction with this Agreement, all of the Permittees have also entered into an agreement entitled "Santa Clara Valley Habitat Plan Memorandum of Understanding" ("Memorandum of Understanding") for the purpose of further defining their roles and responsibilities related to implementation of the Habitat Plan.

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

1. **DEFINITIONS**

Unless the context otherwise requires, the terms used in this Agreement shall be defined as set forth in this section, or in the Recitals to this Agreement. Any terms that are not thus expressly defined shall have the same definitions as provided in the Implementing Agreement or the Habitat Plan.

"Agency" means the Santa Clara Valley Habitat Agency created by this Agreement.

"Effective Date" is defined in Section 24 hereof.

"Fee" is defined in Section 12 hereof.

"Development Fee" is defined in Section 13 hereof.

"Governing Board" means the governing board of the Agency.

"Implementation Board" means the implementation board of the Agency.

"Real Property" means any interest in real property, including but not limited to a fee title interest or easement.

“Reserve System” means the Reserve System set forth in the Habitat Plan.

2. PURPOSE

This Agreement is made pursuant to the JPA Act to establish a joint powers agency to fulfill the duties and obligations of the Implementing Entity in accordance with the Habitat Plan and Implementing Agreement, including, but not limited to, the following activities:

- A. To adopt, modify, manage and expend fees collected by the Parties or paid by the Permittees for the purpose of implementing the Habitat Plan;
- B. To oversee, monitor, and report on implementation of the Habitat Plan;
- C. To acquire lands for, establish and manage a Reserve System in accordance with the Habitat Plan and to secure funding for those purposes;
- D. To provide public information and outreach regarding the Habitat Plan;
- E. To apply for, negotiate and hold general permits issued under federal or state laws based upon and directly related to the Habitat Plan (e.g., Clean Water Act sections 401 and 404 permits).
- F. To adopt fees and undertake mitigation, monitoring and other activities related to other permits that may be issued under federal or state laws based upon the Habitat Plan (e.g., Clean Water Act sections 401 and 404 permits);
- G. To undertake all of the actions described herein, including all actions necessary or convenient to carry out the purposes and intents of the Implementing Entity.

3. AGENCY

A. Creation of Agency. There is hereby created pursuant to the JPA Act an agency and public entity to be known as the “Santa Clara Valley Habitat Agency.” As provided in the JPA Act, the Agency shall be a public entity separate from its Parties, and the Agency shall be governed by a Governing Board comprised of elected officials from the Parties’ governing bodies as provided in this Agreement. The debts, liabilities and obligations of the Agency shall not constitute the debts, liabilities or obligations of the Parties, or any of them.

Within thirty days after the effective date of this Agreement or any amendment hereto, the Agency will cause a notice of this Agreement and any amendment hereto to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Government Code section 6503.5.

B. Agency Responsibilities: The Agency is responsible for implementing the Habitat Plan. Except for those implementing activities that are expressly assigned to other persons or entities in the Habitat Plan, the Implementing Agreement or this Agreement, the Agency shall be responsible for all Habitat Plan implementing activities that are set forth in the

Habitat Plan (primarily Chapter 8) and the Implementing Agreement.

4. AGENCY POWERS

Except for the ability to exercise eminent domain power, the Agency shall have all of the powers granted to joint powers authorities in Articles 1, 2 and 4 of the JPA Act, and all of the additional rights and powers that are common to all of the Parties, express or implied, that are necessary or convenient to fulfill its purposes and the intent of this Agreement. Without limiting the generality of the foregoing, the Agency is authorized, in its own name, to do all acts necessary or convenient for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts; to obtain permits and licenses; to construct improvements and facilities; to employ agents and employees, including attorneys and other professionals; to adopt and modify fees; to receive, collect, and disburse funds; to receive grants, contributions and donations of property, funds, and services; to sue and be sued in its own name including, without limitation, to file or intervene in lawsuits that pertain to the implementation of the Habitat Plan; to acquire real property and improvements thereon by any lawful means other than eminent domain; to sell and lease real and personal property; and to buy and hire real and personal property.

Except as otherwise provided herein, the Agency's powers shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon San Jose in the exercise of similar powers, as provided in Government Code section 6509.

The Agency shall continue to exercise the powers herein conferred upon it until the termination of this Agreement.

5. AGENCY GOVERNING BOARD

A. Composition. An eight-member Governing Board shall serve as the Agency's governing body. The Governing Board shall consist of two representatives from each Party who shall be officials elected to the Party's governing body. Each Party's governing body shall appoint that Party's representatives and shall also appoint alternate representatives, all of whom shall serve at the pleasure of the appointing Party's governing body. Any alternate representatives shall also be officials elected to the Party's governing body.

B. Terms. The term of office of any Governing Board member or alternate shall be three years and shall terminate when such member or alternate is replaced by the appointing Party's governing body or when such member or alternate ceases to be an elected official of the appointing Party's governing body. Whenever a Party's seat on the Governing Board has for any reason become vacant, that Party's governing body shall promptly appoint a new representative to the Governing Board. Terms shall be limited to three years, and no person shall serve more than three consecutive terms in addition to any portion of any unexpired term that the person may have served.

C. Duties. The Governing Board shall make all decisions relating to the governance and administration of the Agency, except with regard to matters within the scope of authority of the Implementation Board, Executive Officer or Agency committees as set forth herein or as

delegated by the Governing Board pursuant to Government Code section 6508. The Governing Board may not delegate the following duties: (1) adoption and modification of Fees; and (2) approval of the Agency's annual budget.

D. Quorum/Voting. Each member of the Governing Board shall have one vote. The presence of at least one representative from each Party shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time. Unless otherwise provided in this Agreement, any action of the Governing Board requires the affirmative vote of at least one representative from each Party.

E. Meetings.

(1) Regular Meetings. The Governing Board shall hold a regular meeting at least twice each year at dates and times the Governing Board determines by adoption of a resolution, and may provide for the holding of regular meetings at more frequent intervals. If the Governing Board Chair determines that there is no business to transact at any meeting or that a scheduling conflict exists, such meeting may be canceled or rescheduled. The hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Governing Board.

(2) Legal Notice. All meetings of the Governing Board shall be called, noticed, held and conducted in compliance with the provisions of the Ralph M. Brown Act, Government Code section 54950 *et seq.*, or any successor legislation hereinafter enacted, to the extent applicable.

(3) Minutes. The Secretary of the Agency shall cause minutes of all public meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Governing Board and to each Party.

F. Compensation. Members of the Governing Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Governing Board determines that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

6. AGENCY OFFICERS

A. Chair. The Governing Board shall annually select from its members a Chair who shall serve as Chair of the Agency and a Vice Chair who shall serve as Vice Chair of the Agency. The Chair and the Vice Chair shall have the duties assigned by the Board or set forth in bylaws adopted by the Board.

B. Secretary. The Governing Board shall designate a Secretary of the Agency. The Secretary or his/her designee shall keep the records of the Agency, shall act as Secretary at the Governing Board and Implementation Board meetings and record all votes, and shall keep a record of the proceedings of the Governing Board and Implementation Board in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office.

C. Treasurer. The County Controller-Treasurer shall be the Treasurer of the Agency until such time as the Governing Board may appoint a replacement. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Agency to have custody of all the money of the Agency, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Government Code section 6505.5.

D. Controller. The County Controller-Treasurer shall be the Controller of the Agency until such time as the Governing Board may appoint a replacement. The Controller shall have the powers, duties and responsibilities specified in Government Code section 6505.5. The Controller shall draw checks to pay demands against the Agency when the Governing Board or its delegee has approved the demands.

E. Cost Reimbursement. The Agency shall reimburse the County (or any successor entity appointed Treasurer or Controller for the Agency) for its actual and reasonable direct and indirect costs of providing the services of the Agency Controller-Treasurer and Controller pursuant to Government Code section 6505.5.

F. Audits and Reports. The Agency Treasurer and Controller are hereby authorized and directed to: (a) prepare or cause to be prepared an annual audit as required by Government Code section 6505 for each year during the term of this Agreement; and (b) as required by Government Code section 6505.5, verify and report in writing on the first day of July, October, January and April of each year to the Governing Board, Implementation Board and the Parties the amount of money he or she holds for the Agency, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

7. IMPLEMENTATION BOARD

A. Composition. An eleven-member Implementation Board shall serve as the Agency's implementing body. The Implementation Board shall consist of two representatives each from the County, San Jose, Gilroy, Morgan Hill and the Water District, and one representative from VTA. Each agency's governing body shall appoint that agency's representatives and shall also appoint alternate representatives, all of whom shall serve at the pleasure of the appointing agency's governing body. At least one representative from the County, San Jose, Gilroy, Morgan Hill and Water District shall be an official elected to that agency's governing body, and the alternates for those elected representatives shall also be officials elected to their respective agency's governing body.

B. Terms. The term of office of any Implementation Board member shall terminate when such member is replaced by the appointing agency's governing body. For Implementation Board members and alternates who are elected officials, their term of office shall terminate when such member ceases to be an elected official of the appointing agency's governing body. Whenever an agency's seat on the Implementation Board has for any reason become vacant, the agency's governing body shall promptly appoint a new representative to the Implementation Board. Terms shall be limited to three years, and no person shall serve more than three consecutive terms in addition to any portion of any unexpired term that the person may have served; provided, however that these term limits do not apply to VTA representatives.

C. Duties. The Implementation Board shall have the following duties:

- (1) Reviewing and making recommendations to the Governing Board regarding the adoption or modification of Fees.
- (2) Making decisions regarding the appointment of the Executive Officer and the hiring/procurement of other Agency personnel, services or equipment.
- (3) Reviewing and making recommendations to the Governing Board regarding the Agency's annual budget.
- (4) Making decisions regarding Real Property acquisitions.
- (5) Reviewing and making recommendations to the Executive Officer regarding grants and other funding opportunities.
- (6) Establishing any committees or subcommittees that the Implementation Board determines are necessary or appropriate to help the Agency fulfill its duties.
- (7) Any other activities or duties delegated by the Governing Board.

D. Quorum/Voting. Each member of the Implementation Board shall have one vote. The presence of at least seven representatives shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time. Unless otherwise provided in this Agreement, any action of the Implementation Board requires the affirmative vote of at least seven representatives.

E. Officers. The Implementation Board shall annually select from its members a Chair and a Vice Chair.

F. Meetings.

(1) Regular Meetings. The Implementation Board shall meet at least once every two months at dates and times the Implementation Board determines by adoption of a resolution, and may provide for the holding of regular meetings at more frequent intervals. If the Implementation Board Chair determines that there is no business to transact at any meeting or that a scheduling conflict exists, such meeting may be canceled or rescheduled. The hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Implementation Board.

(2) Legal Notice. All meetings of the Implementation Board shall be called, noticed, held and conducted in compliance with the provisions of the Ralph M. Brown Act, Government Code section 54950 *et seq.*, or any successor legislation hereinafter enacted, to the extent applicable.

(3) Minutes. The Secretary of the Agency shall cause minutes of all public

meetings of the Implementation Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Implementation Board and to each Party.

G. Compensation. Members of the Implementation Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Governing Board determines that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

8. COMMITTEES

A. Technical Advisory Committee. There shall be a Technical Advisory Committee ("TAC") to provide advice to the Agency regarding land management, monitoring, and other Habitat Plan activities in the Reserve System. The Implementation Board shall determine the composition of the TAC, which may be modified from time to time to reflect the Agency's needs; however, the TAC shall always include at least one representative each from the U.S. Fish and Wildlife Service ("USFWS") and the California Department of Fish and Game ("CDFG"). USFWS and CDFG shall each appoint their TAC members, and the Implementation Board shall appoint all other TAC members.

B. Public Advisory Committee. There shall be a Public Advisory Committee to provide input to the Agency regarding all aspects of Habitat Plan implementation. Members of the Public Advisory Committee shall be appointed by the Implementation Board based on their ability to represent interested or affected segments of the public.

C. Other Committees. The Governing Board or Implementation Board may establish other Agency committees as contemplated in the Habitat Plan or as they otherwise deem appropriate that are related to Habitat Plan implementation. The Board that establishes a committee shall specify the purpose and function of such committee.

D. Legal Notice. All Agency Committee meetings shall be called, noticed, held and conducted in compliance with the Ralph M. Brown Act, Government Code section 54950 *et seq.* or any successor legislation hereinafter enacted, to the extent applicable.

9. AGENCY STAFFING/ADMINISTRATION

A. Executive Officer. The Executive Officer of the Agency shall serve as the Agency's administrative officer and shall be responsible for the following:

(1) Overseeing the Agency's day-to-day activities and managing all Agency staff and consultants.

(2) Ensuring that the Agency operates within the annual budget approved by the Governing Board, and not approving any expenditures that are not authorized by, or would exceed, the annual budget.

(3) Preparing reports and recommendations for consideration by the Governing

Board, Implementation Board and committees.

(4) Applying for and otherwise pursuing grants and other funding opportunities.

(5) Reviewing and approving Authorized Take coverage to Participating Special Entities, Neighboring Landowners, and agricultural land owners.

(6) Any other duties or activities delegated to the Executive Officer or requested by the Governing Board or Implementation Board.

The Executive Officer serves at the pleasure of the Implementation Board. The Implementation Board may remove or appoint a new Executive Officer by a two-thirds vote of the entire membership of the Implementation Board at a duly-noticed Implementation Board meeting.

The Executive Officer is designated as the public officer or person who has charge of, handles, or has access to any property of the Agency, and the Executive Officer shall file an official bond in the amount necessary as required by Government Code section 6505.1.

B. Other Staff/Administration. Based on the recommendations of the Executive Officer, the Implementation Board shall determine how and whether to hire or contract for additional staff and other services necessary to fulfill the Agency's purposes. All such decisions shall be consistent with the annual budget adopted by the Governing Board. Factors to be considered in making these determinations include cost-effectiveness, efficiency, and qualifications/capability.

C. Personnel/Services/Equipment Supplied by Permittees. If the Implementation Board determines that having one or more of the Permittees supply personnel, services or equipment to the Agency is in the Agency's best interests, then the Agency may contract with one or more Permittees. Compensation for such personnel, services or equipment may consist of cash payments, credits against the Local Partner's share of the Habitat Plan implementation obligations, or any other form of compensation agreed upon by the Agency and the contracting Local Partner.

10. ANNUAL PUBLIC MEETING

At least once annually, the Agency will hold a meeting to directly report on the progress of implementation to the public. This meeting may coincide with one of the regular Governing Board or Implementation Board meetings.

11. ANNUAL BUDGET

Within 90 days after the first Governing Board meeting, the Governing Board shall approve an annual budget for the Agency's first fiscal year. The Governing Board shall approve an annual budget prior to the commencement of each fiscal year thereafter, after giving due consideration to the recommendations of the Implementation Board and Executive Officer.

12. ADOPTION/MODIFICATION OF FEES

The Agency will be responsible for adopting and modifying various mitigation fees ("Fees") to pay for certain Habitat Plan implementation activities in accordance with the requirements in this section.

A. The adoption and modification of Fees shall be in full compliance with all requirements of the Mitigation Fee Act, to the extent applicable, and shall include, at a minimum, consideration the following factors:

(1) The best available data regarding all costs of implementing the Habitat Plan that are to be funded by mitigation fees;

(2) The fair and equitable allocation of implementation costs between mitigation fees and other sources of funding for Habitat Plan implementation activities; and

(3) The fair and equitable allocation of implementation costs between and among the various types of mitigation fees (e.g., fee zones, habitat types, or other bases for differentiating between mitigation fees).

B. The Implementation Board shall review any proposed Fee adoption or modification and make a recommendation to the Governing Board prior to any action being taken by the Governing Board.

C. Any adoption or modification of Fees shall require a two-thirds vote of the entire membership of the Governing Board and the affirmative vote of at least one Governing Board member representing each Party.

13. MITIGATION FEE COLLECTION/DISBURSEMENT

The County, San Jose, Gilroy and Morgan Hill will collect Fees for private land use/development activities for which they issue permits or approvals within their respective jurisdictions (collectively, "Development Fees"). The Party collecting such Development Fees may accept as payment either a check made payable to the Agency, proof of the developer's having made an electronic funds transfer to the Agency, or reliable documentation from the Agency showing performance of an alternative method of payment acceptable to the Agency (e.g., land donation in lieu of fees). All checks received shall be forwarded promptly to the Agency. Pursuant to the requirements of the Mitigation Fee Act, the Agency shall hold revenues from Development Fees in a separate, interest-bearing account, until disbursement or expenditure for the purpose for which the Development Fees were established.

The Permittees will also be responsible for paying Fees for activities that they undertake, and shall pay any and all such Fee revenues to the Agency within 30 days of taking final action to approve or commence any activity triggering the Fees, but no later than the actual commencement of ground-breaking activities.

The Agency shall use any and all revenues from the Fees only for the purposes for which they were imposed, and for no other purpose.

The Agency is strictly accountable for all revenue from the Fees that is transmitted to the Agency and must report all receipts and disbursements. No later than October 1 of each year of this Agreement, the Agency shall prepare and furnish a report of the collection, disbursement and expenditures of, and any interest earned on, revenue from the Fees for the prior fiscal year. The Agency shall be solely responsible for full compliance with all applicable requirements of the Mitigation Fee Act as they pertain to revenue from the Development Fees that have been disbursed to the Agency, including but not limited to requirements related to expenditure, management, accounting and reporting.

14. FISCAL YEAR

The fiscal year of the Agency shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall consist of the period from the Effective Date of this Agreement through the following June 30.

15. SURPLUS MONEY

Pursuant to Government Code section 6512, after the completion of the purpose of this Agreement, any surplus money on hand shall be returned in proportion to the contributions made.

16. DISPOSITION OF ASSETS AND REAL PROPERTY

Upon the termination of this Agreement as set forth in Section 24, and after the repayment of advances and contributions in accordance with Section 17, any assets acquired as the result of the joint exercise of powers pursuant to this Agreement, other than real property and interests in real property that are part of the Reserve System and funding for the restoration or management of the Reserve System, shall be distributed to the Parties in proportion to each Member's overall unreimbursed contribution of assets to the Agency. The Agency shall transfer all real property and interests in real property that are part of the Reserve System and any funding for the restoration or management of real property, that have been acquired by the Agency as the result of the joint exercise of powers under this Agreement, to one or more public agencies or nonprofit conservation organizations in accordance with applicable law.

17. CONTRIBUTIONS AND ADVANCES

With the Governing Board's approval, any Local Partner may contribute or advance public funds, personnel, equipment or property to the Agency for any of the purposes of this Agreement. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by the Agency and the Local Partner making the advance at the time of making such advance. Except as otherwise expressly provided in this Agreement, no Local Partner has any obligation to make advances or contributions to the Agency to provide for the Agency's costs and administrative expenses, although any Local Partner may choose to do so.

18. ACCOUNTING AND REPORTING

The Agency shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Agency shall be open to inspection at all reasonable times by the Permittees and their representatives. The Agency shall give an audited written report of all financial activities for each fiscal year to the Permittees within six months after the close of each fiscal year.

To the extent required by Government Code section 6505.6, the Agency Controller shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Agency. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code section 26909 and shall conform to generally accepted auditing standards. When such an audit is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the Parties and, if required by Government Code section 6505.6, with the County Auditor-Controller. Such report shall be filed within twelve months of the end of the fiscal year or years under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for the purpose.

In any year the Agency may, by unanimous request of the Board, replace the annual special audit with an audit covering a two-year period.

19. CONFLICT OF INTEREST CODE

The Agency shall adopt a conflict of interest code as required by law.

20. LIABILITY AND INDEMNIFICATION

A. The Agency is solely liable for any and all claims, demands, damages, costs, expenses or liability arising out of, related to, or in connection with, this Agreement or any Habitat Plan implementation activities undertaken by or under the direction of the Agency.

B. The Agency shall indemnify, defend, and hold harmless each of the Parties and Permittees and their respective officials, officers, agents, and employees from and against any and all claims, demands, damages, costs, expenses or liability arising out of, related to, or in connection with, this Agreement or any Habitat Plan implementation activities undertaken by or under the direction of the Agency; provided, however, that this obligation by the Agency shall not apply to (1) reckless, intentional, or willful misconduct leading to personal injury, or (2) any claims, demands, damages, costs, expenses or suits by one Party to either this Agreement or the Memorandum of Understanding against one or more other Parties relating to an alleged breach of either agreement. The Agency shall only be required to provide a joint defense to all indemnified parties pursuant to this provision, and all indemnified parties shall cooperate in good faith with the Agency in all matters related to such joint defense. However, any indemnified

party may elect to provide its own defense at that party's own expense.

C. The Agency shall obtain and maintain insurance policies to provide sufficient coverage to fulfill its obligations under this section.

21. REMEDIES FOR BREACH

If a Party shall default on any obligation contained in this Agreement, such default shall not excuse any other Party from fulfilling its respective obligations under this Agreement. 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 Agreement. 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.

22. SEVERABILITY

If any court determines that a part, term, or provision of this Agreement 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.

23. SUCCESSORS; ASSIGNMENT

This Agreement 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.

24. TERM, TERMINATION, AND WITHDRAWAL

A. Term. This Agreement shall take effect as of the date it is fully executed by all Parties (the "Effective Date") and shall continue in full force until terminated pursuant to this section.

B. Termination. This Agreement may only be terminated by a majority vote of all Parties' governing bodies.

C. Withdrawal. Any Party may withdraw from this Agreement upon 180 days written notice to the other Parties, Permittees, USFWS and CDFG. Notwithstanding such withdrawal, the withdrawing Party 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 Agreement. Upon withdrawal, the withdrawing party shall no longer be a Party, and the term "Parties" as used in this Agreement shall thereafter mean the remaining Parties to the Agreement. Within 30 days after receiving a notice of withdrawal, the Parties who will remain will meet to discuss whether any amendments to this 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.

D. Voting Requirement. Any Party's decision to terminate or withdraw from this Agreement must be approved by resolution duly adopted by a majority vote of the members of the Party's governing board or council.

25. AMENDMENT OF AGREEMENT

This Agreement may be amended only by written agreement executed by all of the Parties following a majority vote of the members of each Party's governing board or council.

26. NOTICES

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

County:

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

San Jose:

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

Gilroy:

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

Morgan Hill:

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

With a copy to:

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

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

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

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

Any Party may change its address for notices by written notice hereunder. Notices shall be effective when delivered personally, or when received by facsimile, U.S. Postal Service, or by overnight courier.

27. 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 Agreement.

28. COUNTERPARTS

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

29. SIGNATURES

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

Dated: _____, 20__

COUNTY OF SANTA CLARA

By: _____
Jeffrey V. Smith, County Executive

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

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

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

Any Party may change its address for notices by written notice hereunder. Notices shall be effective when delivered personally, or when received by facsimile, U.S. Postal Service, or by overnight courier.

27. 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 Agreement.

28. COUNTERPARTS

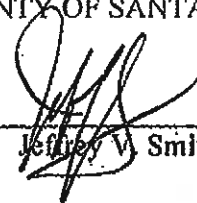
This Agreement may be executed in counterparts and so executed shall constitute one Agreement which shall be binding upon all Parties. A photocopy of the fully executed Agreement shall have the same force and effect as the original.

29. SIGNATURES

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

Dated: 4/26/13, 2013

COUNTY OF SANTA CLARA

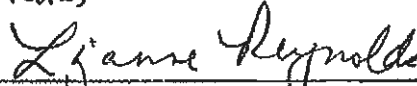
By: 
Jeffrey V. Smith, County Executive

APPROVED AS TO FORM

~~E. P. Pegg, Acting County Counsel~~

Orry P. Korb,

By:



Lizanne Reynolds

Deputy County Counsel

Dated: _____, 20__

CITY OF SAN JOSE

By: _____

Debra Figone, City Manager

APPROVED AS TO FORM

Richard Doyle, City Attorney

By: _____

Vera Todorov

Senior Deputy City Attorney

Dated: _____, 20__

CITY OF GILROY

By: _____

Thomas J. Haglund, City Administrator

APPROVED AS TO FORM

By: _____

Linda Callon

City Attorney

Dated: _____, 20__

CITY OF MORGAN HILL

By: _____

J. Edward Tewes, City Manager

APPROVED AS TO FORM

By: _____

Danny Wan


City Attorney

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


By: _____
Lizanne Reynolds
Deputy County Counsel

Dated: 4/11, 2013

CITY OF SAN JOSE

By:  _____
Debra Figone, City Manager

APPROVED AS TO FORM
Richard Doyle, City Attorney

By:  _____ 4/11/2013
Vera Todorov
Senior Deputy City Attorney

Dated: _____, 20__

CITY OF GILROY

By: _____
Thomas J. Haglund, City Administrator

APPROVED AS TO FORM

By: _____
Linda Callon
City Attorney

Dated: _____, 20__

CITY OF MORGAN HILL

By: _____
J. Edward Tewes, City Manager

APPROVED AS TO FORM

By: _____
Danny Wan
City Attorney

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

By: _____
Lizanne Reynolds
Deputy County Counsel

Dated: _____, 20__

CITY OF SAN JOSE

By: _____
Debra Figone, City Manager

APPROVED AS TO FORM
Richard Doyle, City Attorney

By: _____
Vera Todorov
Senior Deputy City Attorney

Dated: 4/15, 2013

CITY OF GILROY

By: _____
Thomas J. Haglund, City Administrator

APPROVED AS TO FORM

By: _____
Linda Callon
City Attorney

Dated: _____, 20__

CITY OF MORGAN HILL

By: _____
J. Edward Tewes, City Manager

APPROVED AS TO FORM

By: _____
Danny Wan
City Attorney

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

By: _____
Lizanne Reynolds
Deputy County Counsel

Dated: _____, 20__

CITY OF SAN JOSE

By: _____
Debra Figone, City Manager

APPROVED AS TO FORM
Richard Doyle, City Attorney

By: _____
Vera Todorov
Senior Deputy City Attorney

Dated: _____, 20__

CITY OF GILROY

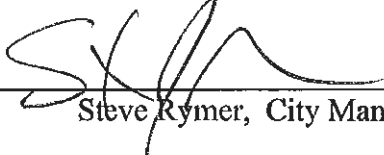
By: _____
Thomas J. Haglund, City Administrator

APPROVED AS TO FORM

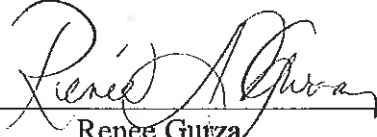
By: _____
Linda Callon
City Attorney

Dated: APRIL 18, 2013

CITY OF MORGAN HILL

By: 
Steve Rymer, City Manager

APPROVED AS TO FORM

By: 
Renee Gurza,
City Attorney

