



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
May 22, 2014 at 4:00 p.m.**

**This meeting will likely begin after 4:30 p.m.
due to a Special SFCJPA Board meeting beginning at 3:30 p.m.**

AGENDA

- 1) ROLL CALL
- 2) APPROVAL OF MEETING MINUTES – April 24, 2014 Board meeting
- 3) APPROVAL OF AGENDA
- 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) S.F. Bay-Highway 101 project construction planning
 - b) Approve an inter-agency agreement to fund the S.F. Bay-Highway 101 project
- 6) BOARD MEMBER MATTERS - *Non-agendized comments, requests, or announcements by Board members; no action may be taken.*
- 7) ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda can be viewed online by 4:00 p.m. on May 19, 2014 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 May 20, 2014.

NEXT MEETING: Regular Board meeting, June 26, 2014 at 4:00 p.m., Palo Alto City Council Chambers.

San Francisquito Creek Joint Powers Authority

May 22, 2014 Regular Board Meeting

Agenda Item 2

April 24, 2014 Board Meeting Minutes

Chairperson Keith called the meeting to order at 4:03 p.m. at the City of Menlo Park Council Chambers, Menlo Park, CA.

DRAFT

1) ROLL CALL

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

Members Absent: Director Abrica, City of East Palo Alto

Alternates Present: Catherine Carlton, City of Menlo Park (in audience)

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

Others Present: Norm Beamer and Art Kraemer, Crescent Park Neighborhood Association; Trish Mulvey, Palo Alto resident; Jerry Hearn, Portola Valley resident; Claire Elliot, Palo Alto; Joe Teresi, City of Palo Alto; Tom Zigterman, Stanford; Gene McCown, Stanford; Ann Stillman, SMCFCD; Sharon Jones, City of East Palo Alto; Alice Kaufman, Committee for Green Foothills; Philippe S. Cohen, Jasper Ridge Biological Preserve; Melanie Richardson, SCVWD

2) APPROVAL OF MEETING MINUTES- Board meetings on March 12, 2014 and March 27, 2014

Director Schmidt made a motion to approve the March 12 and March 27 Board meeting minutes. Director Pine seconded. Motion to approve the March 12 and March 27 Board meeting minutes passed 4-0. (Director Abrica absent)

3) APPROVAL OF AGENDA

Director Schmidt made a motion to approve the agenda. Director Burt seconded. Motion to approve agenda passed 4-0. (Director Abrica absent)

4) PUBLIC COMMENT

Jerry Hearn, Portola Valley resident, commented on the success of the April 12, 2014 watershed tour that was organized by the Committee for Green Foothills and others; noting that his two goals for the event were to get people together in person and to have people understand the complex and interrelated nature of work in this watershed.

Chairperson Keith commented that she was not able to attend but heard a lot of positive comments from people who thought the tour was very informative. Director Schmidt, who spoke at the tour, commented that the tour was very rewarding and he commended the many people who worked on the event.

San Francisquito Creek Joint Powers Authority

May 22, 2014 Regular Board Meeting

Agenda Item 2

April 24, 2014 Board Meeting Minutes

5) REGULAR BUSINESS – EXECUTIVE DIRECTOR’S REPORT

Update on S.F. Bay – Highway 101 project construction planning

Mr. Materman presented the Executive Director’s report beginning with a brief outline of the two S.F. Bay - Highway101 project alternatives that the Regional Water Board recently requested the SFCJPA analyze.

Director Burt asked what the Regional Water Board thinks might be the benefit of degrading the levee between the creek and Faber Tract close to the Bay after recently saying that their greatest concern with the project related to creek water getting into the Faber Tract. Mr. Murray responded saying that the main portion of the Faber Tract, which is west of the suggested degrade, can be hydraulically isolated during normal conditions from the area where the Regional Water Board requested that we degrade the levee. Mr. Murray and Mr. Materman further said that the Regional Water Board has not specifically answered that question, but has expressed an interest in reducing flow into Faber and opening up the creek mouth even with the constriction caused by the Palo Alto Airport runway may be helpful in doing that. Chairperson Keith concurred with Director Burt’s questions and comments and asked that staff ask the Regional Water Board for their specific response.

Director Pine questioned how the requested alternative would impact the airport and golf course. Mr. Materman responded saying that one element of this alternative would widen the creek channel downstream of where our proposed project ends by moving the levee on the north side of the golf course into the golf course. Because the creek has to be tied back to the existing levee upstream of the runway, there is little to no benefit to moving it more than a few dozen feet into the new golf course. Mr. Materman continued, explaining that there is an area of airspace that we cannot impact by raising the levee and our design firm is taking that into account with their conceptual design in terms of where to tie-in with the existing levee.

Mr. Materman noted that the project funding agreement is being finalized and that he expects to have the S. F. Bay- Highway 101 project agreement at the May 22, 2014 Board meeting.

Update on the Environmental Impact Report of projects upstream of Highway 101

Mr. Materman provided an update on the Environmental Impact Report (EIR) for projects upstream of Highway 101 explaining that a new item was being looked at for a scope of work in the EIR related to the impact of a potential alternative to remove the Pope-Chaucer Bridge and not put it back or replace the Pope Chaucer Bridge with a bike/pedestrian bridge.

Mr. Materman gave a brief report on the April 23 flood insurance meeting and he thanked Joe Teresi for his hard work to pull that together.

Update by Stanford University on its Searsville Alternatives Study

Jean McCown and Tom Zigterman of Stanford University provided an update on the Searsville Alternatives Study.

Chairperson Keith thanked Stanford for looking at a possible diversion at Felt Lake and noted that could affect the SFCJPA EIR that was just discussed. Chairperson Keith questioned Stanford’s timeframe on looking at that analysis and she asked if any other areas are being looked at, such as Webb Ranch.

San Francisquito Creek Joint Powers Authority

May 22, 2014 Regular Board Meeting

Agenda Item 2

April 24, 2014 Board Meeting Minutes

Mr. Zigterman responded saying that this summer Stanford will intensively study several options, including looking at Felt Lake in terms of its ability to replace the water supply at Searsville and if there would be a benefit to regional flood management by having more water diverted to Felt from Los Trancos Creek. Mr. Zigterman explained that Stanford had met with SFCJPA and SCVWD staff to look at upstream detention opportunities presented to the SFCJPA by PWA a few years ago, including on Webb Ranch and the Stanford golf course.

Director Pine asked how often the Searsville Alternatives Study Advisory Group would meet during the next intensive period of work. Ms. McCown responded saying that the Advisory Group will meet in May, June, September and October, and that the faculty and staff steering committee will meet more frequently.

Director Burt questioned why only a couple hundred cubic feet per second (cfs) were being talked about regarding the diversion from Los Trancos Creek to Felt Lake. Mr. Zigterman responded saying that Stanford's hydrologist could speak to the details, but they believe Los Trancos does not contribute as high a percentage of San Francisquito Creek flow as was previously thought. Mr. Zigterman explained that Stanford noticed a disparity in flows in Los Trancos on the south side of the watershed, Searsville in the middle, and Bear Creek on the north; that with the recent storms, December 2012 being the biggest one, most of the flow is coming from the north. Mr. Zigterman noted that the current maximum flow through the diversion from Los Trancos Creek to Felt Lake is 40 cfs.

6) ADJOURNMENT:

Chairperson Keith adjourned the meeting at 4:58 pm

Minutes prepared by Clerk of the Board: Miyko Harris-Parker

San Francisquito Creek Joint Powers Authority
May 22, 2014 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. Update on S.F. Bay-Highway 101 project construction planning

At our monthly Board meetings for over the past year, we have discussed our efforts to prepare for construction and to relocate utilities related to this project. These updates have focused on our work to secure regulatory permits, land/easement acquisitions, and an inter-agency funding agreement to cover the costs of construction and mitigation. Our objective has long been to secure permits, acquire the needed land agreements, and complete a funding agreement in time to take advantage of as much of the 2014 June-October window to work in the creek as possible, and to preserve flexibility to move forward with work outside the creek. The information below and our Board discussion will provide an update on recent developments on permits and land/easement needs. Construction funding will be discussed under Agenda Item 5.b., which follows this Agenda Item.

Project Permits

At its March 27, 2014 meeting, the SFCJPA Board authorized the filing of a petition to appeal the San Francisco Bay Regional Water Quality Control Board's (Regional Water Board) February 27, 2014 determination to deny without prejudice the SFCJPA's application for Clean Water Act Section 401 Certification for this project. A petition to the State Water Resources Control Board to appeal that finding, and an appeal to the Regional Water Board to reverse its decision, was filed on April 1, 2014 and held in abeyance to allow for SFCJPA staff to work with Regional Water Board staff to advance our application to complete 401 Certification.

At the March 27 Board meeting, I described our planned work with Regional Water Board staff based on a March 19, 2014 meeting with Regional Water Board Executive Officer Bruce Wolfe and the city managers of Palo Alto and East Palo Alto, and senior Santa Clara Valley Water District (SCVWD) staff. That work included technical information regarding the project's hydraulic assumptions and regarding our proposal to fill in a low point of the levee separating the creek from Faber Tract, sent to Mr. Wolfe and his senior staff on April 14.

It also included an analysis by our design consultant, HDR Inc., and by SCVWD and SFCJPA staff, of the hydraulic performance, environmental impacts and feasibility of two project alternatives requested by the Regional Water Board on March 19, as well as the SFCJPA providing additional technical information regarding the project's hydraulic assumptions and regarding our proposal to fill in a low point of the levee separating the creek from Faber Tract. At the April 24, 2014 SFCJPA Board meeting, I described the following two project alternatives:

- Widening the Creek Mouth Alternative: Downstream of the project area, widen the channel slightly by continuing the new Palo Alto side levee in the Palo Alto Golf Course to the location just upstream of where the Golf Course meets the northern end of the Palo Alto Airport. This alternative would lower the levee between the creek and marsh to allow fluvial flows into the triangular area of marsh to the east of the Faber Tract. Hereafter, these two project elements are referred to as the Levee Setback Extension and Bay Levee Degrade.
- Embarcadero Road Bypass Alternative: Construct a bypass channel to divert some of the flow from San Francisquito Creek to a floodwater detention basin at the City of Palo Alto Baylands Athletic Center ball fields and the potential future sports fields near the downstream end of the proposed floodwall. Floodwaters would exit the detention basin into a bypass channel that would continue along the southern boundary of the golf course along Embarcadero Road, cut through the airport property, and discharge to the tidal marsh south of the airport runway.

San Francisquito Creek Joint Powers Authority
May 22, 2014 Board Meeting
Agenda Item 5
Executive Director's Report

On May 7, I sent to the Regional Water Board documents containing the technical analyses they requested on March 19. These documents, listed below, were also listed in a letter sent to Mr. Wolfe, which he reviewed and agreed to prior to its delivery on March 31, 2014.

- A five page cover letter that details the remaining items to be submitted (that were attached to the letter), the basis for selecting the creek flow and tidal scenarios for our analysis, a summary of findings regarding the two alternatives listed above and the proposed project, and why the proposed project is the Least Environmentally Damaging Practicable Alternative (LEDPA).
- Technical reports detailing the methodologies and results of our analysis of the requested alternatives, along with modeling parameters.
- A table with all nine of the preliminary project alternatives considered throughout the life of the project measured against fourteen criteria used to screen the preliminary alternatives.
- Section 6 of the Final EIR for the Project, which analyzed prospective project alternatives and represents our determination of the LEDPA as defined by CEQA.

Regional Water Board staff asked for two weeks of review before meeting with staff from the SFCJPA, SCVWD and HDR to discuss the results of our analysis described in the above documents. As discussed with Mr. Wolfe, this material and this meeting should allow us to move forward with 401 Certification, which, in turn, should allow us to move forward with the other regulatory agencies on their permits. The meeting at the Regional Water Board to review these documents is scheduled to take place on May 21, 2014, one day before the May 22 SFCJPA Board meeting. At that Board meeting, I will report on the results of our meeting with the Regional Water Board.

Land/Easement Acquisition

On the Palo Alto side of the creek, the SCVWD continues its effort to secure the necessary land and easements. On the East Palo Alto side, San Mateo County staff have issued initial offers to the three property owners from whom easements will be needed, and negotiations are underway to secure these easements. The SFCJPA is working with the City of East Palo Alto on how those easements will be held by the City, with compensation owing to be paid by the SFCJPA.

b. Approve an inter-agency agreement to fund the S.F. Bay-Highway 101 project

The previous agenda item focused on major challenges still to be overcome to begin construction in the creek channel. With this agenda item, we can put behind us a challenge that we have all worked on for over a year. During that time, SFCJPA Board, staff and General Counsel, and Member Agency staff and attorneys, have worked to develop the funding strategy and agreements that will be necessary to fund projects to achieve our objectives throughout the floodplain.

At this Board meeting, we will consider the first of these agreements, for the S.F. Bay-Highway 101 project. This agreement (enclosed) is scheduled to also go to each Member Agency governing board/council in early June. While it is focused solely on the S.F. Bay-Highway 101 project, it follows the direction given by the SFCJPA Board on March 12, 2104 that all Member Agencies contribute to projects so that all water flowing under the Middlefield Road Bridge can reach the Bay without causing flooding. This would provide protection against a flow approximately equal to the 1998 flood of record.

Based on the top of the range of project costs estimated by HDR over a year ago, the estimated cost to construct the project and mitigate for impacts is about \$37 million. The agencies contributing to cover these costs include: the SCVWD (between \$27-28 million), the SFCJPA (\$7.85 million), East Palo Alto (\$800,000), and the San Mateo County Flood Control District (\$800,000).

San Francisquito Creek Joint Powers Authority
May 22, 2014 Board Meeting
Agenda Item 5
Executive Director's Report

Because constituents of the SFCJPA and all of its Member Agencies (the cities of East Palo Alto, Palo Alto, and Menlo Park, the San Mateo County Flood Control District and Santa Clara Valley Water District) benefit from this suite of projects, all have agreed to contribute resources towards its overall implementation. Thus, all agencies will be party to both the agreement that funds the Bay-Highway 101 project and to the agreement that funds the upstream of Highway 101 project, even if an agency does not directly contribute to or directly benefit from one of those projects.

Proposed Board action: Authorize the Executive Director to sign the enclosed draft inter-agency agreement to fund the S.F. Bay-Highway 101 project, subject to minor modifications agreed to by the Executive Director and General Counsel.

Submitted by:



Len Materman
Executive Director

DRAFT

**AGREEMENT AMONG THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, AND THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION AND MITIGATION 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 as of the date it is fully executed by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY (“Authority”), a California joint powers authority, the SANTA CLARA VALLEY WATER DISTRICT (“Water District”), a special district of the State of California, the San Mateo County Flood Control District, a special district of the State of California (“Flood District”), the CITY OF PALO ALTO (“Palo Alto”), the CITY OF EAST PALO ALTO (“East Palo Alto”), and the CITY OF MENLO PARK (“Menlo Park”), collectively referred to as “the Parties” or individually as “Party.” The effective date of this Agreement will be the last date that this Agreement is executed by the Parties.

The purpose of this Agreement is to define the roles and responsibilities of the Parties for funding construction of the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101 (“Project”).

RECITALS

- 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, East Palo Alto, Menlo Park, and Palo Alto along with the Flood District and the Water District formed the 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 the Authority, completed a reconnaissance study for the Creek. The reconnaissance study results indicated a Federal Interest in developing a flood control project for San Francisquito 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. The 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 Corps' processes.
- F. Due to the Corp's delay in completing the Feasibility Study and the Member Agencies' desire to begin addressing the risk of flooding in their jurisdictions, the 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 the Authority Board of Directors for consideration.
- G. On July 23, 2009, the 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. The Authority, the Water District, and the Flood District entered into an agreement on November 3, 2009 to fund the design and environmental documentation of the Project.
- I. The Authority hired a design engineering firm and an environmental consulting firm to prepare design documents and an Environmental Impact Report ("EIR") for the Project.
- J. The final EIR was certified by the Authority on October 25, 2012. The Notice of Determination (NOD) was filed by the Authority with the County of Santa Clara, Office of the Clerk/Recorder and by the County of San Mateo Office of the Recorder, on July 30, 2013.
- K. East Palo Alto will contribute \$800,000 towards Project costs.
- L. In November 2012, the voters of Santa Clara County approved Measure B, the Water District's Safe, Clean Water initiative which will provide significant funding toward the Project costs. The District will contribute approximately \$28 million toward Project costs from its Safe, Clean Water program and other sources.
- M. On January 9, 2013, the Authority entered into an Agreement with the State of California, Department of Water Resources (DWR) for \$8 million in grant funding from DWR's Stormwater Flood Management Program to be applied towards Project costs.
- N. The Flood District will contribute \$800,000 toward Project costs. The Flood District's financial contribution will be in an amount equal to the financial contribution made by East Palo Alto.
- O. The City of Menlo Park and the City of Palo Alto are not financially contributing toward the Project costs, however, construction of the Project directly benefits the City of Menlo Park as its completion is necessary to accommodate future flood protection measures located in Menlo Park, upstream of the Project, which may be constructed in the future. In addition, Palo Alto is impacted by the Project because realignment of a portion of its municipal golf course may be necessary to accommodate various flood protection construction elements of this Project.
- P. For the purpose of this Agreement, funding from East Palo Alto, the Flood District, the Authority, and any future funds from other sources, contributed toward Project costs, shall be referred to as "Non Water District Funds."

- Q. The Water District and the Authority intend to enter into a Construction Management Agreement designating the Water District as the entity responsible for managing construction of the Project.
- R. The Parties desire to enter into this Agreement to provide for reimbursement of Water District expenditures towards construction of the Project from funding that may become available through Non Water District Funds

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions in the sections contained herein below, the Parties agree as follows:

PROVISIONS

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 flood events in conjunction with a 100-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. Funding Amounts

Construction of the Project is currently estimated to cost approximately \$37.45 million. Based on this estimate, the Parties agree to contribute the following amounts toward these costs.

A. Non Water District Funds

1. The Authority will provide Project funding in the currently estimated amounts as stated below. The Authority will provide to the Water District documentation of all listed expenses incurred and paid for by the Authority.

- a) \$3,000,000 to the City of Palo Alto to mitigate for impacts to the City of Palo Alto Municipal Golf Course
- b) \$50,000 for other mitigation activities
- c) \$2,700,000 to Pacific Gas & Electric Company to relocate gas and electric transmission lines
- d) \$400,000 to the East Palo Alto Sanitary District to relocate a sewer line
- e) \$100,000 for property acquisition within East Palo Alto
- f) \$1,600,000 to Water District for expenditures toward construction of the Project, which is the estimated balance of DWR grant funds after the Authority's payment of DWR's required grant administration costs and the Project costs listed above.

2. East Palo Alto: \$800,000

3. Flood District: \$800,000 (matching East Palo Alto's contribution of \$800,000 currently identified from Non Water District Funds).

B. Water District Funds

The Water District will expend an amount not to exceed \$28,000,000 for expenditures incurred in constructing the Project.

3. Method and Timing of Transactions

- A. Water District shall prepare and submit quarterly invoice packages of Water District expenditures to the Authority that will be used for DWR grant funding reimbursement. Water District's Quarterly invoice packages will include Project progress reports and all other documentation required by DWR sufficient to enable the Authority to submit subsequent funding requests to DWR for grant funding reimbursement.
- B. Authority shall submit a request for grant fund reimbursement to DWR within 15 days of receipt of invoice packages from Water District, provided all DWR-related invoicing requirements are met. Authority shall subsequently issue payment to Water District for costs of construction managed by Water District within 30 days of receipt of grant funds from DWR.
- C. Non Water District Funds contributed by East Palo Alto and the Flood District will be remitted to the Water District within one hundred and eighty days (180) after a construction contract is awarded by the Water District's Board of Directors.

4. Mutual Hold Harmless

Mutual Hold Harmless and Indemnification Obligations

- A. 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 and expiration of this Agreement.
- B. 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.

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

5. Retention of Records, Right to Monitor and Audit

Unless a longer period of time is required by law or federal or state grant funding agreements, the Parties shall maintain all financial records related to this Agreement and/or the Project for five (5) years after the Agreement expires or is terminated earlier pursuant to Section 7 of this Agreement. The records shall be subject to the examination and/or audit of either Party.

6. 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 7. Termination.

7. Termination

- A. 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.
- B. A final notice of termination may be given only after completion of the notice and cure process described in Section 7.A. and only with the approval of the governing body of the Party terminating the Agreement.

- C. 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 this Construction Funding Agreement 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.
- D. Notwithstanding the foregoing, after the Water District awards a construction contract for the Project, this Agreement may only be terminated by the mutual written agreement of all of the Parties approved by the governing body of each Party.
- E. The Chief Executive Officer of the Water District and the Executive Director of Authority are empowered to terminate this Agreement on behalf of their respective agencies in accordance with the provisions of this Agreement.

8. 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, or (c) 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
 Attention: Len Materman, Executive Director
 len@sfcjpa.org

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

Palo Alto: City of Palo Alto
 250 Hamilton Avenue
 P.O. Box 10250
 Palo Alto, CA 94303
 Attention: James Keene, City Manager
 james.keene@cityofpaloalto.org

East Palo Alto: City of East Palo Alto
 2415 University Avenue
 East Palo Alto, CA 94303
 Attn: Magda Gonzalez, City Manager
 mgonzalez@cityofepa.org

Menlo Park: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attention: Alex McIntyre, City Manager
admccintyre@menlopark.org

Flood Control District: Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: James Porter, Director
jporter@smcgov.org

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery (whether accepted or refused) as evidenced by: a) confirmed in-person delivery by the addressee or other representative of the Party authorized to accept delivery on behalf of the addressee, b) as shown by the addressee's return receipt if by certified mail, or c) as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or demand so made shall be deemed effective on the first business day immediately following the day of actual delivery. No communications via electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder.

9. 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.

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. 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 or where otherwise appropriate, exclusively in the United States District Court, Northern District of California.

12. Assignability and Subcontracting

Parties shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required under this Agreement without the prior written consent of the other parties. Any unauthorized attempt by any Party to so assign or transfer shall be void and of no effect. Notwithstanding the foregoing, a Party may hire a consultant to fulfill its obligations under Section 3 of this Agreement.

13. Ownership of Materials

All reports, documents, or other materials developed or discovered by any Party or any other person engaged directly or indirectly by any Party to perform the services required hereunder shall be and remain the mutual property of Authority and Water District without restriction or limitation upon their use.

14. Entire Agreement

This Agreement constitutes the entire Agreement between the Authority and the 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 and Water District.

15. 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 transactions contemplated by this Agreement.

16. 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.

17. 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.

18. 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.

(remainder of page intentionally left blank)

AGREEMENT

**AMONG THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, AND THE CITY OF EAST PALO ALTO
FOR THE FUNDING OF CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the San Francisquito Creek Joint Powers Authority has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:

San Francisquito Creek Joint Powers Authority

By: _____
Greg Stepanicich
Title: SFCJPA General Counsel

By: _____
Len Materman, Executive Director

Date: _____

Date: _____

AGREEMENT

**AMONG THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, AND THE CITY OF EAST PALO ALTO
FOR THE FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the Santa Clara Valley Water District has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:

Santa Clara Valley Water District

By: _____

By: _____

Print Name:

Print Name:

Title: _____

Title: _____

Date: _____

Date: _____

AGREEMENT

**AMONG THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, AND THE CITY OF EAST PALO ALTO
FOR THE FUNDING OF CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the City of Palo Alto has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:

City of Palo Alto

By: _____

By: _____

Print Name:

Print Name:

Title: _____

Title: _____

Date: _____

Date: _____

AGREEMENT

**AMONG THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, AND THE CITY OF EAST PALO ALTO
FOR THE FUNDING OF CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the City of East Palo Alto has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM: City of East Palo Alto

By: _____ By: _____

Print Name: Print Name:

Title: _____ Title: _____

Date: _____ Date: _____

AGREEMENT

**AMONG THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, AND THE CITY OF EAST PALO ALTO
FOR THE FUNDING OF CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the City of Menlo Park has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM: City of Menlo Park

By: _____ By: _____

Print Name: Print Name:

Title: _____ Title: _____

Date: _____ Date: _____

AGREEMENT

**AMONG THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, AND THE CITY OF EAST PALO ALTO
FOR THE FUNDING OF CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the San Mateo Flood Control District has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:

San Mateo County Flood Control District

By: _____

By: _____

Print Name:

Print Name:

Title: _____

Title: _____

Date: _____

Date: _____