



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY
SFCJPA.ORG

**Notice of Regular Meeting of the
BOARD OF DIRECTORS
City of Palo Alto Council Chambers
250 Hamilton Avenue, Palo Alto, California
March 24, 2016 at 4:00 p.m.**

AGENDA

- 1) ROLL CALL
- 2) APPROVAL OF AGENDA
- 3) APPROVAL OF MEETING MINUTES – February 25, 2016 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) Review of storms thus far this year
 - b) S.F. Bay-Highway 101 project construction planning
 - c) Authorize the Executive Director to execute Contract Amendment #6 with HDR, Inc. to provide support to the Santa Clara Valley Water District during the Bay-Highway 101 project bidding process
 - d) Authorize the Executive Director to sign an Actual Cost Contract with Pacific Gas & Electric that commits the SFCJPA to reimburse PG&E for the cost to modify an electrical tower to accommodate the S.F. Bay-Highway 101 project
 - e) Approve a new General Counsel Services Agreement with Richards, Watson & Gershon
- 6) ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda can be viewed online by 4:00 p.m. on March 21, 2016 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 4:00 p.m. on March 22, 2016.

NEXT MEETING: Regular Board meeting, April 28, 2016 at 4:00 p.m., Menlo Park City Council Chambers.

San Francisquito Creek Joint Powers Authority
March 24, 2016 Regular Board Meeting
Agenda Item 3
February 25, 2016 Regular Board Meeting Minutes

Chairperson Keith called the meeting to order at 4:05 p.m. at the City of East Palo Alto, City Council Chambers, East Palo Alto, CA.

DRAFT

1) ROLL CALL

Members Present: Director Keith, City of Menlo Park
Director Pine, San Mateo County Flood Control District
Director Burt, City of Palo Alto (not present at roll call)
Director Kremen, Santa Clara Valley Water District (not present at roll call)

Alternates Present: Director Gautier, City of East Palo Alto

Members Absent: Director Abrica, City of East Palo Alto

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

Others Present: Jerry Hearn, Portola Valley resident; Dennis Parker, East Palo Alto resident; Joe Teresi, City of Palo Alto; Justin Murphy, City of Menlo Park; Ann Stillman, San Mateo County Flood Control District; Kamal Fallaha, City of East Palo Alto; Eileen McLaughlin, Citizens Committee to Complete the Refuge (CCCR)

Pledge of Allegiance.

Director Kremen arrived at 4:07 pm.

2) APPROVAL OF AGENDA

Director Gautier made a motion to approve the agenda. Director Kremen seconded. Agenda approved 4-0. Director Burt not present at time of approval. Director Abrica not present.

3) APPROVAL OF MEETING MINUTES-January 28, 2016 Board Meeting

Director Burt arrived at 4:12 pm.

Mr. Fallaha, City of East Palo Alto, addressed the Board in regards to East Palo Alto permits for work done in response to the flood of December 2012 and in preparation for storms this winter. Director Kremen noted that Mr. Schmidt does not live in Mtn. View. Director Pine made a motion to approve the January 28, 2016 Board meeting minutes with noted amendment. Director Kremen seconded. Motion to approve the January 28, 2016 Board meeting minutes with amendment approved 5-0. Director Abrica not present.

4) PUBLIC COMMENT

Jerry Hearn, Portola Valley resident, spoke to the Board regarding the Searsville dam and suggested having a Stanford representative attend a future SFCJPA meeting to provide updates on the work Stanford is doing. Mr. Hearn requested updates on the hiring of the new staff position and the status of when the Board would have a discussion on purposes and responsibilities of the JPA. Chairperson Keith requested that staff agendize a report out from Stanford at an upcoming meeting.

San Francisquito Creek Joint Powers Authority
March 24, 2016 Regular Board Meeting
Agenda Item 3
February 25, 2016 Regular Board Meeting Minutes

5) REGULAR BUSINESS

Board Organization: select officer positions and membership on committees

Mr. Materman provided a brief summary of the Board officer positions and Board committees, including purpose of each committee and which Board members currently serve in which capacities.

Director Burt nominated Director Pine for the Chair position. Director Kremen seconded. Director Pine appointed Chair by acclamation. Director Keith turned the meeting over Chairperson Pine.

Director Burt nominated Director Kremen for Vice Chair. Director Gautier seconded. Director Kremen appointed Vice Chair by acclamation.

Committee appointments remain the same by acclamation:

Personnel Committee members: Director Burt and Director Abrica

Finance Committee members: Director Keith and Director Pine

Emergency Preparedness Committee members: Director Abrica and Director Kremen

Purposes: Full Board

Director Keith nominated Director Abrica to be the ACWA/JPIA Board representative. Director Gautier seconded. Director Abrica appointed the ACWA/JPIA Board representative by acclamation. No change in ACWA/JPIA alternate representation by SFCJPA Finance and Administration Manager Miyko Harris-Parker.

S.F. Bay-Highway 101 project construction planning

Mr. Materman provided an update on the S.F. Bay-Highway 101 project construction planning, highlighting that after thirty-five months of effort all regulatory permits for the project are now complete.

Director Kremen asked if there is a protest period or public comment period after the permit approval. Mr. Murray explained that several of the agencies have a public review period which we have already passed, except for the CA Department of Fish and Wildlife thirty-day review period, which is still open.

Director Keith expressed her support in doing whatever is needed in terms of getting PG&E moving. Mr. Materman noted that the March 24, 2016 Board meeting may need to be moved in order to bring some contract items for Board approval as early as possible, including two agreements being developed with PG&E.

Director Burt asked about the timeline regarding agendizing the upstream project for Board discussion. Mr. Materman replied saying that staff has been looking at a timeline for agendizing a discussion on the upstream project, noting that the hiring of the new Project Manager is a key component our ability to focus on upstream areas. Mr. Materman stated that an offer letter is being sent to the top candidate next week.

Director Keith commented that she is looking forward to the upstream project discussion and she requested that staff create a timeline that works backwards from whatever date we expect to have an EIR.

San Francisquito Creek Joint Powers Authority
March 24, 2016 Regular Board Meeting
Agenda Item 3
February 25, 2016 Regular Board Meeting Minutes

Director Gautier expressed her thanks to staff and Board members for pushing through permitting difficulties on the downstream project.

Chairperson Pine asked for clarification on the construction start and end date. Materman replied saying in terms of work in the creek channel it is mid-June to mid-October. Chairperson Pine commented on the fact that the funding agreement was drafted on the high end of the range and that we will have a hard task if the costs end up above the funding agreement parameters. Mr. Materman concurred and explained that the greatest unknowns in terms of whether we have adequate funding are the construction bids and PG&E costs. Mr. Materman mentioned that we are trying to do everything we can to be sure the distribution of costs between the JPA and PG&E is fair.

Eileen McLaughlin, CCCR, congratulated Chairperson Pine and Vice-Chair Kremen on their appointments. Ms. McLaughlin spoke about the accomplishments thus far with the project highlighting the fact that stakeholder participation in the process has improved the project and led to the assurance of protection for the marsh. Mr. Hearn expanded on Ms. McLaughlin's comments noting that this is a challenging project and he suggested taking advantage of stakeholder input and getting everything out in the open for this and future projects. Mr. Hearn suggested that staff and the Board hold an open discussion whereby people can exercise their opinions.

Director Keith concurred with Ms. McLaughlin's and Mr. Hearn's comments noting that Menlo Park residents will have a lot to say as people have questions everyday about the creeks.

Discuss the Fiscal Year 2016-17 Operating Budget

Mr. Materman provided a brief summary of items that will affect the FY 2016-2017 operating budget, which will be brought to the Board within the next two months.

6) ADJOURNMENT

Chairperson Pine adjourned the meeting at 5:10 pm

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

San Francisquito Creek Joint Powers Authority
March 24, 2016 Board Meeting
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. Review of storms thus far this year

Throughout the second half of 2015, the SFCJPA and its member agencies spent considerable staff and financial resources to reduce flood risk and communicate with the public in advance of the onset of El Niño. The SFCJPA's roles were to coordinate and facilitate the temporary flood protection work along the creek by East Palo Alto, Palo Alto, and Menlo Park, in the creek by these agencies and the Santa Clara Valley Water District (SCVWD) and San Mateo County, and communicate with the public through community meetings and mailings sent by SCVWD, and to build the new Flood Early Warning System.

Since that effort was completed, major storms have hit our area but fortunately the timing of these events did not result in flooding. Our region did spend six days in March under a Flash Flood Watch called by the National Weather Service, and at this Board meeting, we will briefly discuss the rainfall and creek flow information we gathered from our Early Warning System during these storms and how this knowledge can help us in the future.

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

At Board meetings for the past few years we have discussed our efforts to prepare for construction of a project that will improve public safety and recreation, and increase marsh habitat, between S.F. Bay and Highway 101. At this Board meeting, we will provide an update on our efforts since the last Board meeting on February 25.

On February 25, I reported that all regulatory permits for the Project had finally been secured. Since that time, SFCJPA and SCVWD staff have been working to complete the documents that the conditions of our permits required we submit to regulatory agencies prior to construction. We will deliver all products to the agencies before April 15, which is the deadline to provide these documents 60 days before the onset of construction activities within the channel.

Just prior to the February 25 SFCJPA Board meeting, the SCVWD advertised for bids for the project's primary construction contract (the SCVWD is managing construction on behalf of the SFCJPA). On March 22, a pre-bid conference was conducted with interested contractors at the project site. Bids are due and will be opened on April 13, at which time we will have a much better idea of the cost of the primary construction contract. As mentioned at the last Board meeting, SFCJPA and member agency staff are looking at the known and (as of yet) unknown project costs in relation to the construction and mitigation funding agreement that was finalized by our agencies in June 2014. The objective of this review is to be ready to cover any shortfall between final costs and the amounts provided in that funding agreement. Also at this time, staff from several agencies are working to finalize any outstanding land easement issues on the East Palo Alto side of the creek. At this Board meeting, we will discuss the activities as we move towards the onset of construction planned for June.

c. Authorize the Executive Director to execute Contract Amendment #6 with HDR, Inc. to provide support to the Santa Clara Valley Water District during the Bay-Highway 101 project bidding process

On November 19, 2015, the Board approved the S.F. Bay-Highway 101 project Construction Management Agreement, which assigned and enabled the SCVWD to manage construction activities for the S.F. Bay-Highway 101 project on behalf of the SFCJPA. The activities to be managed by SCVWD include advertising for construction bids, and hiring and overseeing a contractor and a construction management firm. In this role, the SCVWD will require support from the design engineer of record, HDR, Inc., which was hired by the SFCJPA to provide design services and develop the now-completed bid documents for the project.

San Francisquito Creek Joint Powers Authority
March 24, 2016 Board Meeting
Agenda Item 5
Executive Director's Report

As mentioned in the previous agenda item, the bid process extends until April 13, 2016. During this period, the design engineer of record assists the SCVWD in responding to questions from prospective bidders, prepares addenda or changes to the bid documents, creates a conformed set of construction documents that includes these addenda, prepares for and attends the pre-bid conference on March 22, and participates in weekly phone conferences with SFCJPA and SCVWD staff.

Because the contract to design the project was managed by the SFCJPA, the SCVWD asked the SFCJPA and we agreed to amend our contract with HDR so it may provide bid support to the SCVWD. The cost of the enclosed draft contract Amendment #6 is not to exceed \$58,736, based on a scope negotiated between HDR and the SCVWD. This amount, as well as funding for construction support services to also be provided to the SCVWD by HDR, will be paid for through a new funding agreement between the SFCJPA and SCVWD. At the SFCJPA Board meeting in April, I can ask the Board to authorize me to execute both Amendment #7 with HDR to provide construction support to the SCVWD and the new funding agreement with the SCVWD to pay for Amendments 6 and 7.

Recommended Action: Authorize the Executive Director to execute Contract Amendment #6 (draft enclosed) with HDR, Inc. to provide support to the Santa Clara Valley Water District during the Bay-Highway 101 project bidding process.

d. Authorize the Executive Director to sign an Actual Cost Contract with Pacific Gas & Electric that commits the SFCJPA to reimburse PG&E for the cost to modify an electrical tower to accommodate the S.F. Bay-Highway 101 project

As has been discussed at multiple Board meetings over the past four years, major electrical and natural gas infrastructure crosses the creek at the location of our S.F. Bay-Highway 101 project. These utilities must be modified to make room for the project's widening of the creek channel and construction of new levees and floodwalls. The first phase of this work by Pacific Gas & Electric, relocating electrical poles crossing the creek between East Palo Alto and Palo Alto, was completed by PG&E at the end of 2013 and subsequently paid for by the SFCJPA. The next phase of the electrical work is to build a new foundation for an electrical tower that is currently outside of the creek channel but will be within the newly widened channel after the project is completed. It is important that this work, which will occur under the permits the SFCJPA recently secured, is planned and completed as soon as possible to minimize conflicts with the work of the primary construction contractor this summer.

This agenda item concerns our funding of PG&E's work to build this tower foundation and then move its electrical tower onto it. PG&E estimates that the actual net cost of the modification of the electrical tower transmission line will be \$1,407,000, including \$150,000 already paid to PG&E for advance engineering costs, and minus any "betterments". Betterments are defined in the enclosed Actual Cost Contract (ACC) as replacements costing more than the replaced facilities for greater capacity, durability, or efficiency, and the salvage value of any materials removed.

The enclosed ACC was drafted by PG&E and reviewed and edited by SFCJPA staff and legal counsel. It commits the SFCJPA to reimbursing PG&E with \$1,407,000 in project funds minus the \$150,000 the SFCJPA has already paid PG&E, which leaves up to \$1,257,000 to be paid for construction. These funds will come from the State's reimbursement of levee construction costs through our grant from the CA Department of Water Resources. As described in the enclosed ACC, prior to making a payment the SFCJPA will have the ability to review PG&E's accounts and records regarding this work.

Proposed Board Action: Authorize the Executive Director to sign an Actual Cost Contract (draft enclosed) with Pacific Gas & Electric that commits the SFCJPA to reimburse PG&E for the cost to modify an electrical tower to accommodate the S.F. Bay-Highway 101 project.

San Francisquito Creek Joint Powers Authority
March 24, 2016 Board Meeting
Agenda Item 5
Executive Director's Report

e. Approve a new General Counsel Services Agreement with Richards, Watson & Gershon

At the February 2016 Board meeting, I discussed the need for a new SFCJPA contract with the law firm of Richards Watson Gershon, which provides general counsel and specialized legal services to the Board of Directors and staff at our agency. The billing rate currently charged by the firm is up to 25% lower than the rates it charges other public agencies, including SFCJPA member agencies, and the proposed new contract (enclosed) would increase the firm's billing rate for the first time since it was hired by the SFCJPA in 2001. At that time, the SFCJPA was much less well-established and was not presented with the complex legal issues we have seen over past several years since we began planning, designing, funding and implementing major capital projects. The new contract would take effect on May 1, 2016, and it will not impact our current fiscal year operating budget.

Proposed Board Action: Approve the new General Counsel Services Agreement (draft enclosed) with the law firm of Richards, Watson & Gershon.

Submitted by:



Len Materman
Executive Director

Agenda Item 5.c.

Authorize the Executive Director to execute
Contract Amendment #6 with HDR, Inc.
to provide support to the
Santa Clara Valley Water District
during the S.F Bay-Highway 101 project
bidding process

**DRAFT AMENDMENT NO. 6 TO AGREEMENT FOR DESIGN SERVICES FOR
FLOODWATER CONVEYANCE IMPROVEMENTS ON SAN FRANCISQUITO CREEK
BETWEEN THE
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY
AND
HDR ENGINEERING, INC.**

This Amendment No. 6 (“Amendment”), effective as of the date it is fully executed by the parties, amends the terms of the Consultant Agreement (“Agreement”) between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY (“Authority”) and CONSULTANT HDR Engineering, Inc., a Nebraska corporation (“Consultant”), dated November 3, 2009, amended on August 9, 2011, through the execution of Amendment No. 1, again on October 24, 2013, through the execution of Amendment No. 2, again on November 27, 2013 through the execution of Amendment No. 3, again on March 5, 2015 through the execution of Amendment No. 4, and again on December 21, 2015 through execution of Amendment No. 5. Capitalized terms not otherwise defined will have the meaning set forth in the Agreement.

WHEREAS, on February 23, 2016 Authority accepted the final deliverables under the Agreement, signifying that Consultant had completed its duties under the Agreement as amended by Amendments Nos. 1, 2, 3, 4, and 5; and

WHEREAS, the Authority and the Santa Clara Valley Water District entered into a separate agreement effective December 22, 2015 designating the Santa Clara Valley Water District as the entity responsible for managing construction of the Project, which includes the bidding and construction activities; and

WHEREAS, it is appropriate for Consultant, who prepared the design plans and specifications for the Project, to also provide bid support services to the Santa Clara Valley Water District as the Engineer of Record; and

WHEREAS, the Agreement between the Authority and Consultant represents an established legal vehicle for the provision of bid support services, and

WHEREAS, the parties desire to amend the Agreement to modify the Project budget in order to include a task for bid support services; and

WHEREAS, the parties desire to amend the term of the Agreement, extending it to December 31, 2016.

NOW, THEREFORE, in consideration for the mutual promises and agreements contained herein and notwithstanding anything to the contrary in the Agreement or Amendments No. 1, No. 2, No. 3, No. 4 and No 5, Consultant and Authority hereby agree as follows:

1. Exhibit A, Scope of Services, is amended to include services described in ATTACHMENT 1, Modifications to Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full.
2. Exhibit B, Schedule of Performance, is amended to extend the Agreement to December 31, 2016.
3. Exhibit C, Compensation, is amended to add \$58,736 for the additional services for a new total not to exceed cost under the Agreement to be \$1,675,020.
4. Except as specifically amended by this Amendment No. 6, all terms and conditions stated in the original Agreement as amended by Amendments Nos. 1, 2, 3, 4 and 5 shall remain in full force and effect.

**DRAFT AMENDMENT NO. 6 TO AGREEMENT FOR DESIGN SERVICES FOR
FLOODWATER CONVEYANCE IMPROVEMENTS ON SAN FRANCISQUITO CREEK
BETWEEN THE
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY
AND
HDR ENGINEERING, INC.**

IN WITNESS WHEREOF, the parties have set forth below their consent to the terms and conditions of this Amendment No. 6 through the signatures of their duly authorized representatives.

SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

HDR Engineering, Inc.,
[a Nebraska corporation]

Len Materman
Executive Director

Amy Gilleran
Senior Vice President

Date

Date



ATTACHMENT 1, Modifications to Exhibit A

March 21, 2016

Kevin Murray
SFCJPA
615 B Menlo Ave.
Menlo Park, CA 94025

RE: Scope of Work for San Francisquito Creek

Dear Mr. Murray,

HDR Engineering, Inc. (HDR) is pleased to present this scope of work to assist the San Francisquito Creek Joint Powers Authority (JPA) with Bid Phase Engineering Services.

This scope of work is intended to support new tasks within the existing JPA-HDR contract and provide additional tasks related to bid engineering support. Work tasks related to this new scope of work are summarized below. A proposed budget is attached for the additional services.

1 Project Management

1.1 Project Management

HDR's project manager will manage the contract scope, schedule, and budget for all HDR Team project activities outlined for this Scope. Project management will also occur at the activity level for each team member as shown on the attached breakdown of hours. In addition, the project manager will coordinate with the Client as needed to insure project performance.

1.2 Progress Reports

HDR will prepare monthly progress reports that document project activities and update the project schedule and budget status. Items that the progress report will include are:

- Financial status summary including an earned value analysis by task
- Project schedule and deliverables
- Current activities list
- Issues list (design, schedule and QA/QC issues)
- QA/QC review status



- Decision log

HDR will provide schedule updates to the JPA as necessary.

1.3 Meetings and Coordination

In order to facilitate project coordination, weekly project team teleconference meetings between HDR, the JPA, Santa Clara Valley Water District (District) and associated Cities will be resumed similar to the previously conducted team meetings. The fee estimate is based on 11 weekly project team meetings during the project duration.

Deliverables:

1. Project Management Plan (electronic copy)
2. Meeting Minutes
3. Monthly progress reports

2 Bid Phase Support

2.1 Engineering Support during Bid Period

At the JPA's request, HDR's Team will work directly with the District to provide assistance during the bidding phase of the Project by:

- **2.1.1** – Responding to bidders' questions pertaining to the bid documents within two (2) business days of receipt. HDR assumes 25 questions and 2 hours to respond to each).
- **2.1.2** – Attending one (1) pre-bid conference including site visit, and preparing addenda documents if clarifications or changes to bid documents, including plans and specifications, are needed.
 - HDR shall sign and stamp changes to drawings and provide to the District within five (5) business days of written request from District. HDR assumes 3 addenda documents at 6 hours per document.
 - During preparation of each addendum, HDR shall determine any construction cost and schedule impact of the addendum and submit to District for consideration prior to finalizing the addendum.
- **2.1.3** – Preparing a conformed set of construction contract documents to be used during construction that incorporates all the addenda generated during the bid phase.



Assumptions:

1. District will receive all bidders' questions, convey those questions related to HDR's work to HDR, and disseminate the responses to bidders.
2. District will be responsible for generating pre-bid conference notes and disseminating the notes to bidders.
3. District will be responsible for reproducing and distributing bid documents and addenda documents.

Deliverables:

1. Written responses to bidders' questions
2. Attend pre-bid conference including site visit
3. Assist District in preparing addenda
4. Electronic copy of conformed set of construction contract documents
5. 1 Wet stamped and signed conformed set of construction contract documents (full size)



Budget

HDR will perform these activities on a time and materials basis, with a not-to-exceed fee of \$58,736. HDR is prepared to commence activities upon receipt of your notice to proceed.

Please contact Sergio Jimenez at (916) 569-1075 or Amy Gilleran at (415) 377-9063 if you have any questions. Should the terms of this proposal be acceptable to the JPA, please indicate agreement on the signature line below.

This instrument may be amended at any time by signature of both HDR and the JPA. Changes in scope of work or not to exceed amount shall be attached to this original and remain in force unless further amended by the parties.

Sincerely,

HDR Engineering, Inc.

Holly Kennedy, PE
Vice President

Sergio Jimenez, PE
Project Manager

Len Materman, SFCJPA Executive Director

Date

Agenda Item 5.d.

Authorize the Executive Director to sign an Actual Cost Contract with Pacific Gas & Electric that commits the SFCJPA to reimburse PG&E for the cost to modify an electrical tower to accommodate the S.F. Bay-Highway 101 project

ACTUAL COST CONTRACT

PM 30823989

THIS AGREEMENT is entered into this ____ day of _____, 2016, by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY (Authority), and the PACIFIC GAS AND ELECTRIC COMPANY (PG&E).

RECITALS:

1. PG&E owns, operates, and maintains certain Ravenswood-Palo Alto 115kV Lines Circuit #1 and Circuit #2 tower line facilities, (PG&E's facilities).
2. Authority contemplates the widening of the San Francisquito Creek and improving the levees on each side of the San Francisquito Creek starting from Route 101 easterly to the San Francisco Bay shore line in both the City of Palo Alto in Santa Clara County and East Palo Alto in San Mateo County, California which will necessitate the rearrangement of PG&E's facilities.
3. Authority has requested and PG&E is willing to rearrange PG&E's facilities to accommodate Authority's project.

AGREEMENT:

1. Upon the receipt by PG&E of notice in writing from Authority, PG&E will commence and thereafter diligently prosecute the rearrangement of PG&E's facilities as nearly as possible in accordance with PG&E's Drawing No. 219497, Change #7 (PM 30823989), attached hereto and marked Exhibit A, provided, however, that PG&E shall not be obligated to perform such work until necessary land rights have been acquired in a form satisfactory to PG&E for any of PG&E's facilities that must be replaced in a new location.
2. In the event the construction of temporary facilities is necessary, PG&E may use lands owned or controlled by Authority for the purpose of making such temporary installation provided that Authority shall have approved the location thereof. Upon completion of construction of such facilities in their permanent location, PG&E shall remove all temporary facilities.
3. During the progress of the work, PG&E may bill Authority not more than once each month for the actual costs incurred by PG&E not previously reimbursed by Authority to the date of such billing, and Authority shall reimburse PG&E therefor. Upon the completion of the work, Authority shall reimburse PG&E for 100% the actual net cost which PG&E has incurred in effecting the rearrangement of its facilities including costs, if any, involved in any temporary rearrangement with credit(s) given to Authority for any interim payments made in accordance with this paragraph. The actual net cost is presently estimated to be \$1,407,000.00. Less the \$150,000.00 paid in advance, the total will be \$1,257,000.00.

4. Authority shall acquire, at no cost to PG&E and in a form satisfactory to PG&E, all necessary permits required for the temporary or permanent rearrangement of PG&E's facilities from governmental agencies having jurisdiction over the same and shall file any statement required by, and otherwise comply with the applicable provisions of the California Environmental Quality Act of 1970 (California Public Resources Code, Sections 21000 et seq.).

5. Authority shall convey or cause to be conveyed to PG&E all necessary land or land rights in a form satisfactory to PG&E to allow PG&E to install its facilities in the new location or reimburse PG&E for its costs incurred in acquiring such land or land rights; provided, however, that in satisfaction of this obligation of Authority, Authority and PG&E will enter into a Joint Use Agreement in the form attached and marked Exhibit B for such portion of the new location as falls within Authority's lands.

6. Actual cost will be determined in accordance with the uniform system of accounts prescribed for utility companies by the Public Utilities Commission of the State of California and PG&E's regularly established accounting practices and will include, but shall not be limited to, the following charges: survey costs, acquisition of land rights, labor and payroll taxes, materials and supplies, transportation, stores and tool expense, supervision and overheads, including allowance for funds used during construction, and an allowance for worker's compensation and public liability and property damage insurance, and estimated federal and state taxes.

7. Actual net cost shall be actual cost reduced by the following:

- a. betterment, defined as replacements costing more than the replaced facilities because of greater capacity, durability or efficiency.
- b. salvage value of any materials removed and retained by PG&E, the replacement cost of which is charged to Authority.

8. Upon completion of the work, PG&E may submit to Authority an un-itemized preliminary invoice for the actual charges recorded to date, less an amount for estimated salvage and betterment, if any, and Authority, within thirty (30) days after receipt of PG&E's invoice, shall reimburse PG&E therefor.

9. Within ninety (90) days after receipt of PG&E's itemized invoice for the additional amount due PG&E, Authority shall reimburse PG&E for the amount billed, provided, however, that Authority shall have reasonable access to PG&E's accounts and records for the purpose of auditing said invoice. If, after the itemized invoice is prepared, it is determined that the actual net cost is less than any amount previously paid by Authority under this Agreement, PG&E shall reimburse Authority the amount of the difference between the amount paid and the actual net cost, without interest.

10. The provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

11. This Agreement is the entire agreement of the parties relating to PG&E's Ravenswood-Palo Alto 115kV Lines Circuit #1 and Circuit #2 (PM #30823989) for the Authority's flood control project and supersedes all prior negotiations, understandings, and agreements whether written or oral. This Agreement may be amended only by written agreement signed by both parties and no purported oral amendment to this Agreement shall be valid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by duly authorized officers this day and year first hereinabove set forth.

PACIFIC GAS AND ELECTRIC COMPANY

SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

By: Andrew K. William, Vice President
Safety, Health and Environment

By: Len Materman
Executive Director

Agenda Item 5.e.

Approve a new
General Counsel Services Agreement with
Richards, Watson & Gershon

DRAFT GENERAL COUNSEL SERVICES AGREEMENT

THIS AGREEMENT is entered into the 1st day of May, 2016 between the San Francisquito Creek Joint Powers Authority, a California Joint Powers Authority (“SFCJPA”) and Richards, Watson & Gershon, a Professional Corporation (“Richards”).

Section 1. Scope of General Services. As General Counsel for SFCJPA, Richards shall provide the general legal services typically required by a joint powers authority. General legal services shall include the following:

- (a) Attendance at the monthly SFCJPA Board of Directors (“Board”) meetings and any special meetings and workshops as requested by the Executive Director or Chair of the Board;
- (b) Legal research and legal advice to the Board, Executive Director and designated Staff;
- (c) Advice on new legislation and case law affecting the SFCJPA;
- (d) Preparation and review of SFCJPA legal documents and agreements as requested;
- (e) Advice and assistance on other legal matters as may be assigned by the Executive Director.

Legal services will not include matters in which Richards has a conflict of interest that precludes Richards from representing the SFCJPA, its Directors and employees. If Richards has a conflict of interest or lacks specialized experience necessary to handle a particular assignment, Richards shall, following consultation with the Executive Director, provide the SFCJPA with a recommendation to hire outside counsel.

Section 2. Litigation and Municipal Finance Services. Litigation and municipal finance services shall not be considered General Services and shall be paid at the separate hourly billing rates set forth in Exhibit A, attached hereto.

Section 3. Term of Agreement. This Agreement shall commence on the date of execution and continue thereafter until terminated pursuant to Section 9 hereof. SFCJPA and Richards shall review the financial provisions contained in this Agreement by April of 2018 and then each even-numbered year thereafter, to ensure that its terms are mutually satisfactory to the parties.

Section 4. Staffing Assignments. Gregory W. Stepanicich, a shareholder with Richards, shall be assigned as General Counsel and shall be primarily responsible for the provision of legal services to the SFCJPA, including attendance at Board Meetings. Any change in the primary attorney providing services to SFCJPA shall be approved by the Board. Associate attorneys and legal assistants shall be utilized where appropriate to assist in conducting legal research; preparing legal documents; providing legal advice; and other assignments appropriate for their level of experience.

Section 5. Compensation for Legal Services. Fees for all legal services and reimbursements provided hereunder shall be charged in accordance with Exhibit “A” which is attached hereto and incorporated herein by reference.

Section 6. Monthly Billings. Richards shall bill the SFCJPA on a monthly basis. Each bill shall indicate the date of the work done, the work that was accomplished, the attorney who performed the work, and the fee for the work. The SFCJPA shall promptly review Richards’ monthly statements. Following approval of monthly statements, SFCJPA shall compensate Richards for services rendered and expenses incurred at the rates and in the amounts provided in this Agreement on a monthly basis.

Section 7. Expense Reimbursements. Reimbursable expenses to which Richards is entitled to under this Agreement shall be separately itemized and include the following: 1) messenger services and overnight mail charges, 2) copying costs; 3) court costs, including filing fees, witness fees, and deposition and discovery costs not paid directly by the SFCJPA, and 4) any extraordinary costs authorized by the SFCJPA. Richards will not charge for mileage in travelling to and from SFCJPA meetings, word processing charges or any secretarial charges.

Section 8. Expense Control. Richards shall endeavor, consistent with sound professional practices and the exercise of reasonable judgment, to limit and minimize expenses incurred during the performance of this Agreement and to keep its fees within the annual budget adopted by the Board.

Section 9. Amendment; Termination. This Agreement may be amended only by written agreement of SFCJPA and Richards. This Agreement may be terminated by SFCJPA at any time upon written notice to Richards and by Richards upon sixty (60) days' written notice to SFCJPA. In the event of termination, SFCJPA shall be responsible only for fees and costs incurred through the effective date of the termination.

Section 10. Retention of Other Counsel, Specialists or Experts. Richards will not retain or otherwise incur an obligation to pay other legal counsel, specialists or experts for services in connection with this Agreement without the prior approval of the Executive Director.

Section 11. Interest of Members of Local Public SFCJPA. No member of the governing body of the SFCJPA, and no other officer, employee or agent of the SFCJPA who exercises any discretion, function or responsibility in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

Section 12. Interest of Counsel. Richards agrees to secure the informed written consent of the Executive Director before accepting any representation adverse to the SFCJPA (actual or apparent) during the term of this Agreement, and to forego such representation if the Executive Director objects for any reason.

Section 13. Conflict of Interest. Richards certifies that no member, officer or employee of Richards is an officer or employee of the SFCJPA or its Board of Directors. Further, during the period of this contract, Richards will not engage in an active practice against any of the member agencies of the SFCJPA.

Section 14. Indemnification. Richards agrees to indemnify, hold harmless, and defend, to the maximum extent permitted by law, the SFCJPA, its Board of Directors and each member thereof, and its officers, employees, commission members and representatives, from any and all liabilities, losses, suits, claims, damages, costs, judgments and expenses (including reasonable attorney's fees) which result from or arise out of the intentionally wrongful conduct or negligent errors or omissions of Richards in its performance of this Agreement.

Section 15. Professional Liability Coverage. During the term of this Agreement, Richards shall at all times maintain insurance coverage for general and professional liability. The general liability policy shall provide coverage of a least \$1 million and shall name the SFCJPA and its board members, officers and employees as additional insureds. A copy of the current policy or policies shall be provided to the SFCJPA upon request.

Section 16. Independent Contractor. No employment relationship is created by this Agreement. Richards at all times during the term of this Agreement shall be an independent contractor of SFCJPA.

Section 17. Entire Agreement. This Agreement shall constitute the full and complete agreement of the parties and shall supersede any other written or oral agreements, representations or statements of either party, including but limited to that certain Agreement for Legal Services, dated _____.

SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

Date: _____

By: _____
Len Materman, Executive Director

RICHARDS, WATSON AND GERSHON,
a professional corporation

Date: _____

By: _____
Gregory W. Stepanicich, Shareholder

EXHIBIT "A"

Compensation for Legal Services

General Services: \$275 per hour for shareholders and senior attorneys and \$225 per hour for associates.

Litigation and Municipal Finance Services: \$275 to \$300 per hour for shareholders and senior lawyers and \$250 per hour for associates. For the purposes of this Agreement, litigation services includes advocacy and representation before other administrative or public agencies, including those with regulatory authority over SFCJPA projects.