

County of Santa Clara

Recycling and Waste Reduction Commission
Integrated Waste Management Division

1553 Berger Drive, Building #1
San Jose, California 95112
(408) 282-3180 FAX (408) 282-3188
www.ReduceWaste.org



**AD HOC ORGANIZATION STRUCTURE STUDY SUBCOMMITTEE of the
TECHNICAL ADVISORY COMMITTEE
MEETING AGENDA**

DATE: Wednesday, October 5, 2011
TIME: 10:00 a.m. – 11:30 a.m.
LOCATION: **1580 Berger Dr.** (across from regular location)
San Jose, CA 95112

(** Denotes item on which action may be taken)

1. Call to Order and Introductions**

2. Public Comment

(This item is reserved for persons desiring to address the committee on any matter not on this agenda.) For members of the public who wish to address the committee on any item not listed on the agenda this would be the appropriate time. The Chair will call individuals in turn. Speakers are limited to three (3) minutes. The committee is not permitted action or extended discussion of any item not on the agenda except under special circumstances. If committee action is requested, the committee may place the matter on a future agenda. All statements that require a response will be referred to staff for reply in writing

3. Organizational Study – Draft MOU/MOA document**

4. Timelines and Meeting Schedule**

5. Adjourn**

Commissioners: Jamie McLeod, Chair; Ronit Bryant, Kansen Chu, Susan Garner, Jim Griffith, Linda J. LeZotte, Evan Low, Cat Tucker, Kris Wang, Mike Wasserman

AGREEMENT
PROVIDING FOR IMPLEMENTATION OF
COUNTY OF SANTA CLARA
SOLID WASTE MANAGEMENT AND DIVERSION PROGRAM

THIS AGREEMENT, is made and entered into this _____ day of _____ TBD by and between the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a local public agency of the State of California; COUNTY OF SANTA CLARA, a political subdivision of the State of California; CITY OF CAMPBELL, a municipal corporation of the State of California; CITY OF CUPERTINO, a municipal corporation of the State of California; CITY OF GILROY, a municipal corporation of the State of California; CITY OF LOS ALTOS, a municipal corporation of the State of California; TOWN OF LOS ALTOS HILLS, a municipal corporation of the State of California; TOWN OF LOS GATOS, a municipal corporation of the State of California; CITY OF MILPITAS, a municipal corporation of the State of California; CITY OF MONTE SERENO, a municipal corporation of the State of California; CITY OF MORGAN HILL, a municipal corporation of the State of California; CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California; CITY OF PALO ALTO, a municipal corporation of the State of California; CITY OF SAN JOSE, a municipal corporation of the State of California; CITY OF SANTA CLARA, a municipal corporation of the State of California; CITY OF SARATOGA, a municipal corporation of the State of California; and CITY OF SUNNYVALE, a municipal corporation of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as "PARTIES" or individually as "PARTY."

RECITALS:

- A. In 1978, the Intergovernmental Council voted unanimously to establish the Solid Waste Committee which was comprised of one city council member from each of the fifteen cities, one member of the Board of Supervisors, three non-voting members
1. One waste hauler operating in Santa Clara County to be named by the Clara-Mateo Garbagemen's Association
 2. One landfill site operator to be named by the Clara-Mateo Garbagemen's Association
 3. One waste generator to be named by the Board of Supervisors; and

Recommended continuing the Solid Waste Technical Advisory Committee, adding a representative from the Santa Clara Valley Water District.

- B. AB 939, passed in 1989 by the California State Legislature required that PARTIES develop programs to divert 50% of materials from landfills in the Santa Clara County.
- C. In 1992 the County Board of Supervisors adopted an ordinance to replace the IGC Solid Waste Committee with a nine-member "Solid Waste Commission of Santa

Clara County.”

- D. In 2001 the County Board of Supervisors renamed the Commission the “Recycling and Waste Reduction Commission of Santa Clara County” (hereinafter referred to as “Commission”) and adopted updated Bylaws for the Commission. The new bylaws increased the number of members to ten.
- E. The Recycling and Waste Reduction Commission recommends policy to cities and the County regarding solid waste management and diversion.
- F. The Technical Advisory Committee (TAC) is advisory to the Recycling and Waste Reduction Committee as technical and subject matter experts. The Technical Advisory Committee is comprised of representatives from the 15 Cities and the County, Santa Clara Valley Water District, non-governmental organizations, industry and the public.
- G. In and for the mutual interest of the PARTIES, the PARTIES have entered into this Agreement for the purpose of assuring, through use of one or more Service Providers, continued effective and efficient provision of services to the Parties and support to the Commission.
- H. The (TAC) Management Committee consists of representatives from the 15 cities and the County of Santa Clara who provide fiscal and governance oversight of the Service Provider(s).
- I. For purposes of this agreement Service Provider is defined as follows: TBD

NOW, THEREFORE, THE PARTIES HERETO FURTHER AGREE, AS FOLLOWS:

Section 1. Program

- 1.01 The Program is a collective effort and implementation of area-wide activities, designed to benefit all PARTIES.

Section 2. Management Committee (To be determined by TAC)

2.01 A Management Committee is hereby constituted to provide for overall Solid Waste Management and Diversion coordination, review, and budget oversight, with respect to the AB 939 mandates.

2.02 The Management Committee may as necessary adopt and revise Bylaws for its governance.

2.03 The Management Committee is the official management and oversight body of the Program. The Management Committee shall direct and guide the Program and review and approve the Program budget. The Management Committee shall consider how best to achieve state diversion mandates, including benefit to a majority of the PARTIES, as a primary objective in approving Program tasks and corresponding budgets.

2.04 The Management Committee may periodically re-evaluate and make recommendations to the PARTIES concerning reallocation of the proportion of the annual Program contribution that each PARTY shall pay.

2.05 The voting membership of the Management Committee shall consist of one designated voting representative from each PARTY. One or more alternative voting representative(s) may be appointed to the Management Committee by each PARTY.

2.06 A quorum of the Management Committee shall be achieved when at least TBD voting representatives, are present at any Management Committee meeting.

2.07 Meetings of the Management Committee, including any closed sessions with Program Legal Counsel, shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.) The individual parties have differing opinions on whether the Brown Act legally should be interpreted as applying to members of the Management Committee. In executing this Agreement, the parties do not waive their right to take the position that the Brown Act legally does not apply, but voluntarily agree to follow Brown Act procedures for Management Committee meetings. Except for official meetings of the Management Committee, nothing herein shall be interpreted to require meetings between staff members of the individual Parties (including designated representatives of the Parties) to be subject

to the Brown Act, where the Brown Act would not otherwise apply. Each party is individually responsible for ensuring that it complies with the Brown Act.

2.08 The affirmative vote of at least TBD voting members of the Management Committee, which collectively contribute at least fifty percent (50%) of the area-wide Program costs (a "Majority Vote"), is necessary to approve any measure brought before the Management Committee.

Comment [LR1]: Affirmative vote criteria TBD

2.09 The Management Committee shall be responsible for selecting Service Providers. A Service Provider is any entity, whether public, private or not-for-profit, including consultant(s) and contractor(s) who are to be paid from Program funds to provide services to the Parties and in support of the Commission. Service Providers are to be selected using a process approved by the Commission. The Management Committee shall review and approve all contracts with Service Providers, including the scope(s) of work, schedules of performance, use of subcontractors, and compensation for Service Providers.

2.10 The Management Committee shall select a PARTY or Service Provider to act as manager for the Program. The Service Provider acting as manager shall be responsible for Program management and administration, mandates and technical program management, all in accordance with AB 939, this Agreement and Management Committee Bylaws, as directed by the Management Committee in the best interest of the PARTIES as a whole and individually. This Service Provider shall be paid from Program funds in accordance with the adopted Program budget for providing the services described hereunder. The Service Provider shall not be responsible for providing program management services related to the solid waste management and diversion programs of individual PARTIES, but may provide such services under separate contract with any PARTY or PARTIES.

2.11 The Management Committee may select an attorney (Program Attorney) or a firm that is experienced with AB 939 mandates to provide legal advice to the Management Committee on all matters involving administration of the Program's AB 939 mandates and such other matters upon which the Management Committee may seek legal advice or request legal representation. Program Legal Counsel shall not be responsible for providing legal advice to individual PARTIES, but may provide such services under separate contract with any PARTY or PARTIES. The Service Provider may assist in coordination of activities with the Program Attorney but shall not give direction without prior authorization from the Management Committee.

2.12 The Management Committee shall establish timelines and budgets for completion of Program tasks. The Management Committee shall rate the performance of the Program, and in turn rate the performance of the Service Provider, based upon the Program's ability to meet such approved timelines and budgets.

2.13 The Management Committee, through its Bylaws, may establish procedures for tracking, accounting for and auditing the Program Fund.

Comment [c2]: Is a Fund being established? DEFINE WHERE FUNDING COMES FROM

Section 3. Program Budget

3.01 A collective budget for the Program (Program Budget) shall be based upon a projection of two consecutive fiscal year cycles; however, the Budget shall be adopted for only one fiscal year cycle. The Budget shall include a Contingency/Reserve Fund which shall not exceed ten percent (10%) of the operating costs of the adopted Budget.

Comment [c3]: So the budget is to be approved every year?

3.02 The PARTIES shall each pay a yearly assessment into a fund established for Program operations for their assigned portion of the Program Budget. The proportionate share of the Program Budget that each PARTY shall pay is shown in the schedule marked Exhibit A hereto and incorporated by reference herein.

[Discuss/define Planning Fee collected at landfills by County.]

Each PARTY will receive credit against its yearly assessment for monies generated on its behalf by the Planning Fee.

[Discuss/clarify whether this entity may or may not borrow money and if so, under what circumstances and with what approval]

3.03 Except as provided in Section 6.03, the ending fund balance at the close of each fiscal year shall be considered the fund balance entering the new fiscal year as rollover.

Section 4. Contracting/ Fiscal Agent TBD

4.01 TBD shall serve as the initial Contracting/Fiscal Agent for the Program.

4.02 TBD may withdraw as the Contracting Fiscal Agent upon the provision of ninety days (90) days written notice to the Management Committee.

4.03 In the event that the Contracting/Fiscal Agent withdraws from the Program or from providing Contracting/Fiscal Agent services to the Program, another PARTY may serve as a successor Contracting/Fiscal Agent. Any PARTY willing to serve as successor Contracting/Fiscal Agent may be nominated by another PARTY. Selection of a Contracting/Fiscal Agent must be by majority vote of the Management Committee.

4.04 The Contracting/Fiscal Agent shall act in a reasonable amount of time to execute contracts with Outside Contractors, including the Service Provider which have been requested and approved by the Management Committee.

4.05 The Contracting/Fiscal Agent shall be the treasurer of Program funds. The Contracting/Fiscal Agent, in accordance with generally accepted accounting procedures, shall keep the Program funds segregated from any other funds administered by the Contracting/Fiscal Agent; shall credit the Program with appropriate interest income earned on Program funds in each fiscal year; and shall not expend any funds except in accordance with the annual budget approved by the Management Committee or as otherwise directed by the Management Committee.

4.06 The Contracting/Fiscal Agent shall provide a copy of any contract executed on behalf of the Program to any PARTY or person designated by any PARTY or the Management Committee upon request. The governing body of the Contracting/Fiscal Agent, at its discretion, may delegate authority to execute agreements and contracts approved by the Management Committee, to a designated employee. Notice of any such delegation of authority shall be provided to the Management Committee.

4.07 The Contracting/Fiscal Agent may request, as part of the annual Program Budget, reimbursement for reasonable and customary costs incurred in providing the services described hereunder. Reimbursement to the Contracting/Fiscal Agent shall be subject to Management Committee review and approval as part of the Program Budget.

Section 5. Ancillary Rights and Duties of the Parties

5.01 In addition to the participation in the Management Committee, the PARTIES accept and agree to perform the following duties:

1. Each will comply with the AB 939 mandates conditions set forth in the County Waste Management Plan (CoWMP);
2. Each will participate in Management Committee meetings and other required meetings of the PARTIES;
3. Each will implement its Community-Specific program;
4. Each will provide certain agreed upon reports to the Program for purposes of reporting, on a joint basis, compliance with applicable provisions of the CoWMP Program implementation; and
5. Each will individually address inter-agency issues, agreements or other cooperative efforts.

Section 6. Term of Agreement

6.01 The term of this Agreement shall commence on the date the last duly authorized representative of the PARTIES executes it.

6.02 This Agreement shall have a term of TBD

6.03 Let's discuss this as a group – how do we address a situation where one or more jurisdictions choose not to be a party in this MOA?

Section 7. General Legal Provisions

7.01. This Agreement supersedes any prior agreement among all the PARTIES regarding the Program, but does not supersede any other agreements between any of the PARTIES.

7.02 This Agreement may be amended by unanimous written agreement of the PARTIES. All PARTIES agree to bring any proposed amendment to this Agreement to their Council or Board, as applicable, within three (3) months following acceptance by the Management Committee.

7.03 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile. When each PARTY has signed and delivered at least one counterpart to the Program, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.

7.04 No PARTY shall, by entering into this Agreement, participating in the Management Committee, or agreeing to serve as Fiscal Agent, Contracting Agent, Service Provider, and/or Legal Counsel, assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of AB 939. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party.

7.05 In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a PARTY shall not be shared pro rata but instead the PARTIES agree that pursuant to the Government Code Section 895.4, each of the PARTIES hereto shall fully defend, indemnify and hold harmless each of the other PARTIES from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts of omissions or willful misconduct of the indemnifying PARTY, its officers agents or employees, under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY

under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under AB 939. No PARTY, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under AB 939.7.06. In the event that suit shall be brought by either party to this contract, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the dates shown below.

June 28, 2011

SANTA CLARA VALLEY WATER DISTRICT, a body corporate and politic of the State of California

Date: _____ APPROVED AS TO FORM:

By: _____
Chair, Board of Directors

By: _____
General Counsel

ATTEST:

By: _____
General Manager

Date: _____
By: _____

COUNTY OF SANTA CLARA, a public entity of the State of California

Date: _____ APPROVED AS TO FORM:

By: _____
Chair, Board of Supervisors

By: _____
Deputy County Counsel

ATTEST:

Date: _____
By: _____

CITY OF _____

Date: _____ APPROVED AS TO FORM:

By: _____
Name : _____
Title: _____

By: _____
Name : _____
Title: _____

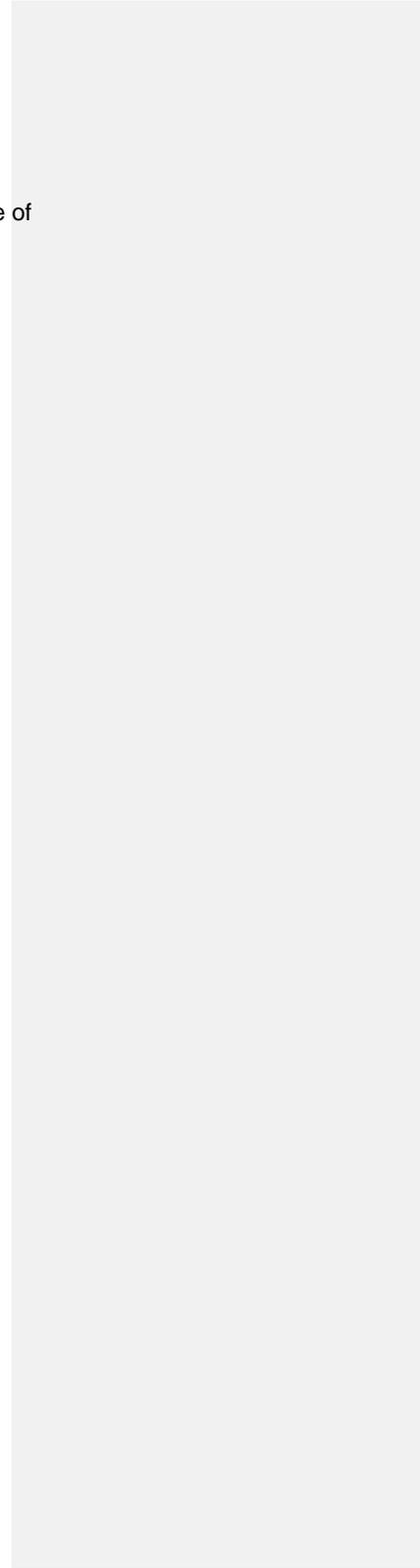


EXHIBIT A

**SOLID WASTE MANAGEMENT AND
AB 939 DIVERSION PROGRAM
SCHEDULE OF COST-SHARING PROPORTIONS**

| <u>Jurisdiction</u> | <u>Proportional Share per Capita</u> |
|-----------------------------------|---|
| Campbell | 2.21% |
| Cupertino | 3.27% |
| Gilroy | 2.75% |
| Los Altos | 1.62% |
| Los Altos Hills | 0.44% |
| Los Gatos | 1.65% |
| Milpitas | 3.75% |
| Monte Sereno | 0.19% |
| Morgan Hill | 2.13% |
| Mountain View | 4.16% |
| Palo Alto | 3.61% |
| San Jose | 53.34% |
| Santa Clara | 6.57% |
| Saratoga | 1.68% |
| Sunnyvale | 7.85% |
| Unincorporated Santa Clara County | <u>4.77%</u> |
| TOTAL | 99.99%* |

*Population data comes from the California Department of Finance, 1/1/11 Official State Estimates. The Official Estimate for the total population is 1,797,375. The Finance Department states that individual counts do not sum to this total due to rounding.

June 28, 2011

Diagram of Proposed Organizational Structure

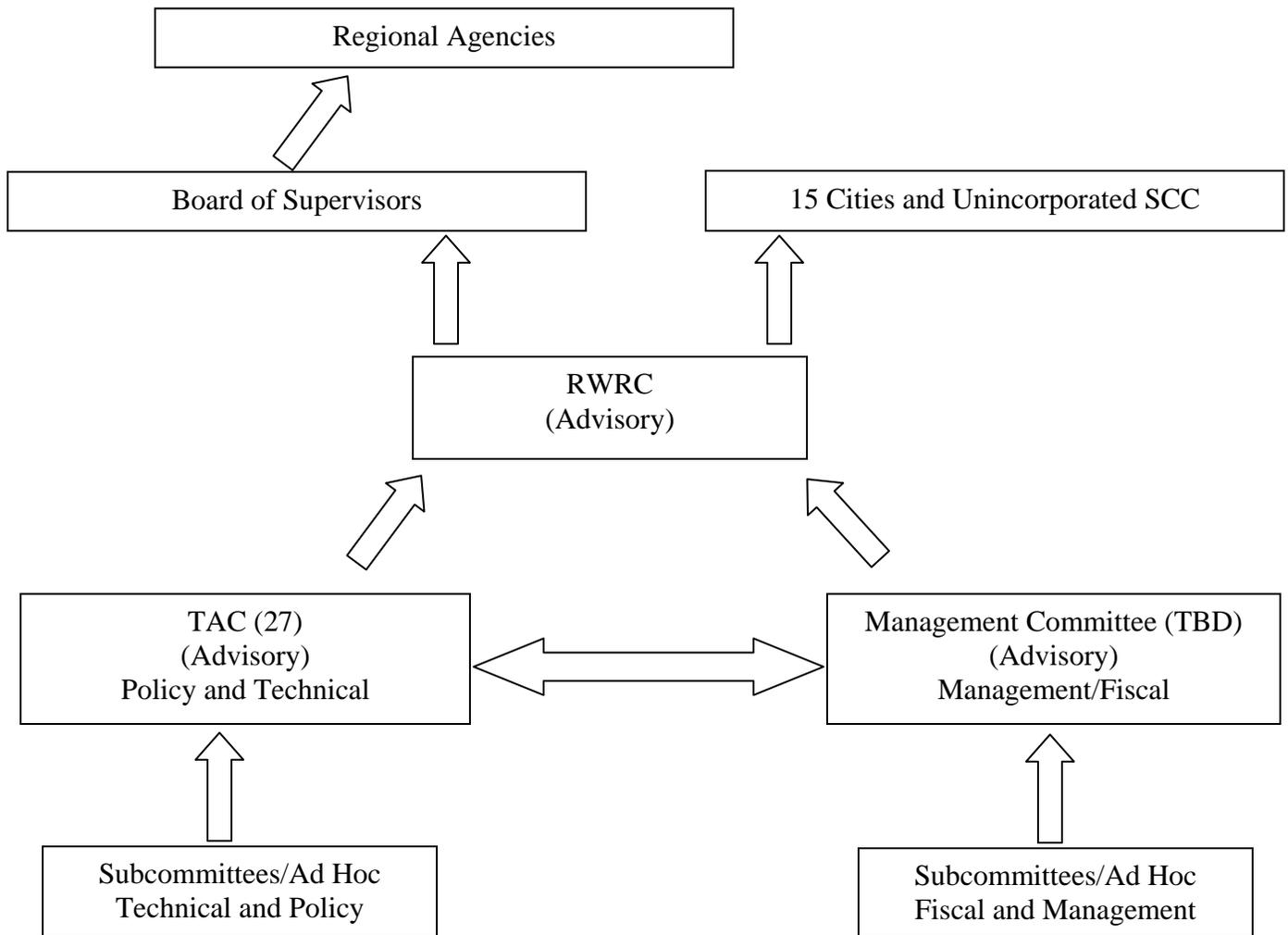


Chart Key:

Board of Supervisors – 5 elected representing all of Santa Clara County

Recycling and Waste Reduction Commission (RWRC) comprised of ten elected officials

Regional Agencies – SCVWD, Cities Association, SVMG, BAWSCA, RWQCB, City Managers

TAC – Cities, County, SCVWD, Clara Mateo Garbagemen’s Association, Acterra, CRRA, ...

Timeline for Completion of MOA

| <u>Task</u> | <u>Due Date</u> |
|--|-------------------------------------|
| Begin write up of MOA | Currently in process |
| Ad Hoc Org Study Meeting | October 5, 2011, 10:00 – 11:30 a.m. |
| Update to TAC | October 13, 2011, 1:30 p.m. |
| Update to RWRC | October 24, 2011, 5:15 p.m. |
| Proposed Ad Hoc Org Study Meeting | November 2, 2011, 1:00 – 2:30 p.m. |
| Update to TAC | November 10, 2011, 1:30 p.m. |
| Proposed Ad Hoc Org Study Meeting | December 7, 2011, 1:00 – 2:30 p.m. |
| Update to TAC | December 8, 2011, 1:30 p.m. |
| Update to RWRC | December 12, 2011, 5:15 p.m. |
| Proposed Ad Hoc Org Study Meeting | January 4, 2012, 1:00 – 2:30 p.m. |
| Update to TAC | January 12, 2012, 1:30 p.m. |
| Proposed Ad Hoc Org Study Meeting | February 1, 2012, 1:00 – 2:30 p.m. |
| Rough Draft Complete | |
| Update to TAC | February 23, 2012, 1:30 p.m. |
| Update to RWRC | February 29, 2012, 5:15 p.m. |
| First Draft to County Counsel/City Attorney for Review | March 1, 2012 |
| Proposed Ad Hoc Org Study Meeting | March 7, 2012, 1:00 – 2:30 p.m. |
| Update to TAC | March 8, 2012, 1:30 p.m. |
| Proposed Ad Hoc Org Study Meeting | April 4, 2012, 1:00 – 2:30 p.m. |
| Update to TAC | April 12, 2012, 1:30 p.m. |

Meetings and updates are suggested and on an as-needed basis; proposed dates are to reserve meeting space
 Work products are highlighted in yellow

| | |
|-----------------------------------|--------------------------------|
| Update to RWRC | April 25, 2012, 5:15 p.m. |
| Proposed Ad Hoc Org Study Meeting | May 2, 2012, 1:00 – 2:30 p.m. |
| Update to TAC | May 10, 2012, 1:30 p.m. |
| Proposed Ad Hoc Org Study Meeting | June 6, 2012, 1:00 – 2:30 p.m. |
| Update to TAC | June 14, 2012, 1:30 p.m. |
| Final Recommendation to RWRC | June 27, 2012, 5:15 p.m. |

DRAFT

Meetings and updates are suggested and on an as-needed basis; proposed dates are to reserve meeting space
Work products are highlighted in yellow