



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY
SFCJPA.ORG

**Notice of Regular Meeting of the
BOARD OF DIRECTORS
City of East Palo Alto Council Chambers
2415 University Avenue, East Palo Alto, California
November 19, 2015 at 4:00 p.m.**

AGENDA

- 1) ROLL CALL
- 2) APPROVAL OF AGENDA
- 3) APPROVAL OF MEETING MINUTES – October 22, 2015 Board meeting
- 4) PUBLIC COMMENT – *Individuals may speak on any topic for up to three minutes; during any other Agenda item, individuals may speak for up to three minutes on the subject of that item.*
- 5) REGULAR BUSINESS – Executive Director's Report
 - a) Reducing flood risk along the creek this winter
 - b) S.F. Bay-Highway 101 project construction planning
 - c) Approve S.F. Bay-Highway 101 project Construction Management Agreement
- 6) CLOSED SESSION – Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)(1)
Petition for Review and Reconsideration of the Conditional Clean Water Act Section 401 Water Quality Certification Issued for the San Francisquito Creek Flood Reduction, Ecosystem Restoration and Recreation Project, San Francisco Bay to Highway 101, filed by the San Francisquito Creek Joint Powers Authority with the State Water Resources Control Board
- 7) CLOSED SESSION – Executive Director Performance Evaluation
Pursuant to Government Code Section 54957
- 8) CLOSED SESSION – Conference with Labor Negotiators
Pursuant to Government Code Section 54957.6
Authority Designated Representatives: Pat Burt and Ruben Abrica
Unrepresented Employee: Executive Director
- 9) ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda can be viewed online by 4:00 p.m. on November 16, 2015 at sfcjpa.org -- click on the "Meetings" tab near the top. Supporting documents related to the Agenda items listed above will be available at the same online location by 5:00 p.m. on November 17, 2015.

NEXT MEETING: Board meeting, Dec. 17, 2015 at 4:00 p.m., Community Meeting Rm, 1st Fl., Palo Alto City Hall.

San Francisquito Creek Joint Powers Authority
November 19, 2015 Regular Board Meeting
Agenda Item 3
October 22, 2015 Regular Board Meeting Minutes

Chairperson Keith called the meeting to order at 4:00 p.m. at the City of Menlo Park City Council Chambers, Menlo Park, CA.

DRAFT

1) ROLL CALL

Members Present: Director Keith, City of Menlo Park
Director Pine, San Mateo County Flood Control District
Director Abrica, City of East Palo Alto
Director Kremen, Santa Clara Valley Water District (SCVWD)

Alternates Present: Greg Scharff, City of Palo Alto

Members Absent: Director Burt, City of Palo Alto

JPA Staff Present: Len Materman, Executive Director
Kevin Murray, Staff
Miyko Harris-Parker, Staff

Legal Present: Greg Stepanicich

Others Present: Jerry Hearn, Portola Valley resident; Trish Mulvey, Palo Alto resident;
Dennis Parker, East Palo Alto resident; Joe Teresi, City of Palo Alto; Ann Stillman, San Mateo County Flood Control District; Mark Wander, Santa Clara Valley Water District (SCVWD); Bill Springer, SCVWD; Carlos Romero, City of East Palo Alto; Kamal Fallaha, City of East Palo Alto; Dale Jacques, SCVWD; Azalea Mitch, City of Menlo Park; Eileen McLaughlin, Citizens Committee to Complete the Refuge (CCCR)

2) APPROVAL OF AGENDA

Agenda approved.

3) APPROVAL OF MEETING MINUTES - September 24, 2015 Board Meeting

Director Kremen made a motion to approve the September 24, 2015 Board meeting minutes. Director Abrica seconded. September 24, 2015 Board Meeting Minutes approved 3-0-2. Chairperson Keith and Director Scharff abstained. Director Burt not present.

4) PUBLIC COMMENT

None

5) REGULAR BUSINESS

Reducing Flood risk along the Creek this winter

Mr. Materman provided an update on the activities by member agencies and the SFCJPA to reduce the flood risk along the creek this winter, including clearing debris from the channel and raising the creek banks in areas that previously flooded or may flood, providing greater advance warning of flooding, improving emergency response coordination, and increasing public outreach.

Chairperson Keith asked staff to provide an update on the comments made by Catherine Carlton at the September 24, 2015 Board meeting when she inquired if the public could automatically receive an alert like those sent by the Amber Alert System in the event of a flood at the next Board meeting. Chairperson Keith requested that the SFCJPA website be updated to with clearer information for people to sign up for the alert system.

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Director Kremen commented that there should be a remember me box for people to check when they first sign up for the alert system and he suggested that staff ask people who do not know the new site to use it and provide feedback/suggestions for improvement. Director Kremen invited the Board, staff and members of the audience to join the SCVWD on October 29, 2015 at 8:30 am at its emergency preparedness meeting. Chairperson Keith reminded the Board and staff of the December 4, 2015 emergency responders meeting at 10:00 am at the Menlo Park Fire District's facility on Willow Road. Chairperson Keith directed staff to send all members of the Board an e-mail providing the information for both of the above mentioned meetings.

Trish Mulvey, Palo Alto resident, commented on the winter preparedness mailer that was sent by the SCVWD in conjunction with the SFCJPA and its member agencies noting that the mailer went to property owners but that it should also go to businesses and residents who are leasing properties. Mrs. Mulvey also noted that the properties on the west side of East Palo Alto did not receive the mailer. Mrs. Mulvey asked for an update on the Mutual Aid agreement, and for an on the areas of the creek that were not able to be cleared out because of regulatory constraints.

Dennis Parker, East Palo Alto resident, commented on the importance of being able to access the early warning website on cellular phones and how the alert system is very important to residents and the significance of the alerts as they signal the changes going on in the creek. Mr. Parker explained to the Board the different alert systems that are available to residents in San Mateo County. Mr. Parker expressed his appreciation of the work staff had done with the early warning system.

Chairperson Keith asked staff to follow up on Mrs. Mulvey's comments and to have the updates agendized for the next SFCJPA meeting of the Board. Director Abrica commented that we should be utilizing the mailing lists that send junk mail to residents and businesses in the three cities, noting that he did not receive a copy of the mailer himself. Director Kremen responded saying he would speak to someone about utilizing a commercial mailing list in order to reach as many tenants and property owners as possible. Joe Teresi, City of Palo Alto, noted that the Palo Alto lists included both residents and property owners.

Mr. Murray responding to Mrs. Mulvey's request for an update regarding the maintenance walk said that this year's approach was to be much more aggressive than in previous years focusing on items that we knew we could take action on without regulatory clearance. Mr. Murray explained the process of obtaining regulatory clearance to modify in-channel native vegetation can take years to put in place, and that the Board's Emergency Preparedness Committee could consider it along with our other roles. Chairperson Keith voiced her support for this idea.

Director Abrica stated that he believes this is ultimately a policy issue for the Board. Director Abrica commented on the fact that emergency preparedness is written within the original mission of the JPA but it has never been staffed for or resourced. Director Abrica spoke of some of the accomplishments made by staff and the Board in relation to emergency preparedness highlighting the JPA's efforts in the creation of the Mutual Aid agreement.

Mr. Teresi expressed his opinion that the maintenance walk team accomplished most of what they wanted to accomplish this year explaining that the team had a discussion regarding the area that was left untouched and they determined that the remaining items did not pose a real threat to flooding.

Director Pine questioned if there were no regulatory agencies what else we would do to improve the safety of the creek. Mr. Murray responded saying that there is a difference between flood risk and perceived flood risk and that there are a lot of trees that are perceived as a problem but are not a real problem, and we would not want to touch them. Mr. Murray continued saying that there were a few items that we may have modified if we weren't concerned about regulatory restrictions but the reality is that the regulatory process for modifying or removing those trees is significant.

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Mr. Murray explained that the process is not just notifying an agency that we are doing something but there is a process to obtain the permit and then there are mitigation activities that go along with that approval which are significant and can be expensive. Director Pine asked for clarification on what was left in the creek that can cause flood problems that we decided not to act upon. Mr. Murray responded saying it's probably about five items, mostly oak trees.

Director Scharff asked if staff believes that pursuing the removal of these five items should not be done and was not a good use of resources. Mr. Murray responded saying that it would not be a wasted effort to do another walk and tag and count the items that we may have modified if we weren't worried about regulatory restrictions, but if we wanted to remove them there will likely be mitigation requirements for them or we may simply be told no by the agencies. Mr. Murray reiterated that staff would need some direction from the Emergency Preparedness Committee and the Board as to whether or not we wanted to take on that role. Mrs. Mulvey stated that she was reassured by the smallness of the number of items left.

Presentation on when, where, and how to place sandbags

Mr. Materman introduced Mark Wander of the SCVWD who gave a brief presentation on when, where and how to place sandbags.

Chairperson Keith suggested that pictures be added to the text on the links and websites. Director Kremen commented that at the October 29 SCVWD Board meeting there will be a discussion of an upcoming SCVWD budget amendment to include the purchase of plastic sheeting to be available at the sandbag locations.

Mrs. Mulvey asked that emergency services representatives be present at the upcoming community meetings on winter preparedness to answer questions, such as what happens if there really is a flood, will the rescue boats have blankets, can I take my pet with me to the evacuation site and how do I know what evacuation site I should go to.

Director Pine asked if we are confident we have enough material, sand and sandbags, to meet the need of residents. Mr. Wander responded saying that in 1998 Santa Clara County purchased and went through almost two million sandbags countywide and we are using that as a baseline. Mr. Wander also noted the proposed budget adjustment being made at the SCVWD's October 29 meeting as the budget has already been exceeded.

Ann Stillman, San Mateo County Flood Control District, and interim Public Works Director for the City of Menlo Park, told the Board that the City of Menlo Park has 10,000 empty bags on hand and 2,000 bags filled already on location at three sites in the city and staff is working on contracts to order more. Mrs. Stillman stated that the San Mateo County will be filling 40,000 sandbags that will be spread out at different locations county-wide.

Director Kremen asked staff to provide an update on the JPA's social media outreach at an upcoming Board meeting.

Director Kremen left at 5:50 p.m.

Kamal Fallaha, City of East Palo Alto, stated that the City of East Palo Alto will have sandbags and sand available for residents to fill and 5,000 prefilled bags for senior residents who are not able to fill their own bags. Director Abrica suggested that each JPA member agency contact landlords in the places we know are likely to flood and have them pick up and store sandbags and sand on their locations for tenants.

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Director Pine asked for an update on the idea of placing sandbags or temporary inflatable barriers along the creek at the Pope-Chaucer Bridge to keep more water in the channel at that location. Mr. Materman responded by saying that sandbags and inflatable (with water) barriers are used in that way, that he and others have recently facilitated discussions along those lines, and that the cities looked at these ideas closely. Mr. Materman continued, saying there are opportunities to increase creek flow capacity there, but there are also uncertainties and potential liabilities inherent in such an effort and in flooding events generally. Mr. Materman concluded by saying he will check with the cities regarding any plans beyond what was recently done at Pope-Chaucer, which is the repair of the degraded berms on both sides of the creek just upstream of the bridge.

S.F. Bay-Highway 101 project construction planning

Mr. Materman provided an update on the S.F. Bay-Highway 101 project construct planning.

Chairperson Keith asked for a status on the discussion of PG&E covering some of the costs. Mr. Stepanicich commented that there is still a point to be made with PG&E about the fact that one of these lines was left in the ground by PG&E. Chairperson Keith directed staff to have another conversation with PG&E noting that she and Director Pine are available to have another conference call with PG&E to discuss this issue.

6) BOARD MEMBER MATTERS

None

7) ADJOURNMENT

Chairperson Keith adjourned the meeting at 6:08 pm.

Minutes Prepared by Clerk of the Board: Miyko Harris-Parker.

San Francisquito Creek Joint Powers Authority
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Agenda Item 5
Executive Director's Report

With the help of Kevin Murray and Miyko Harris-Parker, I am pleased to submit the following:

a. Reducing flood risk along the creek this winter

The SFCJPA is 31 months into the regulatory permitting process to construct the S.F. Bay-Highway 101 project, which has delayed the construction of that project and the planning and design of upstream projects. At the past several Board meetings, we have discussed how the increasing likelihood of a strong El Niño this winter demands that we act now to reduce the flood risk faced by properties along the creek. At this Board meeting, we will briefly discuss the progress we have made in each of the following areas since the last Board meeting on October 22:

- In September and early October, SFCJPA member agencies removed several tons of material in the channel that could contribute to flooding and pose a threat to life and property, and within the past two weeks additional material of concern was cut or removed at the top of the creek bank by Palo Alto;
- East Palo Alto, Palo Alto and Menlo Park raised creek banks in areas that previously flooded or are at risk of flooding, and this process has continued over the past week with East Palo Alto building a small temporary floodwall along Woodland Avenue where flooding occurred in December 2012;
- At the October 22 Board meeting, Board members made suggestions regarding the SFCJPA's new interactive Flood Early Warning System website (sfcjpa.org/floodwarning), and since that meeting these suggestions were incorporated into the SFCJPA.org homepage and the new website;
- A consultant to the City of Palo Alto has been assembling comments from SFCJPA member agencies and other agencies regarding the SFC Multi-Agency Coordination agreement on communication and coordination among emergency response personnel from both counties; and
- Over the past few weeks, there have been several public events on sandbagging and other public presentations, and 4,000 brochures in English and Spanish are being mailed this week to apartments and condos in the three cities (in addition to the mailing of over 8,800 similar brochures to property owners in October). The next winter preparedness community meeting is on November 19 at 7:00 p.m.

b. S.F. Bay-Highway 101 Project construction planning

At SFCJPA Board meetings for the past few years we have discussed our efforts to prepare for construction that will improve public safety and increase marsh habitat between S.F. Bay and Highway 101. Since the last Board meeting on October 22, we have been working with the Corps of Engineers, and the National Marine Fisheries Service and United States Fish and Wildlife Service that consult with the Corps on its federal permit, to respond to recent requests for information. We are awaiting the draft permit from California Department of Fish and Wildlife, and we have reached out to Bay Conservation and Development Commission (BCDC) staff regarding the information we provided to them in October. We will provide a verbal update on these permits at the Board meeting.

Regarding easement acquisition, on the Palo Alto side of the creek, the Santa Clara Valley Water District (SCVWD) has secured all necessary land and easements from private land owners, and anticipates securing final agreements with the City of Palo Alto within the next month. On the East Palo Alto side of the creek, the SFCJPA has led the effort to secure the necessary easements to construct the project.

Since the October 22 Board meeting, the second-to-last needed easement with a private property owner has been recorded. The final easement has been extensively discussed with San Mateo County real estate staff and that property owner, and the initial review of the easement document is underway by the City of East Palo Alto, which will hold the easement. Once reviewed by the City, we will provide the draft to the property owner. We anticipate being able to secure this final private party easement by the end of the year.

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c. Approve S.F. Bay-Highway 101 project Construction Management Agreement

The SCVWD has a great deal of experience and expertise managing the construction of major watercourse projects similar to the Bay-Highway 101 project, and has offered to manage the construction of this project on behalf of the SFCJPA. SFCJPA and SCVWD staff, management and legal counsels have developed the enclosed Construction Management Agreement to be entered into by the SFCJPA and SCVWD to define the roles and responsibilities of the our agencies during construction of the Project. The primary responsibilities of the two agencies, as defined in the Agreement, are as follows:

- SFCJPA's design consultant will prepare the construction bid documents;
- SCVWD will advertise and award the construction contract;
- SCVWD will manage the construction contractor and be responsible for payments to the contractor;
- SFCJPA will administer all grant funding for the Project;
- SFCJPA will provide payments from grant sources to the SCVWD for project construction costs pursuant to the August 11, 2014 Construction Funding Agreement among the SFCJPA and all of its Member Agencies;
- SCVWD will provide all written reports necessary to satisfy grant reporting requirements; and
- Upon request, SCVWD will provide periodic updates to the SFCJPA Board or any other SFCJPA member agency on the progress of project construction.

Proposed Board Action: Approve the enclosed S.F. Bay-Highway 101 project Construction Management Agreement.

Submitted by:



Len Materman
Executive Director

DRAFT Agreement

**Among the San Francisquito Creek Joint Powers Authority and
the Santa Clara Valley Water District
For Construction Management of**

**The San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project
San Francisco Bay to Highway 101**

This Agreement ("Agreement") is made and entered into this ____ day of _____, 2015 by and among the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY ("Authority"), a California joint powers authority, and the SANTA CLARA VALLEY WATER DISTRICT ("Water District"), a special district of the State of California, collectively referred to as "the Parties" or individually as "Party." The date of this Agreement will be the latest date that this Agreement is executed by the Parties and shall be inserted by Authority in the space above ("Effective Date").

The purpose of this Agreement is to define the roles and responsibilities of the Parties for construction management of the facilities to be constructed for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101 as approved by Authority's Board of Directors by Resolution No. 13-07-25 on July 25, 2013 (the "Project").

R E C I T A L S

- A. San Francisquito Creek ("Creek") has a history of flooding the communities in and around East Palo Alto, Menlo Park, and Palo Alto, most recently in December 2012, impacting residential properties adjacent to the Creek.
- B. Following the severe flood in February 1998, the cities of East Palo Alto, Menlo Park and Palo Alto along with the San Mateo County Flood Control District and the Santa Clara Valley Water District formed the San Francisquito Creek Joint Powers Authority on May 18, 1999. These entities are all full members of the Authority. The Authority was authorized to represent its member agencies as the local sponsor for a U.S. Army Corps of Engineers' ("Corps") San Francisquito Creek flood control project on May 23, 2002.
- C. In March 2005, the Corps, working with Authority, completed a reconnaissance study for the Creek. The reconnaissance study results indicated a Federal Interest in developing a flood control project for the Creek. Therefore, the Corps has engaged in the feasibility study ("Study") phase of the San Francisquito Creek Flood Damage Reduction and Ecosystem Restoration Project ("FDRER") which requires a Feasibility Cost Share Agreement with a local sponsor.
- D. Authority entered into a Feasibility Cost Share Agreement ("FCSA") with the San Francisco District of the Corps for the Study on the Creek. The Corps, pursuant to the FCSA, is developing a project to evaluate flood protection and ecosystem restoration opportunities within the San Francisquito Creek Watershed in Santa Clara and San Mateo Counties. At the conclusion of the Study, the Corps will issue a Federally Preferred Plan, which will detail the pre-design actions to be taken to complete the FDRER.
- E. The Corps' ability to complete the Study has been impacted by unanticipated delays due to federal funding constraints and the Corps processes.

- F. Due to the Corps' delay in completing the Feasibility Study and the Member Agencies' desire to begin addressing the risk of flooding in their jurisdictions, Authority and Member Agency staff conducted a process of evaluating alternatives for an initial capital project and recommended a preferred alternative with conceptual design drawings to Authority's Board of Directors for consideration.
- G. On July 23, 2009, Authority's Board of Directors unanimously approved the staff's recommended Project and authorized its Executive Director to pursue funding opportunities and to contract with qualified consultants to perform 1) planning and design services and 2) environmental impact assessment and planning for the Project.
- H. Authority, Water District, and the San Mateo County Flood Control District entered into an agreement effective on November 3, 2009 to fund the design and environmental documentation of the Project, and later entered into Amendment No. One effective August 24, 2011, Amendment No. Two effective September 17, 2013, and Amendment No. Three effective November 27, 2013.
- I. Authority hired a design engineering firm to prepare design documents and an environmental consulting firm to prepare environmental documents for the Project.
- J. Certification of the Final Environmental Impact Report by Authority took place in October 2012. On July 25, 2013, Authority's Board of Directors approved the Project, making the required CEQA findings. The Project plans currently are being finalized.
- K. The Authority and all of its members entered into an agreement effective on August 11, 2014 to provide construction funding (the "construction funding agreement.").
- L. The Parties desire to enter into this Agreement to designate Water District as the entity responsible for managing the construction of the Project.

P R O V I S I O N S

1. Project Purposes

The Project's purposes are to improve flood protection, restore the ecosystem, and provide recreational opportunities within the Project's reach, with the following specific objectives: 1) protect properties and infrastructure between Highway 101 and the San Francisco Bay from San Francisquito Creek flows resulting from 100-year riverine flood flows in conjunction with a 10-year tide, including projected Sea Level Rise; 2) accommodate future flood protection measures upstream of the Project that may be constructed; 3) enhance habitat along the Project reach, particularly habitat for threatened and endangered species; 4) enhance recreational uses; and 5) minimize operational and maintenance requirements.

2. Roles and Responsibilities of Parties

- 2.1 Authority shall be responsible for the administration of any grant funding for the Project, including but not limited to the grant awarded to Authority by the State Department of Water Resources for construction and other purposes. Authority shall remit to Water District grant monies received by Authority as reimbursement for Project construction costs pursuant to the construction funding agreement, within 30 days after receipt of such monies from the State.

2.2 Water District shall be responsible for providing Construction Management Services as further set forth in Exhibit "A," including the award and management of the construction contract(s), and the timely making of progress payments to the construction contractor(s).

Water District shall provide to Authority quarterly progress reports on construction activities sufficient in format and content for quarterly grant reporting as required by the State Department of Water Resources. Water District also shall provide Authority with all written reports necessary to satisfy grant reporting requirements.

Water District shall provide periodic updates, upon request, to Authority's Board of Directors or any member agency of the Authority not party to this Agreement, on the progress of construction, and to account for Construction Management services provided by Water District.

3. Agreement Term

This Agreement shall commence on the Effective Date and remain in place until the construction of the Project is completed and accepted by the Parties, or this Agreement is terminated earlier by the Parties in the manner authorized by Section 13. Termination, of this Agreement.

4. Land and Right of Way Acquisitions

Water District will not commence the bid process for the construction contract award until all real property interests have been acquired, including, permanent or temporary easements and fee titles, necessary for construction and long-term maintenance of the Project.

5. Natural Resource and Other Regulatory Permits

Authority shall obtain and maintain all natural resource agency permits. Water District shall obtain and maintain all other regulatory permits and other approvals required for the construction of the Project, excepting those required to be obtained by the construction contractor. Water District will not commence the bid process for the construction contract award until all natural resource agency permits have been received by Authority.

6. Bid Advertising and Contractor Selection

6.1 The bid package for the Project will be prepared by Authority's design consultant. The bid package must be approved by Authority before Water District commences the bid process for award of a construction contract. Further, Water District will not commence the bid process for award of a construction contract until Water District is informed in writing by Authority that all necessary funding agreements for the construction of the Project have been executed.

6.2 Authority and Water District will cooperate in the advertising of the availability of the bid packages. Water District will conduct the process for the solicitation and opening of bids and selection of contractors in accordance with its lawful procedures and all applicable laws.

6.3 Before the award of any construction contract is made, Water District shall verify with Authority to ensure bids have been received that are within the amount of monies available to fund the Project, including providing for a fifteen percent (15%) contingency above the bid amount for change orders or other expenses that may arise during construction of the Project.

6.4 Authority shall have the right to direct Water District to reject all bids if the bid amounts exceed available funds for the construction of the Project.

7. Construction Management

7.1 Water District shall administer the construction contract and manage all construction activities, and incur the costs and hire the subcontractors and/or consultants necessary to provide inspection, survey, and testing to construct the Project.

7.2 Water District, at its discretion, may approve any change orders as it deems appropriate within the contingency amount and that do not cumulatively exceed the monies available to fund construction of the Project. Any change orders that will increase the cost of the Project above the monies available to fund construction of the Project shall be subject to approval by Authority.

7.3 The Executive Director of Authority may authorize individual change orders that result in a cost increase equal to or less than \$25,000.00 above the monies available to fund construction of the Project. The Executive Director of Authority shall inform the Authority's Board of Directors of any such authorization at the next regularly scheduled meeting of the Authority's Board of Directors.

7.4 An individual change order or a set of change orders that result in a cost increase greater than \$25,000.00 above the monies available to fund construction of the Project may only be authorized by a formal action of Authority's Board of Directors.

7.5 Authority shall inform Water District of any construction management conditions or requirements imposed by grant funding administered by Authority. Water District shall comply with all grant funding conditions and requirements applicable to its management of Project construction and will include all grant requirements applicable to Project construction in its construction contract with its contractor.

8. Mutual Hold Harmless and Indemnification Obligations

8.1 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 Member Agencies agree that, pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the another party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other party under this Agreement. The obligations set forth in this paragraph will survive termination, expiration, suspension, and completion of this Agreement.

8.2. In the event of concurrent intentional or unintentional misconduct, negligent acts or omissions by any one of the Parties (or each of their respective officers, directors and/or employees), then the liability for any and all claims for injuries or damages to persons and/or property which arise out of each and any of their performance of the terms and conditions of this Agreement shall be apportioned according to the California law of comparative negligence. The Parties hereto are not jointly and severally liable on any liability, claim, or lawsuit.

8.3. The construction contract and bid documents will require the construction contractor to agree to appropriate indemnity provisions allowable by law to protect the Parties, and to secure and maintain in full force and effect all times during construction of the Project and until the Project is accepted by the Parties, general liability and property damage insurance, business automobile insurance and such other insurance as the Parties deem appropriate, in forms and limits of liability acceptable to the Parties, naming Water District, Authority and each of its Member Agencies and their respective directors, council members, officers, employees and agents as additional insureds from and against all damages and claims, losses, liabilities, costs or expenses arising out of or in any way connected to the construction of the Project.

8.4. The duties and obligations of this Section will survive and continue in full force and effect after the termination or expiration this Agreement.

9. Retention of Records, Right to Monitor and Audit

The Parties will maintain all records related to the subject of this Agreement and/or the Project for five (5) years after the Agreement expires or is terminated earlier pursuant to Section 13. Termination of this Agreement. The records shall be subject to the examination and/or audit of all Parties.

10. Governing Law and Compliance with Laws

The Parties agree that California law governs this Agreement. In the performance of this Agreement each Party will comply with all applicable laws, ordinances, codes and regulations of the federal, state, and applicable local government.

11. Notices

Any notice or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other parties in writing:

Authority:

San Francisquito Creek Joint Powers Authority
615-B Menlo Avenue
Menlo Park, California 94025
len@sfcjpa.org
Attention: Len Materman, Executive Director

Water District:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118-3614
bgoldie@valleywater.org
Attention: Beau Goldie, Chief Executive Officer

12. Severability

In the event any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be severed from this Agreement and the remaining parts hereof shall remain in full force and effect as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

13. Termination

- 13.1 If any Party fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, any other Party may terminate this Agreement but only after giving written notice of the failure of performance to the Party committing the failure with a copy of such notice given to all other Parties. Such notice shall explain the alleged failure of performance and provide a reasonable opportunity for the failure to be cured which in no case will be less than 30 days. If the failure of performance is not satisfactorily cured within the cure period, the Agreement may be terminated upon the delivery of a written notice of termination to all of the Parties.
- 13.2 A final notice of termination may be given only after completion of the notice and cure process described in Section 13.1 and only with the approval of the governing body of the Party terminating the Agreement.
- 13.3 In event of termination, each Party shall deliver to all of the other Parties, upon request, copies of reports, documents, and other work performed by any Party under this Agreement. The cost of work performed under this Agreement to the date of termination shall be due and payable in accordance with the provisions of the Construction Funding Agreements to be executed by the Parties prior to Water District's commencement of the bid process for award of a construction contract for the Project.
- 13.4 Notwithstanding the foregoing, this Agreement may be terminated by the mutual written agreement of all of the Parties approved by the governing body of each Party.

14. Assignability

Without the written consent of the other Parties, no Party shall assign or transfer any interest in this Agreement or any of the obligations hereunder except to contractors or consultants working directly for that Party. Any unauthorized attempt by any Party to so assign or transfer shall be void and of no effect. Any Party hiring a contractor or consultant shall be responsible for the inspection, review, and quality of all work of that contractor or consultant.

15. Entire Agreement

This Agreement constitutes the entire agreement between Authority and Water District with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by authorized representatives of the Authority, Water District, Flood District, Palo Alto and East Palo Alto.

16. Further Actions

The Authority and Water District agree to execute all instruments and documents, and to take all actions, as may be reasonably required to consummate the transaction contemplated by this Agreement. Claims related to the design of the Project will be administered by Authority. Claims related to the construction of the Project will be administered by Water District.

17. Venue

In the event that suit shall be brought by any party to this contract, the Parties agree that venue shall be exclusively vested in the state courts of either the County of Santa Clara, or the County of San Mateo.

18. Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

19. Non-Waiver

A Party's waiver of any term, condition, or covenant, or breach of any term, condition or covenant will not be construed as a waiver of any other term, condition or covenant.

20. Third Parties

This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.

IN WITNESS WHEREOF, Authority and Water District have executed this Agreement as of the dates indicated below with each signature.

Separate Signature pages follow for each Party to this Agreement.

Agreement
Between the San Francisquito Creek Joint Powers Authority and
the Santa Clara Valley Water District
For Construction Management of
The San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project
San Francisco Bay to Highway 101

IN WITNESS WHEREOF, Authority and Water District have executed this Agreement as of the dates indicated below.

Separate Signature pages were implemented individually for each Party.

APPROVED AS TO FORM:

San Francisquito Creek Joint Powers Authority

Gregory Stepanicich
General Counsel

By: _____
Len Materman
Executive Director

Date: _____

Remainder of page intentionally left blank

Agreement
Between the San Francisquito Creek Joint Powers Authority and
the Santa Clara Valley Water District
For Construction Management of
The San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project
San Francisco Bay to Highway 101

IN WITNESS WHEREOF, Authority and Water District have executed this Agreement as of the dates indicated below.

Separate Signature pages were implemented individually for each Party.

APPROVED AS TO FORM:

Santa Clara Valley Water District

Leslie Orta
Senior Assistant District Counsel
Santa Clara Valley Water District

By: _____
Beau Goldie
Chief Executive Officer

Date: _____

Exhibit A

CONSTRUCTION MANAGEMENT SERVICES

Water District will provide Construction Management services for the Project in accordance with Water District Quality and Environmental Management System Document *Construction Phase WBS Item Descriptions and Instructions*, W73006, Revision C, February 15, 2011, and the Water District Construction Manual, CM10088, revised June 30, 2009.

Water District inspection program will be in accordance with the Water District Documents *Construction QA/QC Inspection and Testing Program*, MC9259, revised September 15, 2006, and *Construction Safety Program*, R9077c, revised May 1, 2009.

Water District will conduct contract advertising, bidding, and award in accordance with the Water District Quality and Environmental Management System Document *Advertise\ Bid Opening\ Report of Bids\ Award*, QEMS W73008, revised March 4, 2015.

Water District will provide to Authority and its member agencies not party to this Agreement full copies of the Water District Documents listed above that will govern the construction activities of the Project.

Water District will provide Authority and its member agencies not party to this Agreement the minutes from Weekly Progress Meetings prepared in accordance with the Water District Construction Manual, Section 4, Subsection 9.C.

(remainder of page intentionally left blank)