

# County of Santa Clara

## Office of the County Executive




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Director of Planning and Development

DATE: May 19, 2009

TO: Board of Supervisors

FROM:   
Sylvia Gallegos  
Deputy County Executive

SUBJECT: Delegation of Authority Relating to an Agreement with Jones and Stokes Associates, Inc. for Support of the Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP)

### **RECOMMENDED ACTION**

Approve delegation of authority to the County Executive, or designee, to negotiate, execute, amend, and terminate the following agreements with Jones and Stokes Associates, Inc. related to lead consultant services for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), following approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Delegation of authority shall expire on June 30, 2010:

1. Fourth Amendment to the Professional Services Agreement between the County of Santa Clara and Jones and Stokes Associates, Inc. for HCP/NCCP lead consultant services, increasing the total contract amount by \$427,632, from \$2,250,711 to \$2,678,343;

2. First Amendment to the July 1, 2008 through June 30, 2009 (Phase 4) Annual Project Agreement between the County of Santa Clara and Jones and Stokes Associates, Inc. for HCP/NCCP lead consultant services, increasing maximum amount by \$31,132, from \$661,864 to \$692,996;
3. Annual Project Agreement for the period of July 1, 2009 through June 30, 2010 (Phase 5) between the County of Santa Clara and Jones and Stokes Associates, Inc. for HCP/NCCP lead consultant services, with a maximum amount of \$396,500.

## **FISCAL IMPLICATIONS**

The Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) is funded by contributions from six Local Partners (the County of Santa Clara, the Cities of Gilroy, Morgan Hill, and San Jose, the Santa Clara Valley Water District, and the Valley Transportation Authority) and supplemented by U.S. Fish and Wildlife Service (USFWS) grants. The total cost for completing the HCP/NCCP is projected to be \$5,011,000, which is offset by \$1,108,248 of grant funding. The \$427,632 amendment to the Professional Services Agreement is included in the total contract budget of \$5,011,000. The additional costs associated with the increased scope of work were reviewed and accepted by the Habitat Plan's Liaison Group, comprised of the elected officials representing each partner agency, on February 19, 2009 with an update provided on April 16, 2009. The County previously agreed to be and continues to be the administrative agent for the HCP/NCCP. Project revenues and expenditures are budgeted in the Department of Planning and Development.

The contract with Jones and Stokes for its lead work on the HCP/NCCP contains a Professional Services Agreement addressing the full budget and Scope of Work, and Annual Project Agreements for each fiscal year. The necessary actions include amending (Fourth Amendment) the Professional Services Agreement (Attachment A) by modifying the Scope of Work and increasing the contract budget by \$427,632 for a total contract amount not to exceed \$2,678,343. The increased budget reflects additional work in Fiscal Year 2009 (\$31,132) and work in Fiscal Year 2010 (\$396,500). The second action is to amend the Fiscal Year 2009 Annual Project Agreement to modify two tasks and increase the budget by \$31,132 to \$692,996 (Attachment B). The third action is to approve the Fiscal Year 2010 Annual Project Agreement Scope of Work and budget of \$396,500 (Attachment C).

On February 19, 2009, the Liaison Group directed that \$50,000 of the \$427,632 increased costs for the Jones and Stokes contract be allocated to 2010-2011 costs. Subsequently, at the Local Partner/Wildlife Agency staff and consultant meeting on April 16, 2009, the Wildlife Agencies committed to an intensive meeting process through the Summer and Fall of 2009 to facilitate completion of the Habitat Plan. The meeting process may increase the original Jones and Stokes budget estimate for 2009-2010. As a result, discussion at the April 16, 2009 Liaison Group meeting led to the \$50,000 that had been identified for 2010-2011 be shifted into a Contingency account. Use of any Contingency funds requires the approval of Local Partner senior managers (the Management Team). A final 2010-2011 budget will be prepared by the Management Team in 2009 and reviewed by the Liaison Group in early 2010.

The County of Santa Clara's Fiscal Year 2010 contribution is \$89,631, which has already been included in the FY10 Recommended Budget for the Department of Planning and Development.

## **CONTRACT HISTORY**

On June 21, 2005, the Board of Supervisors approved a contract with Jones and Stokes for \$1,757,000. The Consultant provides a wide variety of analytical and project development work spanning the 2005 to 2009 period for development of the HCP/NCCP.

- On June 20, 2006, the Board of Supervisors amended the contract's scope of work and budget to add new tasks for economic analysis and expanded species analysis in an amount not to exceed \$173,643.
- On February 1, 2008, the Board of Supervisors amended the contract's scope of work and budget to add new tasks for analysis of nitrogen deposition in an amount not to exceed \$124,868.
- On June 24, 2008, the Board of Supervisors authorized an amendment to the agreement to extend the project's timeline by six months and increased the budget by \$195,200 to reflect changes in the scope of work and the additional time needed to complete the HCP/NCP.

The total contract budget, including the recommended \$427,632 increase, is \$2,678,343. The Professional Services Agreement is implemented through the use of Annual Project Agreements, including previously approved Agreements for Fiscal Years 2006, 2007, 2008, and 2009. The recommended Agreement for July 1, 2009 through June 30, 2010 will provide funding and extend work authorization through Fiscal Year 2010.

## **REASONS FOR RECOMMENDATION**

Jones and Stokes, Associates, Inc. functions as the lead consultant responsible for biological and other analyses as well as for the preparation of the HCP/NCCP, which is a 1,000 + page document. In 2005, work on the HCP/NCCP was projected to cover the period from 2005 through March 2009. The most recent project schedule adjustment reviewed with the Liaison Group (i.e., elected officials from the participating Local Partner jurisdictions) has adoption of the Habitat Plan by late 2010. Necessary follow up activities (issuance of State and Federal permits, adoption of local implementation ordinances) are expected to be completed by April 2011.

The Professional Services Agreement between the County and Jones and Stokes requires Board approval of increases in the total contract expenses and approval of Annual Project Agreements. The July 1, 2009 through June 30, 2010 Agreement is the fifth Agreement under the contract and is necessary to maintain work from July 2009 through June 2010.

The Professional Services Agreement scope and budget amendments are additions to the Jones and Stokes contract and are necessary due to additional work requests. The additional analyses---such as, for the nitrogen deposition analysis---are typically requested by the wildlife agencies from which we are seeking a 50-year permit. This fifth agreement for the Phase 5 schedule extends to June 2010.

Phase 6 will extend from July 2010 through February 2011. Refinement of 2010-2011 work tasks and identification of the final budget will be developed later in 2009 as schedule refinements are made on the basis of Habitat Plan preparation and review schedules.

## **BACKGROUND**

In 2001, preparation of a HCP/NCCP was committed to by the County, the City of San Jose, Santa Clara Valley Water District, and the Valley Transportation Authority (VTA) as part of receiving Wildlife Agency approvals for a number of projects including the widening of Highway 101 in South County and the Highway 101/Bailey Avenue interchange in San Jose. The California Department of Fish and Game and the United States Fish and Wildlife Service regard preparation of this HCP/NCCP as one of their highest planning priorities in California. The HCP/NCCP will be a substantial benefit not only to Santa Clara Valley residents, wildlife and endangered plant species, and our environment,

but to private developers of land and public agencies by streamlining the process for mitigating and receiving permits for impacts on endangered species.

In 2004, a Memorandum of Understanding (MOU) among the Local Partners was approved to initiate development of an HCP/NCCP under applicable State and Federal regulations. In October 2005, the cities of Gilroy and Morgan Hill agreed to join the HCP/NCCP development effort. The HCP/NCCP study area includes 520,000 acres, generally covering most of the Coyote Creek watershed, a portion of the Guadalupe Creek watershed, and all of the Uvas, Llagas, and Pacheco sub-watersheds of the Parjaro River. The study area also includes all of the City of San Jose except the Bayland areas, and additional unincorporated areas that have serpentine soil.

A Planning Agreement was required under the California Natural Community Conservation Plan Act, and is a key step in the preparation of the HCP/NCCP. The Planning Agreement provided commitments from the local jurisdictions, the California Department of Fish and Game (CDFG), and the United States Fish and Wildlife Services (FWS).

The Planning Agreement has the following nine purposes:

1. Define the Parties' goals and obligations with regard to development of a legally sufficient and approvable Plan that will form the basis for take permits for Covered Activities;
2. Define the preliminary geographic scope of the Planning Area;
3. Identify a preliminary geographic scope of the Planning Area;
4. Identify preliminary conservation objectives for the Planning Area;
5. Establish a process for the inclusion of independent scientific input into the Plan development process;
6. Ensure coordination among the Local Agencies and Wildlife Agencies;
7. Establish an interim process during Plan development that encourages conditions conducive to achieving the preliminary conservation objectives;
8. Establish process for public participation and outreach; and
9. Encourage concurrent planning for wetlands and waters of the United States.

Failure to develop and adopt the Planning Agreement would have prevented the local jurisdictions from entering into Implementing Agreements with CDFG and FWS at the conclusion of the HCP/NCCP process, thus preventing the acquisition of the State and Federal permits for incidental take of endangered species that are key objectives of the HCP/NCCP.

In 2005, the Planning Agreement, after review by a group of elected representatives (the Liaison Group), was signed by all six local partners, including the County of Santa Clara, the City of San Jose, the Santa Clara Valley Water District, the Valley Transportation Authority, the City of Gilroy, and the City of Morgan Hill.

The Santa Clara County Open Space Authority and the California Department of Parks and Recreation are actively working with the Local Partners. Plan development is closely coordinated with three Wildlife Agencies, each of which will have to adopt the HCP/NCCP and issue applicable permits. The three Wildlife Agencies are the California Department of Fish and Game, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

Upon completion of the HCP and NCCP, local jurisdictions will enter into an Implementing Agreement with the three Wildlife Agencies and receive State and Federal permits for the incidental take of endangered species negatively

impacted by land development and maintenance activities identified in the HCP/NCCP.

### **CONSEQUENCES OF NEGATIVE ACTION**

If the recommended action is not approved, work on the Annual Project Agreement that is scheduled to start in June 2009 will be delayed. Any delay will negatively affect the overall HCP/NCCP schedule.

### **STEPS FOLLOWING APPROVAL**

The County, along with the other Local Partners and consultants, will continue the process of preparing the HCP/NCCP in close consultation with the Wildlife Agencies. Project contracts will be managed by the Department of Planning and Development. Sylvia Gallegos, Deputy County Executive, coordinates the efforts of the Parks Department acting as the lead agency representative for the County the participation of Roads and Airports, Agriculture and Environmental Management, and Planning and Development. The Department of Planning and Development is responsible for contracts and budget administration for the HCP/NCCP. In addition, County Counsel continues to represent the interests of the County in the process.

### **ATTACHMENTS**

- Amendment to Professional Services Agreement
- Amendment to 2009 Annual Project Agreement
- 2010 Annual Project Agreement