



SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY  
[SFCJPA.ORG](http://SFCJPA.ORG)

**Notice of Special Meeting of the  
BOARD OF DIRECTORS  
City of Menlo Park Arrillaga Recreation Center, Juniper Room  
700 Alma Street, Menlo Park, California  
October 22, 2016 at 8:30 a.m.**

AGENDA

1. ROLL CALL
2. EXPECTED OUTCOMES
3. PUBLIC COMMENT – *During this Agenda item, individuals may speak on any topic for up to three minutes; during any other Agenda item, individuals may speak on the subject of that item for up to three minutes.*
4. UPSTREAM OF HIGHWAY 101 PROJECT  
Discuss the SFCJPA's preferred project and project alternatives, the preferred project's estimated cost and current funding commitments, and the Corps of Engineers Feasibility Study
5. JOINT POWERS AGREEMENT CREATING THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, DATED MAY 18, 1999  
Discuss potential changes to this Agreement that: 1) designates the Member Agency whose restrictions on the exercise of its powers will apply to the Authority and makes other technical amendments, and 2) updates the SFCJPA purposes to reflect the Authority's current and desired roles and responsibilities
6. NEXT STEPS  
Potential actions at upcoming Board meetings to update the May 1999 Joint Powers Agreement and to continue to move forward with the upstream of Highway 101 project
7. ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda and related documents can be viewed online by 11:30 a.m. on October 19, 2016 at [sfcjpa.org](http://sfcjpa.org) -- click on the "Meetings" tab near the top.

NEXT MEETING: Regular Board meeting, November 17, 2016 at 4:00 p.m., East Palo Alto City Council Chambers.



## **October 22, 2016 Board Retreat Packet**

This briefing packet created by SFCJPA staff contains updates, context and recommendations regarding the two agenda topics to be discussed at the October 22, 2016 Board retreat: the flood protection improvements being analyzed for the creek upstream of Highway 101, and the May 1999 Joint Powers Agreement that formed the SFCJPA. Both of these items were discussed at recent SFCJPA Board meetings as well as the previous Board retreat in December 2013. This retreat is a continuation of that discussion; Board action on these topics will be proposed at an upcoming meeting. The following narrative is organized around these two agenda items, and enclosed are a memo from the SFCJPA General Counsel and the original Joint Powers Agreement.

### **The SFCJPA project upstream of Highway 101 (Agenda Item 4)**

While the SFCJPA still must spend a considerable amount of time and resources on permit compliance, grant funding administration, utility construction, and construction coordination of the S.F. Bay-Highway 101 project, we are turning our attention once again to the next major phase of work on the creek; improving conveyance upstream of Highway 101. Four months ago, we moved funding previously designated for the upstream project to the Bay-Highway 101 project, which exacerbated a funding shortfall for construction of upstream improvements. Though the design and environmental review of work upstream of Highway 101 is at a very early stage, now is a good time for the Authority and its member agencies to discuss the preferred project elements and project alternatives, the preferred project's estimated cost and current funding commitments, and the status of the Corps of Engineers work.

#### The Development of the Preferred Project and project alternatives upstream of Highway 101

Those who created the SFCJPA in 1999 primarily sought to establish an entity that could coordinate the development of a project to protect the communities from the flood of record experienced the year before. As the SFCJPA looked at the issue, it was clear that to avoid creating new or additional risk, we would first need to increase the capacity of the creek at the most downstream section to accept water from upstream. Thus, in 2009, the SFCJPA began the design and environmental documentation for a project between S.F. Bay and Highway 101 that would provide very substantial protection: against a 100-year flow during a 100-year tide with projected sea level rise and the freeboard required to remove properties from the FEMA floodplain. In 2016 final design and permitting were completed and the project is now being constructed.

While the Bay-Highway 101 project was in development, we also planned for projects to address the challenges facing areas upstream. In 2013, the SFCJPA published a Notice of Preparation (NOP) for an Environmental Impact Report to analyze the following four project alternatives upstream of Highway 101 that would achieve 100-year flow protection:

1. Replace bridges and widen the channel to remove bottlenecks (for approximately 50-year protection),
2. Alternative 1 plus build floodwalls along the channel,
3. Alternative 1 plus build an underground bypass culvert, and
4. Alternative 1 plus build a facility to detain water upstream.

Alternative 1 above would maximize the capacity of the channel in the floodplain area between Highway 101 and Middlefield Road. Alternatives 2, 3, and 4 build upon Alternative 1 and presented us with the following three basic options to prevent flooding from a larger (100-year) storm event: keep more water in the channel by building floodwalls on both sides (Alternative 2), take water out of the creek via an underground bypass channel (Alternative 3), or detain water upstream of the floodplain area and release it gradually after the storm has passed (Alternative 4). These alternatives were based on hydraulic and engineering analyses performed by the Santa Clara Valley Water District (SCVWD).

After publishing the 2013 NOP, conducting outreach with the community and key stakeholders, and further technical analysis, we understood there to be significant challenges to implementing any of the 100-year protection alternatives (Alternatives 2, 3, and 4 above) in the near-term and that Alternative 1 could not meet the 100-year protection objective identified in the NOP.

While each alternative that could protect against a 100-year event included a feature that presented unique challenges, the features common to all three alternatives – replacing bridges and widening channel bottlenecks – would not present such significant short-term implementation challenges. Hydraulic modeling by SCVWD of these foundational, or baseline, features showed that they could provide protection against an event similar to the 1998 flood of record, even if the two largest bridges in that floodplain area (University Avenue and Middlefield Road) were not replaced.

Discussions with members of the Board and community since 2013 indicate that the long-term objective should remain 100-year flood protection and relief from flood insurance requirements, but that this EIR should focus on a short-term, more achievable project that would reduce the flood risk and anxiety faced by the community every winter.

Thus, since the last Board retreat, SFCJPA proposals have focused on protection against an event similar to the 1998 flood. We felt that this objective would be a substantial benefit and would be achievable because the construction costs estimated by the SCVWD combined with the Bay-Highway 101 project cost estimate at that time were equal to the resources committed to both projects by member agencies. And since the baseline features of replacing the Newell Road and Pope-Chaucer Streets bridges, widening the channel between these bridges, and enhancing creek habitat are required of any larger project that would provide 100-year protection, building these baseline features now would not only provide measurable flood protection, it would also pave the way for future additive improvements.

In summary, the new NOP to be released later this month, and the EIR that will follow, will evaluate the preferred baseline alternative against the alternatives of upstream detention, underground bypass culvert, and floodwalls to determine which would provide flood protection to at least the 1998 flow and other benefits, with the least environmental impacts. At this retreat, staff from the SFCJPA, with support from staff at member agencies and Stanford, will summarize the status of each of these four alternatives.

### Funding

The 2016 amendment to the Bay-Highway 101 funding agreement moved monies from planned work upstream. The San Mateo County Flood Control District moved \$700,000, City of Menlo Park \$500,000 and City of East Palo Alto \$200,000 (and these agencies and Palo Alto provided additional funds; the SCVWD and SFCJPA had already committed most of the needed funding). The consequence of this shift in resources is that the only funding currently committed towards creek work upstream of Highway 101 is \$10,200,000 from the SCVWD and a high likelihood that Caltrans will continue to contribute approximately 88.5% of the cost to complete the Newell Road bridge project.

Over the past year, engineering staff at the SCVWD have developed designs and preliminary cost estimates for the widening of creek bottlenecks, and we have early costs estimates to replace the Newell Bridge and Pope-Chaucer Bridge. Very preliminary costs estimates for the construction of all of these items, plus 10%, total approximately \$18 million. This number is useful to understand the approximate magnitude of the shortfall – about \$8 million. However, for reasons that will be discussed at the retreat, these estimates are not at stage where they should be used to develop a new funding agreement or make decisions regarding new revenue streams. At this retreat, we will discuss what went into this cost estimate, and the engineering and other work that must still be done to develop a reliable number.

While the Bay-Highway 101 downstream project is locally and state funded, the SFCJPA has continued to work with the Army Corps of Engineers on a Feasibility Study to evaluate alternatives for upstream areas. The primary purpose of this collaboration is to retain the possibility of federal funding for project construction, with a secondary purpose to secure earlier input on the project from environmental regulatory permitting agencies. The Corps' Study is funded as a 50-50 cost share, while construction funding has a more favorable cost share for local communities. Our collaboration with the Corps extends to sharing technical information, certification by the Corps of hydrologic information recently developed by the SCVWD, and cooperation between the SFCJPA-led CEQA process to create an EIR and a Corps-led National Environmental Policy Act (NEPA) process to create an Environmental Impact Statement (EIS).

While our EIR and Corps' EIS may recommend different projects, the project that would be built is the locally preferred project. If that occurred, environmental clearance would be provided by the EIR and the federal government could provide funding up to the estimated cost share of the federally preferred project.

### **The May 1999 Joint Powers Agreement creating the SFCJPA (Agenda Item 5)**

Following the record flood in 1998, the five local agencies most concerned with this traumatic event developed a written agreement to create the SFCJPA to collectively solve the flooding problem. At that time, it was assumed that this new agency would make recommendations to, and coordinate the actions of its member agencies, but that it would not secure substantial outside funding or lead major capital projects. This limited role was written into the SFCJPA's founding Joint Powers Agreement. Recital B at the beginning of the Authority's founding Joint Powers Agreement (enclosed) states that the agency was created for "the primary purpose of managing the joint contribution of services and providing policy direction on issues of mutual concern relating to the San Francisquito Creek." At the bottom of the first page of the Agreement the following "purposes" are listed:

- To facilitate and perform bank stabilization, channel clearing and other Creek maintenance.
- To plan flood control measures for the San Francisquito Creek watershed.
- To take actions necessary to preserve and enhance environmental values and instream uses of the Creek.
- To coordinate emergency mitigation and response activities relating to San Francisquito Creek.
- To make recommendations to Member Entities for funding and alternatives for long term flood control for Member Entity consideration.

The five agencies that founded the SFCJPA have substantial staff and financial resources, and sophisticated, engaged constituents. Even with these assets, these jurisdictions cannot address concerns that extend beyond their boundaries to the other side of the creek or along a shoreline. The SFCJPA was formed to implement work that no member agency could perform alone, and in recent years we have been fortunate that over \$70 million in local and State resources, as well as local political leadership, have focused on our project work. We have taken a more effective role in providing regional early warning information, and have devoted more resources to securing and administering larger capital budgets. In recent years, we have shown that there is a need for a nimble agency that can cross jurisdictional lines to lead regional planning, project design, environmental review, and implementation, and emergency response notification.

In August 2011 and December 2013, SFCJPA Board retreats looked at the Authority's short-term and long-term objectives and resources and asked: are the five purposes listed in the 1999 Joint Powers Agreement relevant today or what is desired in the future, and are we well-positioned to fulfill them? While there was recognition that the purposes were outdated, the need to complete the design and permitting of our first major capital project, and to secure the funding to construct it, kept us from updating the Joint Powers Agreement at the SFCJPA Board and taking this to the governing bodies of all five member agencies.

Today, while the need to construct the Bay-Highway 101 project, move forward with the upstream of Highway 101 EIR and design, and begin design and an EIR of our SAFER Bay project have not abated, the need to update our stated purposes that *enable our leadership role* on these critical projects has never been greater. Given the importance of our projects to local residents and as case studies to agencies around the Bay Area, and the local, State, federal and private funding now flowing through the Authority, changes to our Joint Powers Agreement would help to explain and support our work. I believe the following five purposes more accurately reflect who we are now and who we wish to be, and can serve as the basis for a conversation of our roles and responsibilities at this Board retreat and at upcoming Board meetings.

1. Plan, design, and implement capital projects that protect communities served by the Authority from creek and San Francisco Bay flooding due to storms, tides and projected sea level rise.
2. Restore, enhance and maintain the San Francisquito Creek watershed and nearby areas of the San Francisco Bay shoreline, and develop recreational opportunities that connect local communities.
3. Facilitate and integrate the management of this watershed's surface and groundwater in a manner that recognizes their shared source and value to local communities.
4. Provide emergency response agencies with regional information that enhances their communication and response capabilities.
5. Secure and administer funding to implement the above Authority purposes in a transparent manner.

In addition to updating the Authority's purposes, there are changes proposed to the Joint Powers Agreement related to legal and operational issues. As described in the enclosed memo, SFCJPA General Counsel Greg Stepanicich suggests changes regarding a requirement that the agreement designates the Member Agency whose restrictions on the exercise of its powers will apply to the Authority, and making clear the ability of the SFCJPA to create a new financing district and sell bonds to finance capital projects. I will propose additional, operational changes related to giving the SFCJPA Board the authority to approve capital projects, deleting references to Associate Members and the role of the Board Secretary, and updating references to the operating budget and administration. All of these items will be discussed at the retreat, and then specific language will be developed with Board input and presented to the Board for consideration at an upcoming meeting.

Submitted by:

A handwritten signature in blue ink, appearing to read "Len Materman", with a long, sweeping underline.

Len Materman  
Executive Director

MEMORANDUM

TO: Chair and Members of the Board  
San Francisquito Creek Joint Powers Authority

CC: Len Materman, Executive Director

FROM: Greg Stepanicich, General Counsel

DATE: October 18, 2016

SUBJECT: JPA Agreement Amendments

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During the upcoming Board Retreat, there will be a discussion of possible amendments to the Authority's Joint Powers Agreement, which has not been revised since its adoption. In addition to updating the Purposes section of the Agreement to more accurately reflect the current mission of the Authority, I recommend the following three revisions:

1. Under state law, the powers of a joint powers authority are the common powers of its members in performing the purposes of the authority. Government Code Section 6509 provides a method for determining the state law restrictions that will apply to the manner of exercising these powers. It provides that the joint powers agreement must designate one of the parties whose restrictions on the exercise of powers will apply to the authority. If a general law city is designated under Section 6509, the state law limitations on the exercise of the powers of a general law city will apply. For example, state law imposes specific requirements on the power of a general law city to perform construction contracts. These requirements would apply to a joint powers authority that has designated a general law city member as its designated party under Section 6509.

Section 1 of the Authority's Joint Powers Agreement acknowledges the requirements of Section 6509 but does not actually designate one of the members of the Authority. Typically it is most clear cut to use a general law city as the designated party since such limitations generally are well-known and are intended to apply to a wide range of cities. For this reason, I recommend that either East Palo Alto or Menlo Park be the designated member for the applicable restrictions on the manner of exercising the powers of the Authority.

2. Section 6 of the Authority's Joint Powers Agreement addresses the powers of the Authority. In conjunction with the amendment to Section 1 described above, I recommend adding language stating that the Authority has all the powers common to the member entities and any additional powers granted by state law. This reflects existing state law but it is typical to include this language in joint powers agreements to make clear that the Authority has the full powers granted to these types of entities under state law.

MEMORANDUM

Chair and Members of the Board  
San Francisquito Creek Joint Powers Authority  
October 18, 2016  
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3. A new Subsection (c) is proposed to be added to the list of Authority powers specified by Section 6. This new subsection provides that the Authority may “Establish financing districts and issue bonds.” In order to issue bonds case law indicates that this power should be specifically enumerated by the joint powers agreement. Therefore, we recommend adding this new provision in the event that the Authority desires to issue bonds for future public improvements.

In addition, the Executive Director will be recommending operational revisions to the Agreement to better reflect current operations activities.

**JOINT POWERS AGREEMENT  
CREATING THE  
SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY**

Dated  
as of

May 18, 1999



JOINT POWERS AGREEMENT

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SAN FRANCISQUITO CREEK JOINT POWERS AGREEMENT

This Agreement is made by and among the City of Menlo Park, the City of Palo Alto, the City of East Palo Alto, the Santa Clara Valley Water District, and the San Mateo Flood Control District (“Member Entities”), all of which are public entities organized and operating under the laws of the State of California and each of which is a public agency as defined in California Government Code section 6500.

RECITALS

A. Government Code sections 6500-6515, permitting two or more local public entities by agreement to jointly exercise any power common to them, authorizes the Member Entities to enter in this San Francisquito Creek Joint Powers Agreement (“Agreement”).

B. Each Member Entity desires to join together with the other Member Entities for the primary purpose of managing the joint contribution of services and providing policy direction on issues of mutual concern relating to the San Francisquito Creek (“Creek”), including bank stabilization, channel clearing and other Creek maintenance, planning of flood control measures, preserving and enhancing environmental values and instream uses, and emergency response coordination.

C. The governing board of each Member Entity has determined that it is in the Member Entity’s best interest and in the public interest that this Agreement be executed and that it is participating as a member of the public entity created by this Agreement.

NOW, THEREFORE, the Member Entities, by, between and among themselves, in consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

1. CREATION OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY. Pursuant to Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) (as amended from time to time, the “JPA Law”), the Member Entities create a public agency, separate and apart from the Member Entities to be known as the San Francisquito Creek Joint Powers Authority (the “Authority”). Pursuant to Government Code section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this Agreement. A Member Entity may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. The Authority shall require indemnification on behalf of itself and its members as determined by its Board of Directors from entities with which it enters into agreements. For purposes of, and to the extent required by, Government Code section 6509, in exercising its powers, the Authority shall be subject to the restrictions upon the manner of exercising the powers of the city or county Member Entity specified in this Agreement, except as otherwise authorized or permitted by the JPA Law.

2. PURPOSES. This Agreement is entered into by Member Entities under the JPA Law for the following purposes:

- a. To facilitate and perform bank stabilization, channel clearing and other Creek maintenance.
- b. To plan flood control measures for the San Francisquito Creek watershed.
- c. To take actions necessary to preserve and enhance environmental values and instream uses of San Francisquito Creek.
- d. To coordinate emergency mitigation and response activities relating to San Francisquito Creek.
- e. To make recommendations to Member Entities for funding and alternatives for long term flood control for Member Entity consideration.

3. DEFINITIONS. In this Agreement unless the context otherwise requires:

- a. "Administrative Cost" means the amount charged to each Member Entity by the Authority for the Authority's general operating costs and expenses.
- b. "Authority" means the San Francisquito Creek Joint Powers Authority.
- c. "Board" or "Board of Directors" means and is the governing body of the Authority constituted as set forth in Paragraph 10 of this Agreement.
- d. "JPA Law" means Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended from time to time.
- e. "Member Entity" means and shall include each public agency (as defined in Section 6500 of the JPA law), which is a party to this Agreement.
- f. "Creek" means and is the San Francisquito Creek.

4. PARTIES TO AGREEMENT. Each Member Entity certifies that it intends to and does contract with every other Member Entity which is a signatory to this Agreement. Each Member Entity also certifies that the deletion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining.

5. TERM OF AGREEMENT. This Agreement became effective as of May 18, 1999, and continues in full force until terminated in accordance with Paragraph 20.

6. POWERS OF THE AUTHORITY. The Authority through its Board of Directors is authorized, in its own name and subject to the limitations set forth below, to do all acts necessary to fulfill the purposes of this Agreement referred to in Paragraph 2 including, but not limited to, each of the following:

- a. Make and enter into contracts;
- b. Incur debts, liabilities, and obligations, provided that no debt, liability, or obligation of the Authority shall be a debt, liability, or obligation of a Member Entity except as separately agreed to by a Member Entity;
- c. Receive contributions and donations of property, funds, services, and other forms of assistance from any source;
- d. Sue and be sued in its own name;
- e. Contract with independent consultants and/or contractors;
- f. Receive, collect, and disburse monies;
- g. Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;
- h. Assign, delegate, or contract with a Member Entity or third party to perform any of the duties of the Board including, but not limited to, acting as administrator for the Authority; and
- i. Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

7. MEMBER ENTITY APPROVALS AND RESPONSIBILITIES. Each Member Entity has the approval authority, obligations and responsibilities set forth in this Agreement. No action of the Authority shall be effective or binding unless and until such action has been approved in accordance with Paragraph 11.e by the Authority Board of Directors consistent with a budget approved by independent action of each Member Entity's governing body.

8. PROJECT PARTICIPATION APPROVAL AUTHORITY. Member Entities shall have the right to determine independently whether to participate in any capital improvement project. No capital improvement project shall be approved by the Authority unless and until Member Entities sufficient to fund the project fully have approved the project by independent action of each Member Entity's governing body.

9. MEMBERSHIP.

a. Voting Members. All Member Entities shall be Voting Members.

b. Associate Membership.

(1) Nonprofit corporations and academic and charitable organizations located or operating within the jurisdictional limits of a Member Entity shall be eligible to join the Authority as Associate Members, subject to the approval of the Board of Directors.

(2) Associate Members shall be entitled to attend all meetings of the Board of Directors and participate in discussion of all items of business but shall not be entitled to vote or participate in formal debate of a motion on the floor. Further, no representative of an Associate Member may become an officer or director of the Authority.

(3) For purposes of this Agreement, only Voting Members shall be referred to as "Member Entities."

10. BOARD OF DIRECTORS.

a. Directors. There shall be a Board of Directors to govern the affairs of the Authority. The Board shall be comprised of one director, and one alternate director, from each Member Entity. Each director has one vote. An alternate director may cast a vote as a member of the Board of Directors only in the absence of the director. Each director and alternate director shall be a member of the governing body of the Member Entity. Each director shall be designated by the governing board of the respective Member Entity. The alternate directors shall be appointed by the Director designated by a Member Entity in the absence of designation of alternates by a Member Entity.

b. Compensation. Directors and alternate directors are not entitled to compensation. The Board may authorize reimbursement of expenses incurred by directors or alternate directors.

c. Powers. The powers of the Board are each of the powers of the Authority not specifically reserved to the Member Entities by this Agreement. The Member Entities retain the following powers:

- (1) The designation of the Board of Directors as specified in Paragraph 10;
- (2) Approval of an amendment to this Agreement as specified in Paragraph 23;
- (3) Approval of actions pursuant to Paragraph 7, above;
- (4) Approval of project participation as specified in paragraph 8; and
- (5) Approval of the annual budget of the Authority as specified in Paragraph 14.

11. BOARD MEMBERS.

a. Meetings. The Board shall hold at least one regular meeting each year, at which time the Board shall elect its officers as appropriate to comply with Paragraph 12. The Board shall fix the date, hour, and place at which each regular meeting is to be held. To the extent practicable, each Board meeting shall be held in Northern Santa Clara County or Southern San Mateo County. The Chair presides at all meetings. A special meeting may be called upon written request by the Chair or at least one-third of the Member Entities.

b. Brown Act. Each regular, adjourned regular, or special meeting of the Board shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Sections 54950, et seq., of the Government Code).

c. Minutes. The Secretary shall keep or have kept minutes of each regular meeting of the Board. As soon as possible after each meeting, the Secretary shall have a copy of those minutes forwarded to each member of the Board.

d. Quorum. No business may be transacted by the Board without a quorum of members of the Board being present except that less than a quorum may adjourn from time to time. A quorum consists of a majority of the members of the Board.

e. Action of Board. Any action of the Board shall require a vote of a majority of the voting members of the Board.

12. OFFICERS.

a. Officers. The officers of the Authority are the Chair, Vice-Chair, and Secretary.

b. Election/Term/Duties. The officers shall be elected or appointed by the Board at its first meeting. The term of office for Chair, Vice-Chair, and Secretary is one year. The officers shall assume the duties of their offices upon formation of the Authority or as appropriate. If either the Chair, Vice-Chair, or Secretary ceases to be a member of the Board, the resulting vacancy shall be filled at the next regular meeting of the Board held after the vacancy occurs.

c. Compensation. Officers are not entitled to compensation. The Board may authorize reimbursement of expenses incurred by officers.

d. Appointment/Contract. The Board may appoint such officers and may contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.

13. FISCAL YEAR. The first fiscal year of the Authority is July 1, 1999, through June 30, 2000. Each subsequent fiscal year of the Authority shall end on June 30<sup>th</sup>.

14. BUDGET. The Board shall adopt an annual budget, which shall include each Member Entity's proposed contribution for the fiscal year. The budget shall not be effective unless and until it is approved by the governing body of each Member Entity that has a contribution to the budget. Member Entity contributions shall become immediately due and payable to the Authority upon adoption of the budget, unless expressly provided otherwise in the budget.

15. ANNUAL AUDIT AND AUDIT REPORTS. The Board shall cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions, and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be filed no later than required by State law. The Authority shall pay the cost of the financial audit and charge the cost against the Member Entities in the same manner as other administrative costs.

16. ESTABLISHMENT AND ADMINISTRATION OF FUNDS.

a. Accountability. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code. The funds shall be accounted for on a full accrual basis.

b. Investment/Disbursement. The Authority shall receive and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law.

c. Insurance/Bond. The Authority shall require the Board to procure errors and omissions insurance or a fidelity bond.

d. Fiscal Agent. The Authority shall designate a fiscal agent who shall be responsible for the administration of all funds and accounts. The fiscal agent may be one of the Member Entities or an officer or employee of one of the Member Entities, subject to the approval of the selected Member Entity.

17. ADMINISTRATIVE COST. In connection with preparation of the Annual Budget pursuant to Paragraph 14, above, the Board may establish the Administrative Costs of the Authority, if any, for each fiscal year and shall propose a formula for allocating these Administrative Costs among Member Entities for each fiscal year, which shall be approved by the Member Entities as a part of the budget.

18. WITHDRAWAL. Member Entities may withdraw from the Authority for subsequent fiscal years by providing written notice to the Authority and each Member Entity on or before May 1 of any fiscal year. Withdrawal shall be effective on July 1 of the next fiscal year. This shall be the exclusive means by which a Member Entity may withdraw from the Authority. Any Member Entity that withdraws shall remain liable for any budget contributions or capital improvement project participation approved before withdrawal. Any Member Entity that withdraws shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity withdraws from this Agreement. Any Member Entity that withdraws shall remain subject to the provisions of Paragraph 25 with respect to any event or occurrence taking place before the Member Entity withdraws.

19. EXPULSION. The Authority may expel a Member Entity from the Authority by a three-fourths (3/4) vote of the Board of Directors for a breach of this Agreement determined by the Board to be a material breach. Any Member Entity that has been expelled pursuant to this paragraph shall have no further liability or obligation pursuant to this Agreement after the effective date of such expulsion; except such Member Entity shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity was expelled. Any Member Entity that has been expelled shall remain subject to the provisions of Paragraph 25 with respect to any event or occurrence taking place before the Member Entity was expelled.

20. TERMINATION AND DISTRIBUTION.

a. Termination. This Agreement shall continue until terminated. This Agreement may be terminated by the written consent of two-thirds (2/3) of the Member Entities; provided, however, this Agreement and the Authority shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligation and affairs of the authority.

b. Surplus. After completion of the Authority's purposes, any surplus money on deposit in any fund or account of the Authority shall be returned in proportion to the contributions made as required by Section 6512 of the California Government Code. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority.

21. NOTICES. Notices to each Member Entity under this Agreement are sufficient if mailed to its respective address on file with the Authority.

22. PROHIBITION AGAINST ASSIGNMENT. No Member Entity may assign a right, claim, or interest it may have under this Agreement, and any such assignment shall be void. No creditor, assignee, or third party beneficiary of a Member Entity has a right, claim, or title to any part, share, interest, fund, or asset of the Authority.

23. AMENDMENTS. This Agreement may be amended by a unanimous vote of the Member Entities of the Authority acting through their governing bodies. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date when the Member Entity considers it. An amendment is to be effective immediately unless otherwise designated.

24. SEVERABILITY. If a portion, term, condition, or provision of this Agreement is determined by a court to be illegal or in conflict with the law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

25. LIABILITY OF THE AUTHORITY; RELEASE AND INDEMNITY. Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, any Member Entity, any member of the Board, and officer of the Authority for their actions taken within the scope of their duties while acting on behalf of the Authority. The parties to this Agreement release each other and agree to hold each other harmless, as well as their officers and employees, for any loss or liability arising from their respective activities pursuant to this Agreement. Except as otherwise provided herein, each party agrees to indemnify, defend and hold harmless the other parties, their officers, agents, and employees from any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed under this Agreement. Each Member Entity agrees that legal counsel for any Member Entity may be designated by the Board to represent the Authority by performing legal services, including litigation, and that any potential conflict of interest arising from such representation shall be deemed waived by the Authority and Member Entity, unless an actual adverse relationship exists between the Member Entity and the Authority with respect to the particular matter. The designation of legal counsel from a Member Entity shall be with the approval of that Member Entity.

26. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

27. COUNTERPART. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

28. AGREEMENT COMPLETE. The foregoing constitutes the full and complete Agreement of the Member Entities. There are no oral understandings or agreements not set forth in writing herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

DATED: \_\_\_\_\_

CITY OF MENLO PARK

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

DATED: \_\_\_\_\_

CITY OF PALO ALTO

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

DATED: \_\_\_\_\_

CITY OF EAST PALO ALTO

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

DATED: \_\_\_\_\_

SANTA CLARA VALLEY WATER DISTRICT

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Title)

ATTEST:

By: \_\_\_\_\_  
Secretary

DATED: \_\_\_\_\_

SAN MATEO COUNTY FLOOD  
CONTROL DISTRICT

By: \_\_\_\_\_  
Board Chair

ATTEST:

By: \_\_\_\_\_  
Secretary