

Staff Report

TO: Chair and Board Members
Yolo County Habitat JPA

FROM: Maria Wong
Executive Director

DATE: May 3, 2010

SUBJECT: Sixth Amendment to a contract with Ebbin Moser + Skaggs, LLP for on-going legal and strategic planning services related to the NCCP/HCP planning process

Requested Action:

1. That the Board approve the sixth amendment to Agreement No. 2005-01 with Ebbin Moser + Skaggs, LLP for on-going legal and strategic planning services related to the NCCP/HCP planning process and authorize the Chair to execute said Amendment to increase the amount of compensation by \$160,000 for a total contract amount of \$613,760 pending approval of contract documents by JPA counsel.
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REASON FOR RECOMMENDED ACTION:

Approval of this Agreement will allow Ebbin Moser + Skaggs, LLP to continue to provide critical legal and strategic planning services. Staff anticipates that continued consultant support will be needed throughout the HCP/NCCP planning process.

BACKGROUND:

The firm of Ebbin Moser + Skaggs, LLP (EMS) has been under contract with the JPA since June 2005. They provide specialized assistance during the planning phase of the YNHP. The last contract amendment was authorized in March 2009. EMS has provided continued coordination with the wildlife agencies, assisted in the negotiation of agreements, assisted in securing grant funding and provided specialized assistance to the JPA's legal staff. This sixth amendment extends the term of the contract through December, 31, 2010.

DISCUSSION:

Ebbin Moser + Skaggs, LLP will continue to negotiate tentative points of agreement with the wildlife agencies; advise the JPA on matters related to the Endangered Species Act; and will provide valuable assistance in meeting the Board's goal of having a public draft HCP/NCCP document in print by the end of 2010. Specific tasks undertaken with this contract amendment are outlined in the scope of work in Attachment A, and include review, editing and drafting assistance in the preparation of HCP/NCCP documents; and assistance with negotiations.

The attached scope of work is reflective of the master scope of work that guides the work of all of the firms that comprise the consultant team. Consequently, some of the language may refer to work to be undertaken directly by others that EMS may review and/or edit.

FISCAL IMPACT

The contract increase is funded from reprogrammed funds and the 2009 Section 6 grant awarded to the JPA.

Attachment: Draft Sixth Amended Agreement between Ebbin Moser + Skaggs, LLP and the JPA.

ATTACHMENT A

DRAFT

**SIXTH AMENDMENT TO AGREEMENT BETWEEN THE YOLO COUNTY
HABITAT/NATURAL COMMUNITY CONSERVATION PLAN
JOINT POWERS AGENCY AND EBBIN MOSER + SKAGGS, LLP**

This Sixth Amendment to the July 18, 2005 agreement between the parties is made and entered into as of May 3, 2010, by and between the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency (“JPA”) and Ebbin Moser + Skaggs, LLP (“Contractor”).

RECITALS

WHEREAS, Contractor was previously retained to provide legal services to the JPA under a July 18, 2005 contract (the “Agreement”); and

WHEREAS, the Agreement has been amended on five occasions to revise its scope, extend its term, increase the maximum amount of potential compensation, and to provide for the completion of work to be undertaken by Berkeley Economic Consultants; and

WHEREAS, the parties wish to again amend the Agreement to extend its term, increase the maximum amount of potential compensation, and define a specific scope of work.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

AGREEMENT

1. Section 2 of the Agreement is hereby amended to read as follows:

Contractor shall perform said services between May 3, 2009 and December 31, 2010.

2. Section 3 of the Agreement is hereby amended to read as follows:

Subject to Contractor’s satisfactory and complete performance of all the terms and conditions of this Agreement, and upon Contractor’s submission of an appropriate invoice, the JPA shall pay Contractor the rates as reflected in Exhibit A, Fee Schedule, in an amount not to exceed \$613,760.

3. Exhibit A to the Agreement is replaced and superseded by Exhibit A hereto, which is incorporated herein by this reference.

4. Except as specifically amended by this document and by prior amendments to the original Agreement, the original Agreement shall remain in full force and effect according to its terms.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

YOLO COUNTY HABITAT/NATURAL
COMMUNITY CONSERVATION PLAN
JOINT POWERS AGENCY

EBBIN MOSER + SKAGGS, LLP

By _____
Helen M. Thomson, Chairwoman
Board of Directors

By _____
Marc Ebbin, Esq.
550 Montgomery Street, Suite 900
San Francisco, CA 94111
415-362-5050

Approved as to Form:
Robyn Truitt Drivon, County Counsel

By _____
Philip J. Pogledich, Senior Deputy
Attorneys for the Yolo County
Habitat/Natural Community Conservation Plan
Joint Powers Agency

**EXHIBIT A
FEE SCHEDULE**

Fees for services requested by the JPA shall be on a time and materials basis in accordance with the following:

Schedule of hourly rates

<u>Personnel</u>	<u>Hourly Billing Rate</u>
Marc Ebbin	\$405
David Moser	\$405
Sean Skaggs	\$405
Shawn Zovod	\$385

Miscellaneous charges

The following charges are in addition to personnel charges:

Mileage: Current IRS rate

Other direct expenses: Actual cost

EXHIBIT B
SCOPE OF WORK

The scope of work described below includes tasks that are needed to complete development of the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The work described in the scope of work and schedule will be undertaken through the effort of the consultant team over several phases as authorized by the JPA Board of Directors.

Ebbin Moser + Skaggs, LLP will provide strategic and legal guidance; review, editing and drafting assistance in the preparation of HCP/NCCP documents; and assistance with negotiations. The cost estimate provided in this Agreement will cover EMS's effort on the following tasks outlined below.

Yolo NCCP/HCP Plan Development
Scope of work for
Ebbin, Moser + Skaggs LLP

April 28, 2010

The following scope of work for the Yolo Natural Heritage Program (NHP) was jointly prepared by Ebbin, Moser + Skaggs and the Executive Director of the Yolo County Habitat/Natural Community Conservation Plan JPA. This scope identifies the major tasks to complete the HCP/NCCP. However, some tasks are not covered under this scope of work, including preparation of an economic analysis; preparation of supplemental chapters of the Plan Document; and funding procurement support.

Project Team Roles

The Consultant Team consists of the following individual Firms: Science Applications International Corporation ("SAIC"), L-Studio, Berkeley Economic Consultants ("BEC"), TAIC, and Ebbin, Moser + Skaggs ("EMS"). JPA Executive Director and the lead attorney from EMS will jointly coordinate and direct the management of senior staff from each Firm and the Project Schedule. JPA Executive Director will act as Project Manager ("JPA Project Manager") for this phase of HCP/NCCP development and will be responsible for contract administration. Individual Firms will assume the Lead on one or more of the tasks outlined in this Scope of Work according to their expertise (See Tasks).

The Consultant Team, working under the direction of the JPA Executive Director and the EMS lead attorney, and within this Scope of Work, will provide support to and seek input from the JPA's Steering Advisory Committee, Technical Advisory Committee and other working groups that may form to ensure that the broad range of stakeholder interest needs are addressed throughout the remainder of the planning process.

Project Schedule

The Yolo County NCCP/HCP Consultant Team has developed the following schedule for completion of the tasks identified in this Scope of Work. Major tasks to be completed are

outlined below. Completion of the HCP/NCCP planning process within the desired timeframe depends on close coordination and the commitment of the Consultant Team to complete tasks on time and on budget. Each Firm is expected to inform the JPA Project Manager immediately of any condition that would cause delay in the schedule outlined in Exhibit C.

TASKS

Tasks associated with this Scope of Work are described below.

Task 1.0 Goals and Principles for Landscape Conservation & Preserve Design

1.1 Draft and Finalize Biological Goals, Objectives, and Criteria for Conservation

The goals, objectives, and criteria will describe what the NCCP/HCP will achieve for each species and ecological community along with criteria to evaluate the expected level of conservation. The draft goals and objectives will be circulated to the wildlife agencies and to the Steering Advisory Committee for review and comment. These goals will be used to develop preserve designs and conservation strategies, and to undertake the conservation analysis.

The goals will be quantitative in terms of acres targeted for conservation, descriptive in terms of preserve design objectives, and will identify general criteria for avoidance and minimization measures and for management and monitoring. Draft goals and objectives will be presented to the Steering Advisory Committee for input prior to finalizing.

Deliverable: Draft and final set of goals, objectives, and criteria.

Task 2.0 Finalize Evaluation and Assessment Tools (Predictive Distribution Models and species locality data) for Species Prioritization and Analysis

2.1 Finalize Predictive Species Distribution Models

The consulting team has developed draft predicted distribution models for each species. The draft species models are currently under review by the wildlife agencies and the biological working group of the Steering Advisory Committee. The team will coordinate with the wild agency staff and biological working group to answer questions regarding the models and determine if and how the models will be modified. Modifications to the models will be made as needed.

2.2 Finalize Species Locality Data

Species locality data has continued to be collected from all known data sources (wildlife agencies, NGOs, Universities, and independent biologists). It will soon be necessary to “freeze” data collection efforts so that GIS analytical steps involved in preserve design

and conservation analyses can be carried out. The consulting team will circulate the list of current data compiled in the database to the wildlife agencies and the Steering Advisory Committee prior to updating the GIS database. If significant new data sources are identified after this point, there will be another opportunity to integrate the new data into the database prior to plan finalization.

Meetings: None

Deliverable: Final predicted species distribution models, figures displaying predicted habitat for each species, updated based on input from the wildlife agencies and the biological working group of the steering committee. Final species locality GIS database.

Task 3.0 Finalize the Agriculture Conservation Planning Tools

3.1 Finalize the Agricultural Habitat Value Matrix and Habitat Unit Conservation Goals

A draft agriculture habitat value matrix has been developed and presented to the wildlife agencies. The consulting team will facilitate a work session with key wildlife agency biologists and the consulting team biologists involved in setting up the preliminary habitat value rankings to further refine and reach agreement on the matrix. The work session will review the process for determining the habitat value rankings and the rationale for each species agriculture habitat values for each crop. The draft conservation goals for each species using agriculture will also be reviewed and updated during the work session. The updated matrix will be presented to the Steering Advisory Committee for further comment prior to finalizing.

Meetings: Consultant team members will attend up to one planning meeting, one work session and one Steering Advisory Committee meeting in support of this task.

Deliverable: Final agricultural matrix and habitat unit conservation goals for each species.

3.2 Finalize Agricultural-Habitat Report: Report outlining Agricultural-Habitat Best Management Practices (BMPs), land owner/agricultural operator incentives, and Successful Agriculture-Habitat Conservation Programs

An administrative draft Agricultural-Habitat Report has been prepared and distributed for internal review. A final draft Report will be prepared and distributed through the Steering Advisory Committee for additional input. The consultant team will revise the draft Agricultural–Habitat Report based on input received.

Deliverable: Final Agricultural-Habitat Report.

Task 4.0 Develop and Finalize Alternatives and Identify Proposed Conservation Strategy and Preserve Design

4.1 Develop and Finalize Conservation Strategy Alternatives

Conservation strategies describe the use of land preservation and management to achieve conservation goals and objectives. The general purpose of the conservation strategy and preserve design is to describe how the plan will represent all ecosystem/habitat types across their natural range of variation within the study area; and how the plan will include areas large enough to maintain viable populations, natural patterns of abundance and distribution, and evolutionary and ecological processes (including fire regime, flood plains, etc.). The conservation strategy includes landscape-scale, community-scale, and species-scale conservation measures that link back to the goals and objectives established at each of these ecological scales. The conservation strategies also analyze and describe the conservation benefits to the plan's proposed covered species in terms of map-based and process based conservation outcomes. The preserve design process considers these goals and objectives to identify where the goals can be best achieved by the plan. Identifying the best areas to accomplish these goals is a complex process that can best be accomplished using a combination of sophisticated GIS analysis and modeling tools combined with a detailed understanding of species, community, and landscape ecology.

Conservation strategies and the preserve design are expected to result from a combination of habitat preservation easements and set-asides (primarily in the uplands and some riparian and wetland habitats), conservation-oriented development policies and guidelines, and coordinated management of agricultural lands and riparian and wetland habitats. Draft landscape-scale conservation strategies and preserve design approaches are currently in various stages of development for each of the three identified subareas (natural uplands, riparian/wetlands, and agriculture). Alternative landscape-scale conservation strategies for each of the three subareas will be finalized with accompanying maps, figures, and tables. Conservation outcomes for communities and species will be analyzed to determine the relative biological benefits and relative costs of each alternative. The consultant team will work with the JPA Project Manager, the Steering Advisory Committee and the wildlife agencies to refine and reach agreement on existing draft conservation strategies and preserve design approaches. The summary of the conservation strategy alternatives development and identification process will be formatted as a section or chapter of the Plan and/or the EIS/EIR documents.

Deliverable: Conservation strategy alternatives text, maps, tables, and figures formatted for the Plan and/or the EIS/EIR.

Conservation Strategies~

Preserve Design~

4.2 Identify Proposed Conservation Strategy

The Consultant Team will assist the JPA and affected stakeholders in selecting preferred conservation strategies based on the highest practicable conservation outcomes. The potential benefits and costs of each alternative will be summarized to facilitate informed decision-making. The preferred conservation strategies will be documented and formatted as the conservation strategy chapter (Chapter 5) of the Plan.

Deliverables: Final text and figures for conservation strategy chapter (Chapter 5).

Task 5.0 Quantitative Conservation Calculations

The quantitative conservation calculations identify the number acres of habitat for each species/community, and/or known locations (e.g., nesting/roosting sites, rare plant populations) expected to be conserved by plan implementation. These calculations are essential to the evaluation of conservation strategy alternatives as well as assisting in the impact assessment.

An initial quantitative conservation calculation will be conducted for each alternative conservation strategy. This GIS-based analysis will calculate the number of acres (or habitat units in agricultural areas) of each vegetation community, each species predicted habitat, and the number of known localities expected to be conserved under each alternative. This initial conservation analysis will be used to evaluate the relative ability of each alternative to achieve the conservation goals. Input on conservation calculation assumptions and adjustments in conservation strategies may require repeated runs of the GIS calculations to update the results tables.

Deliverables: Text and tables summarizing the quantitative conservation calculation results for each alternative.

Deliverables: Final conservation calculations tables and supporting documentation.

Task 6.0 Develop the Implementation Approach and Structure including Plan Management, Funding, Administration, and Governance

This task will involve focused discussions with the JPA, stakeholders, and wildlife agencies regarding the implementation approach and structure for the plan. A plan for a governance, funding, and administration of the plan will be developed to identify the entity(ies) to assume responsibility for plan implementation and oversight. The processes for coordination of the preserve assembly (acquisitions/easements), project review and compliance, monitoring and management will be developed and described. Up to three alternative implementation structure options will be developed. The Consultant team will assist the JPA in selecting a preferred implementation structure which will be formally described in the HCP/NCCP document. The implementation approach will be documented and formatted as Chapter 6 in the Plan. An Implementing Agreement will also be drafted by Ebbin Moser + Skaggs.

Deliverable: Implementation Chapter (Chapter 6), draft Implementing Agreement

Task 7.0 Identify and Describe Covered Activities that May Affect Resources in the Plan Area

This task involves the identification and description of the types of activities, including development, agriculture, infrastructure, and operations and maintenance, that may affect sensitive resources within the plan area. The consultant team will work with the JPA Executive Director to identify and interface with the county; the four incorporated cities; SACOG; Caltrans; federal state and local agencies, utility service providers; and others who are expected to undertake work in the Plan area to develop a representative list of activities that should be covered under the NCCP/HCP. These activities will be summarized in the Covered Activities Chapter (Chapter 3) that describes the activities that will receive regulatory coverage as well as identifying compatible activities that may be allowed within reserve areas.

Deliverable: Covered Activities chapter (Chapter 3) describing activities within the plan area that may affect sensitive resources, including development, agriculture, and operations and maintenance of public and private infrastructure.

Task 8.0 Conduct the Impact Assessment

The impact assessment will estimate the impact to covered species as a result of the implementation of the HCP/NCCP, including the effect of covered activities. The analysis will consider the level of incidental take that is reasonably expected to occur within the planning area. Where appropriate, the impact assessment will consider species level impacts using population scaled units of measurement, to the extent practicable. Impacts from covered activities on natural communities covered by the Plan will consider ecosystem integrity, ecosystem function and species diversity. The updated General Plan will be used to estimate expansion of suburban and exurban development or changes in agriculture distribution. Impacts associated with location-specific projects may be directly calculated using GIS; impacts resulting from other covered activities will be estimated based on the best available information. Note that some areas not conserved by the plan might not be impacted due to steep slopes, jurisdictional wetlands, or other environmental constraints. The impact assessment will be documented and formatted as Chapter 4 in the Plan.

Deliverable: Impact Assessment Chapter (Chapter 4)

Task 9.0 Coordination with Other Planning Processes

Several parallel planning processes of local and regional significance are currently being undertaken by others. These include the County's Integrated Regional Water Management Plan; upcoming general plan updates for the four incorporated cities; the SaCOG Blueprint and Greenprint Plans; and the Bay-Delta Conservation Plan. These processes have the potential to be valuable information inputs into development of the Yolo NHP and could result in efficiencies in time, effort and cost to the JPA. It is also

possible that Yolo NHP could be expanded to include activities undertaken by Native American Tribes. Ebbin Moser + Skaggs will assist the Executive Director as needed in coordinating development of the Yolo NHP with these related planning processes.

Task 10.0 Design Draft Adaptive Management and Monitoring Framework Plan

Develop the draft adaptive management and monitoring framework plan identifying management and monitoring responsibilities, targets for management and monitoring, triggers for management actions, timing of management and monitoring actions. The draft adaptive management and monitoring framework plan will at a minimum identify potential uncertainties in the Plan, incorporate a range of alternatives for addressing those uncertainties, describe a monitoring program to determine the periodic success rate of each of these alternatives and develop a feedback loop from the monitoring program that allows management strategies to be updated and improved, if needed, over the life of the Plan.

The draft adaptive management and monitoring framework plan will be developed in three stages to allow for early and frequent input from representative affected stakeholders: 1) The consultant team will work with the JPA Project Manager and the Steering Advisory Committee and its relevant working groups to identify an appropriate range of management and monitoring tools that are both flexible and promote the desired biological and regulatory outcomes. 2) The consultant team will use this information to prepare an administrative draft of the adaptive management and monitoring framework plan for internal review purposes. 3) A public draft adaptive management and monitoring framework plan will be prepared for inclusion in the draft HCP/NCCP documentation.

Deliverable: Text and figures associated with the adaptive management and monitoring framework plan formatted as the monitoring and adaptive management chapter.

Task 11.0 Draft Plan Review and Revision Cycles

Task 12.0 Coordination/Support to NEPA/CEQA Consultant

- Preparation of Environmental Documents
 - Administrative review draft
 - Public review draft
- Finalize Plan and Environmental Documents Based on Public Review

Task 13.0 Participation in Meetings

In addition to the ongoing internal team meetings, conference calls, etc to coordinate efforts with the consultants and outside parties, a number of additional formal team meetings will be required. Additional meetings include 3 meetings with the JPA, 5 meetings with the Steering Advisory Committee, 10 meetings with wildlife agencies, and 30 team meetings or conference calls.

Tasks Not Covered by this Scope of Work

The tasks and activities associated with an economic analysis of the Yolo NHP and the preparation of supplemental chapters of the Plan Document; and funding procurement support are not included in this proposed scope of work and its associated budget and contract.

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

“I am aware of the provisions of Paragraph 3700 of the Labor Code which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing any services required by this Agreement”.

Ebbin Moser + Skaggs

Marc J. Ebbin