



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 26, 2016 at 4:00 p.m.**

AGENDA

- 1) ROLL CALL
- 2) APPROVAL OF AGENDA
- 3) APPROVAL OF MEETING MINUTES – April 28, 2016 and May 11, 2016 Board meetings
- 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: discuss construction planning
 - b. Authorize the Executive Director to execute Amendment Number 1 to the Agreement among the San Francisquito Creek Joint Powers Authority, Santa Clara Valley Water District, San Mateo County Flood Control District, City of Palo Alto, City of Menlo Park, and City of East Palo Alto, for funding construction and mitigation of San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101
 - c. Authorize the Executive Director to execute an Agreement with the Santa Clara Valley Water District to fund bid and construction engineering support consultant services, and a portion of utility relocations and project mitigations, for the San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101
 - d. Authorize the Executive Director to execute Contract Amendment No. 7 with HDR, Inc. to provide support to the Santa Clara Valley Water District during Bay-Highway 101 project construction
- 6) ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda can be viewed online by 4:00 p.m. on May 23, 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 10:00 a.m. on May 25, 2016.

NEXT MEETING: Special Board meeting, June 8, 2016 at 3:30 p.m., Palo Alto City Hall 1st Floor Community Room

San Francisquito Creek Joint Powers Authority
May 26, 2016 Regular Board Meeting
Agenda Item 3
April 28, 2016 Regular Board Meeting Minutes

Chairperson Pine called the meeting to order at 4:10 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 (not present at roll call)
Director Pine, San Mateo County Flood Control District
Director Burt, City of Palo Alto
Director Kremen, Santa Clara Valley Water District
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; Brian Perkins, Congresswoman Speier's Office; Joe Teresi, City of Palo Alto; Ann Stillman, San Mateo County Flood Control District; Eileen McLaughlin, Citizens Committee to Complete the Refuge (CCCR); Kamal Fallaha, City of East Palo Alto; Jeremy Dennis, Portola Valley;

2) APPROVAL OF AGENDA

Director Kremen made a motion to approve the agenda. Director Burt seconded. Agenda approved unanimously 4-0. Director Keith not present at time of vote.

3) APPROVAL OF MEETING MINUTES- March 24, 2016 and April 14, 2016 Board Meetings

Director Burt made a motion to approve the March 24, 2016 and April 14, 2016 Board meeting minutes. Director Kremen seconded abstaining from voting on the March 24, 2016 meeting minutes as he was not in attendance. Motion to approve the March 24, 2016 and April 14, 2016 Board meeting minutes approved 3-0-1 and 4-0. Director Keith not present at time of vote.

Vote struck after public comments. Director Burt made a motion to approve the March 24, 2016 and April 14, 2016 Board meeting minutes with noted modifications; remove Mr. Hearn from the others present list on the March 24, 2016 meeting minutes, add a comment on the Ridgway's Rail discussion on the April 14, 2016 minutes. Director Kremen seconded. March 24, 2016 and April 14, 2016 Board meeting minutes approved 3-0-1 and 4-0 with noted changes. Director Keith not present at time of vote.

4) PUBLIC COMMENT

Dennis Parker, East Palo Alto resident, spoke to the Board about the traffic concerns of the residents in the Gardens neighborhood. Chairperson Pine directed staff to take Mr. Parker's comments under advisement.

Jeremy Dennis, Town Manager for Portola Valley, introduced himself and informed the Board that he would be attending the SFCJPA Board meetings at the Portola Valley Mayor's request.

Jerry Hearn, Portola Valley, spoke to the Board about his excitement of Tess Byler's hiring as the SFCJPA's new Project Manager. Mr. Hearn noted that he was not in attendance at the March 24, 2016 Board meeting and that there was not any reference made in the April 14, 2016 meeting minutes regarding the Ridgway's Rail discussion.

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5) REGULAR BUSINESS

Approve the Fiscal Year 2016-17 Operating Budget

Mr. Materman presented the FY 2016-17 operating budget for Board consideration highlighting no change in member agency contributions, the implementation of the second phase of salary adjustments for the Senior Project Manager and Finance & Administration Manager, an increase in the hourly rate of Legal fees, and the full year of salary expense for the new Project Manager.

Chairperson Pine noted that Finance Committee met with Mr. Materman to review the budget.

Director Burt made a motion to approve the Fiscal Year 2016-17 Operating Budget. Director Abrica seconded. Motion to approve the Fiscal Year 2016-17 Operating Budget approved unanimously 4-0. Director Keith not present at time of vote.

Mr. Hearn expressed his support of the salary adjustments and thanked staff for their hard work and commitment.

Chairperson Pine thanked Mr. Hearn for his comments noting that the salaries for staff were well below market and the change was very much needed.

Mr. Materman congratulated Mr. Murray on completing his 15th year working at the SFCJPA in February, and Ms. Harris-Parker on completing her 10th year in October.

S.F. Bay-Highway 101 project funding and construction planning

Mr. Materman introduced Rich Laureta and asked him to provide a brief update on status the East Palo Alto Sanitary District project to relocate a sewer line outside of the new levee.

Mr. Laureta, Senior Project Manager at the East Palo Alto Sanitary District, provided a brief update on the Sanitary District's project activities. Chairperson Pine asked for the estimated cost of the Sanitary district project. Mr. Materman stated that the SFCJPA cost share is \$848,000 of the total \$1.4. million project cost. Mr. Materman noted that if a second line is installed, 100% of the cost for the additional line is the responsibility of the Sanitary District.

Mr. Materman provided an update on the S.F. Bay-Highway 101 project construction. Mr. Materman presented the Board with a letter signed by directors Abrica and Burt to PG&E that resulted out of the April 14, 2016 Board meeting that highlighted the questions Director Burt asked PG&E representatives at that meeting, and noted that PG&E has said they are working on a response to the SFCJPA letter.

Mr. Materman provided the Board with an update on the Ridgway's Rail issue, stating that U.S. Fish and Wildlife is amending their Biological Opinion, which will impact our construction schedule as it will limit the work that can be done this summer. Mr. Materman presented a schedule which noted that work will be newly restricted between February 1 and August 31 within a 700-foot buffer zone surrounding the locations where Ridway's Rail was newly detected in the creek upstream of the Friendship Bridge.

Mr. Materman continued by providing an updated budget for the Bay-Highway 101 project. Mr. Materman requested a short recess to obtain the numbers from the SCVWD construction bid opening taking place at the same time as the Board meeting.

Chairperson Pine adjourned the meeting for a short recess at 4:45 pm.

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Chairperson Pine re-adjourned the meeting to regular session at 4:49 pm.

Mr. Materman presented that the lowest bid just received by the SCVWD at the bid opening, which includes 10% contingency, which is \$29,027,000. Mr. Materman noted that the bid is higher than the estimated cost, and that this would result in a total project shortfall of \$2,838,000.

Director Abrica suggested scheduling a Special Board meeting as soon as possible to discuss the numbers and find a way to address the shortfall. Chairperson Pine concurred, noting that there is a lot of work that needs to be done to bridge the gap. Chairperson Pine commented on the urgency of finalizing the PG&E numbers.

Director Keith arrived at 4:57 pm.

Director Burt asked when PG&E is expected to respond to the letter and if there is a role for local, state and federal support to help us with the PG&E issue. Mr. Materman responded saying that he expects to have a response from PG&E by the end of next week and that he believes there is an opportunity to have some communication from the local, state and federal representatives.

Chairperson Pine directed staff to poll Board members for a Special Meeting of the Board.

Ann Stillman, SMCFCFCD, asked how many bids were received and what the range of the bids were. Director Kremen replied that there were ten bids. Mr. Murray responded that the higher bids were unknown at this time.

6) ADJOURNMENT

Chairperson Pine adjourned the meeting at 5:17 pm.

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

San Francisquito Creek Joint Powers Authority
May 26, 2016 Regular Board Meeting
Agenda Item 3
May 11, 2016 Special Board Meeting Minutes

Director Kremen called the meeting to order at 9:21 a.m. at the City of Palo Alto, City Council Chambers, Palo Alto, CA.

DRAFT

1) ROLL CALL

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

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

Others Present: Trish Mulvey, Palo Alto resident; Jerry Hearn, Portola Valley resident; Tom Rindfleisch, Palo Alto resident; Kevin Fisher, Palo Alto resident; Sean Charpentier, City of East Palo Alto; Justin Murphy, City of Menlo Park; Ann Stillman, San Mateo County Flood Control District; Melanie Richardson, Santa Clara Valley Water District; Joe Teresi, City of Palo Alto; Alex McIntyre, City of Menlo Park

2) PUBLIC COMMENT

None

3) REGULAR BUSINESS

S.F. Bay-Highway 101 project: discuss construction planning and provide direction to staff to develop any necessary funding agreements

Mr. Materman provided a brief summary of the activities that have taken place since the last meeting of the Board.

Director Kremen noted a concern regarding the absence of a not-to-exceed clause in the draft PG&E gas pipeline relocation contract. Mr. Materman explained that PG&E has proposed a percentage based cost share and that if funds are needed beyond the estimate, PG&E would cover 55.7% of those expenses and the SFCJPA would cover 44.3% of the additional expenses. Mr. Materman noted that these numbers are draft numbers and could change, and that he would again bring up the SFCJPA's desire for a not-to-exceed amount for the gas pipeline contract and asked member agency staff to provide an example of a contract they executed with PG&E that included a not-to-exceed clause that he could show to PG&E.

Director Pine arrived at 9:24 a.m.

Director Keith arrived at 9:30 a.m.

Director Burt commented on the discovery of nesting Clapper Rail in the project area, the effect this discovery is having on the construction schedule and the unknown effect that it had on the bid estimates.

Director Kremen asked if all of the permits were still on track. Mr. Murray explained that there is some work that may need to be done in terms of amending conditions, but staff believes that the permits are all set. Director Kremen commented on the availability of the SCVWD staff to help secure the completion of the permits.

Saeid Hosseini, SCVWD, stated that the SFCJPA is responsible for the permit process. Mr. Hosseini noted that an update on the Corps permit is still being finalized to incorporate the new U.S. Fish & Wildlife Service Biological Opinion.

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Mr. Materman provided the Board with a summary of the project revenues and expenses and the resulting \$2.838 million shortfall. Mr. Materman outlined the need to transfer/move funds from the upstream project to cover the \$2.838 million shortfall for the downstream project.

Director Keith expressed her concerns regarding the movement of funds from the upstream project to the downstream project and the possibility of not having the funding needed for the upstream project.

Mr. Materman presented the Board with three proposals to consider for covering the downstream project shortfall. Mr. Materman noted that the proposal made by the SCVWD had been discussed with the City and County Managers and senior staff of each member agency on May 9, 2016.

Mr. Materman did not attend that meeting.

Mr. Kevin Fisher requested the opportunity to make his public comment, as he had to leave. Mr. Fisher, a Palo Alto resident, expressed support in moving forward and not losing momentum. Mr. Fisher noted that there are details that need to be worked out but that the shortfall is small in comparison to the overall project. Mr. Fisher urged the Board to move forward.

Tom Rindfleisch, Palo Alto resident, commented on the damage his property sustained in the 1998 flood, and the concerns of many that we are still discussing how to fix the creek eighteen years later. Mr. Rindfleisch expressed his sincere appreciation for the staff and Board on the progress made and urged the Board that now is not the time to flinch. Mr. Rindfleisch noted that the Bay-101 project does not protect the Crescent Park neighborhood where he lives, but that the project must be completed. Mr. Rindfleisch supports moving some funds from the upstream project, but he is apprehensive as the upstream project is set to fix the issues his neighborhood needs resolved.

Director Kremen stated that the SCVWD wants this project completed suggesting the Board discuss options for finding the funding needed including increasing contributions from the member agencies.

Chairperson Pine briefly explained the challenge the San Mateo County Flood Control District (SMCFCD) faces in terms of funding as it provides the County's only revenue to this project, including the annual contributions to the SFCJPA. Chairperson Pine expressed the commitment of the SMCFCD of wanting to be able to give every cent possible and that the question remains if the County can use general funds noting that the County Manager has expressed reservation on the use of general funds.

Director Keith commented that Menlo Park's perspective is to see this project complete and to work through some issues and find the money needed. Director Keith reflected on timing constraints as each Board member will have to take this back to their Board or City Council.

Alex McIntyre, City Manager of Menlo Park, commented on frustration with this project, the concern about the funding for the upstream project, the lack of adequate funds in the project contingency and the fact that the original funding agreement made it clear that Menlo Park's contributions were to be used for the upstream project. Mr. McIntyre stated that the City of Menlo Park will do its part but that there needs to be a viable plan in place for completing the upstream work.

Director Abrica, clarified that East Palo Alto is in both the downstream and the upstream project area.

Director Kremen commented that he would like to have an agreement that covers the shortfall for the Bay-Highway 101 project now and have the Board reconvene to work on the upstream project.

Melanie Richardson, SCVWD, noted that the low-bid contractor and the price are both good, that the bids expire on June 11, 2016 and that in order to get an extension we have to go back to the contractor and ask for an extension.

Director Keith asked Ms. Richardson if she has concerns regarding the contingency for the project. Ms. Richardson explained that there is 10% contingency included for construction.

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Ms. Richardson noted that the SCVWD usually has a contingency of 15%, that she is reasonably comfortable with the 10% and that the contingency issues are related to the East Palo Alto Sanitary District and PG&E gas. Ms. Richardson expressed concern over the exposure we would face if the costs go up for the sanitary district and the PG&E with the lack of contingency funds.

Director Burt commented on the fact that any possible reductions we receive from PG&E could be applied to the utility needs and possibly the upstream project.

Ms. Richardson stated that the SCVWD cannot shift funds from upstream to downstream without a public hearing which would take at least 45 days.

Director Burt commented on the contributions made by each member agency and the SFCJPA, expressing his belief that the eligibility of the funding that the SFCJPA is contributing from State grants was secured largely because East Palo Alto is a primary beneficiary as a disadvantaged community. Director Burt continued to comment that East Palo Alto, between their own direct contributions and the State grants, with their significant limited budget has made significant contributions toward the projects.

Director Abrica voiced his appreciation for Director Burt's comments. Director Abrica provided a brief summary of the ups and downs the SFCJPA has faced over the years and the accomplishment of getting this far. Director Abrica commented that the City of East Palo Alto is the most disadvantaged community but that the City has done its best to contribute considering its contributions come from the general fund, and it will look at providing even more general funds to complete the projects. Director Abrica expressed his appreciation toward Chairperson Pine for trying to push the County to increase its contribution towards flood protection.

Director Burt commented on the need to determine what recommendations are going to be agreed on so that Board members can take them back to their respective bodies. Director Burt stated that Palo Alto's perspective is along the lines of the proposal made by the SCVWD and that if the San Mateo County agencies are willing to contribute toward that proposal, then Palo Alto and SCVWD would be willing to increase contributions. Director Burt suggest the Board consider either the proposal made by SCVWD or the SFCJPA option A.

Chairperson Pine commented that the Board is not restrained by these two options, which move all available SMCFCFD funding from the upstream project to the downstream project and compound a likely shortfall of funds to complete the work upstream. Director Abrica concurred with Chairperson Pine's comments.

Chairperson Pine asked if there is an option for SCVWD to loan either Menlo Park or East Palo funding. Director Kremen explained that the SCVWD cannot loan funds but can offer cost-sharing.

Director Keith stated that she wants to see the least amount of funds taken from upstream.

Chairperson Pine stated that the Board will have to reconvene another Special Meeting to continue this discussion.

Director Kremen commented that the reality is that the upstream project will not be done until the downstream project is complete.

Chairperson Pine directed staff to schedule a Special Meeting of the Board on May 19, 2016 at 4:00 pm.

4) ADJOURNMENT

Chairperson Pine adjourned the meeting at 11:28 am.

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

San Francisquito Creek Joint Powers Authority
May 26, 2016 Board Meeting
Agenda Item 5
Executive Director's Report

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

a. S.F. Bay-Highway 101 project: discuss construction planning

At Board meetings for the past few years we have discussed efforts to prepare for construction of a project to improve public safety and recreation, and increase marsh habitat, between the Bay and Highway 101. Since the last Board meeting, SFCJPA staff have been focused on two activities: 1) working with staff and legal counsels at Member Agencies to prepare the agreements necessary for the construction, utilities relocation and mitigation work planned for this summer, and 2) finalizing a grant proposal for project funding to the U.S. Environmental Protection Agency. At this Board meeting, we will provide an update on the agreements that we plan to take up at the June 8 Special Board meeting and other project planning issues.

b. Authorize the Executive Director to execute Amendment Number 1 to the Agreement among the San Francisquito Creek Joint Powers Authority, Santa Clara Valley Water District, San Mateo County Flood Control District, City of Palo Alto, City of Menlo Park, and City of East Palo Alto, for funding construction and mitigation of San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101

At the May 19, 2016 SFCJPA Board meeting, Board members expressed support for the framework proposed by senior SFCJPA and member agency staff for augmenting project funding in the 2014 construction and mitigation funding agreement. This change, known as the First Amended Agreement, updates the 2014 agreement regarding costs and the funding needed to complete construction, utilities relocation, mitigation, and other required tasks related to the project. It would cover the funding shortfall by moving funds to this project that had been planned for the project upstream of Highway 101 and by securing additional funding from member agencies. Since May 19, staff and legal counsels have worked hard to prepare this complex amendment, which I am bringing to the SFCJPA Board for approval and which member agency governing Boards will consider in the first half of June. The enclosed draft version of Amendment 1 may be slightly modified before it is executed by the agencies.

Proposed Board Action: Authorize the Executive Director to execute the First Amended Agreement (draft enclosed) among the San Francisquito Creek Joint Powers Authority, Santa Clara Valley Water District, San Mateo County Flood Control District, City of Palo Alto, City of Menlo Park, and City of East Palo Alto, for funding construction of the San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101.

c. Authorize the Executive Director to execute an Agreement with the Santa Clara Valley Water District to fund bid and construction engineering support consultant services, and a portion of utility relocations and project mitigations, for the San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101

On November 19, 2015, the SFCJPA Board approved the S.F. Bay-Highway 101 project Construction Management Agreement, which assigned and enabled the Santa Clara Valley Water District (SCVWD) to manage levee and floodwall construction on behalf of the SFCJPA. The activities to be managed by SCVWD under that agreement include advertising for construction bids, and hiring and overseeing a contractor and a construction management firm. In this role, the SCVWD requires support from the design Engineer of Record, HDR, Inc.

Because the SFCJPA hired HDR to design the project, the SCVWD asked the SFCJPA to amend our contract with HDR so it may provide bid and construction support to the SCVWD. On March 24, the Board authorized me to enter into Amendment No. 6 with HDR to provide bid support to the SCVWD. The tasks under Amendment No. 6 have been completed, and the consultant contract now requires an amendment to add construction support. During the next agenda item (5.d.), I will ask the Board to authorize me to execute Amendment No. 7 with HDR so that it may provide construction support to the SCVWD.

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Executive Director's Report

As described in the amended project funding agreement discussed in agenda item 5.b. above, the SFCJPA will provide \$8,828,351 towards the cost of the project. The SFCJPA is managing and paying for contracts with PG&E for both gas and electric line modifications, East Palo Alto Sanitary District for sewer line modifications, consultants to design and implement mitigation activities, easement agreements with private property owners, the City of Palo Alto to mitigate for impacts to the Golf Course, HDR for bid and construction support, and the cost to complete HDR's design. These costs total more than the \$8,828,351 available to the SFCJPA for these purposes. Thus, the SFCJPA and SCVWD have agreed that, of the \$32,520,000 available to the SCVWD from it and the other SFCJPA member agencies, \$928,000 would be provided to the SFCJPA through the enclosed draft Agreement, for HDR construction support (\$853,000) and for a small portion of utilities costs (\$75,000).

Proposed Board Action: Authorize the Executive Director to execute an Agreement (draft enclosed) with the Santa Clara Valley Water District to fund bid and construction engineering support consultant services, and a portion of utility relocations and project mitigations, for the San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101

d. Authorize the Executive Director to execute Contract Amendment No. 7 with HDR, Inc. to provide support to the Santa Clara Valley Water District during Bay-Highway 101 project construction

As discussed in item 5.c. above, during construction the design Engineer of Record will need to assist the SCVWD and its construction management firm in responding to questions from the contractor regarding the design and specifications; provide design services for change orders, value engineering options that may arise, or dispute resolution; attend construction coordination meetings; prepare a set of conformed design documents for construction; prepare Project record drawings; and perform other key support tasks.

The SCVWD has asked, and we agreed, to amend our contract with HDR, Inc. to enable that firm to provide construction support services, and the new agreement between the SFCJPA and the SCVWD described in agenda item 5.c. will provide the funds needed by SFCJPA to execute that work under Amendment No. 7 to the SFCJPA's contract with HDR.

The cost of the attached draft contract Amendment No. 7 is not to exceed \$794,264 based on a scope included as an attachment to the amendment.

Proposed Board Action: Authorize the Executive Director to execute Contract Amendment No. 7 (draft enclosed) with HDR, Inc. to provide support to the Santa Clara Valley Water District during Bay-Highway 101 project construction.

Submitted by:



Len Materman
Executive Director

Agenda Item 5.b.

Authorize the Executive Director to execute Amendment Number 1 to the Agreement among the San Francisquito Creek Joint Powers Authority, Santa Clara Valley Water District, San Mateo County Flood Control District, Cities of Palo Alto, Menlo Park, and East Palo Alto, to fund construction and mitigation of San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101

**DRAFT FIRST AMENDED 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 OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

This First Amended Agreement (“Agreement”) amends the terms and conditions of the original Agreement dated August 11, 2014, 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 and mitigation activities of the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101 (“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, 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’ (“USACE”) San Francisquito Creek flood control project on May 23, 2002.
- C. In March 2005 the USACE, 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 USACE 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 USACE for the Study on the Creek. The USACE, 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 USACE will issue a Federally Preferred Plan, which will detail the pre-design actions to be taken to complete the FDRER.

- E. The USACE's ability to complete the Study has been impacted by unanticipated delays due to federal funding constraints and USACE's processes.
- F. Due to the USACE'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. On October 25, 2012, the final EIR was certified by the Authority. 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. In November 2012, the voters of Santa Clara County approved Measure B, the Water District's Safe, Clean Water special tax 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.
- L. On January 9, 2013, the Authority entered into an agreement with the State of California, Department of Water Resources (DWR) for \$8 million in Proposition 1E (Prop 1E) grant funding from DWR's Stormwater Flood Management Program to be applied towards Project costs. Of the amount awarded, \$7,875,000 is available for reimbursement of Project costs.
- M. On January 13, 2016, DWR awarded \$1,044,351 in Proposition 84 (Prop 84) funds to the Project as part of the Association of Bay Area Governments Shoreline Resiliency/Sea Level Rise Proposal to be administered by the State Coastal Conservancy. Of the amount awarded, \$953,351 is available for reimbursement of Project costs.
- N. The Flood District will contribute \$2,060,000 toward Project costs. The Flood District's financial contribution will be in an amount equal to the combined financial contributions made by East Palo Alto and Menlo Park.
- O. The City of East Palo Alto will contribute \$1,260,000 towards Project costs.
- P. The City of Menlo Park will contribute \$800,000 towards Project costs.
- Q. The City of Palo Alto will contribute \$400,000 towards Project costs.

- R. 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 is necessary to accommodate various flood protection construction elements of this Project.
- S. For the purpose of this Agreement, funding from Menlo Park, East Palo Alto, Palo Alto, the Flood District, the Authority, and any future funds from grants or other sources, contributed toward Project costs, shall be referred to as “Non Water District Funds.”
- T. On December 22, 2015, the Water District and the Authority entered into a Construction Management Agreement designating the Water District as the entity responsible for managing construction of the Project.
- U. 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 paragraphs 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. Identified Project Costs and Funding Amounts

Construction of the Project, including finalization of the design, is currently estimated to cost approximately \$41.32 million (Table 1), not including internal Project management costs incurred by the Water District or contingency costs for utility relocation expenses above the stated contract estimates.

(remainder of page intentionally left blank)

Table 1 Identified Project Costs		
Costs		Current
Palo Alto Golf Course mitigation		\$3,000,000
Other mitigation activities		\$300,000
Pacific Gas & Electric Company (without contingency)	Electric Relocation	\$1,267,000
	Gas Relocation	\$3,141,000
East Palo Alto Sanitary District (without contingency)	Sewer Relocation	\$848,000
East Palo Alto real estate acquisition		\$85,000
Construction Management (Hatch Mott MacDonald)		\$2,565,000
Construction Support Services (HDR)		\$853,000
Completed design services (HDR)		\$230,000
Construction contract with 10% contingency		\$29,026,800
Total Identified Project Costs		\$41,315,800

Based on the Total Identified Project Costs as stated in Table 1 above, the Parties agree to contribute the following amounts toward these costs (Table 2).

Table 2 Funding					
Funding Sources		Original Funding Agreement	Funds shifted from upstream project	Newly identified funding	Total contribution
Water District Funds		\$28,000,000	\$0	\$0	\$28,000,000
Non Water District Funds	Authority	Prop 1E Grant	\$7,875,000	\$0	\$7,875,000
		Prop 84 Grant	\$0	\$0	\$953,351
	Flood District	\$800,000	\$700,000	\$560,000	\$2,060,000
	East Palo Alto	\$800,000	\$200,000	\$260,000	\$1,260,000
	Menlo Park	\$0	\$500,000	\$300,000	\$800,000
	Palo Alto	\$0	\$0	\$400,000	\$400,000
Total Funding		\$37,475,000	\$1,400,000	\$2,473,351	\$41,348,351

3. Payment of Project Costs

- A. Through use of DWR Prop 1E and Prop 84 grant funds, along with agreements that provide additional funding to the Authority, including a cost sharing agreement whereby the Water District will fund the discrepancy between the available grant funding and anticipated expenses, the Authority agrees to pay the currently estimated Project costs as stated below. If the Authority receives additional grant or other funding for this project, such funds shall be applied first towards costs that are the responsibility of the Authority, itemized in paragraph #3. A. a) through g), with any remaining funds remitted to the Water District and applied toward Project Costs. 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) \$300,000 for other mitigation activities;
 - c) \$4,408,000 to Pacific Gas and Electric Company to relocate gas and electric transmission lines;
 - d) \$848,000 to the East Palo Alto Sanitary District to relocate a sewer line;
 - e) \$85,000 for property acquisition within East Palo Alto;
 - f) \$230,000 to HDR for completed design services; and
 - g) \$853,000 to HDR for construction support services.
- B. Flood District agrees to fund \$2,060,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: \$800,000 (Year 1); \$630,000 (Year 2); and \$630,000 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted to the Water District within 180 days of the beginning of each respective fiscal year.
- C. East Palo Alto agrees to fund \$1,260,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: \$420,000 (Year 1); \$420,000 (Year 2); and \$420,000 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted within 180 days of the beginning of each respective fiscal year.
- D. Menlo Park agrees to fund \$800,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: \$300,000 (Year 1); \$250,000 (Year 2); and \$250,000 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted within 180 days of the beginning of each respective fiscal year.
- E. Palo Alto agrees to fund \$400,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: \$133,334 (Year 1); \$133,333 (Year 2); and \$133,333 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted within 180 days of the beginning of each respective fiscal year.
- F. Through Water District funds and funds remitted to the Water District by Palo Alto, Flood District, East Palo Alto and Menlo Park, the Water District agrees to pay the currently estimated Project costs as stated below.
- a) \$2,565,000 for Construction Management Consultant; and
 - b) \$26,388,000 for construction contract and a separate encumbrance of 10% of the construction contract amount (\$2,638,800) for contingent expenses.

4. Unidentified Project Costs and/or Surplus Funds

- A. The Parties agree to apply any surplus funds toward unidentified Project costs which exceed the current estimated Identified Project Costs (Table 1). If there are no surplus funds, the Parties agree to determine an appropriate cost sharing allocation to pay for any unidentified Project costs or costs which exceed the current estimated Identified Project Costs.
- B. If there are any surplus funds after paying all identified or unidentified Project costs, the Water District shall retain those funds which shall be reallocated toward construction of the San Francisco Creek local-state-funding only project, upstream of Highway 101.

5. Method and Timing of Transactions

- A. Water District shall prepare and submit quarterly invoice packages to the Authority. Water District's Quarterly invoice packages will include Project progress reports and all other documentation required by DWR and the State Coastal Conservancy 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 and the State Coastal Conservancy within 15 days of receipt of invoice packages from Water District, provided all DWR and the State Coastal Conservancy-related invoicing requirements are met. To the extent funds are available, the Authority will pay for all costs itemized in paragraph #3. A. a) through g).
- C. Non Water District Funds contributed by Flood District, East Palo Alto, Menlo Park, and Palo Alto will be remitted to the Water District as set forth in paragraph #3, Payment of Project Costs, subparagraphs B.-E.

6. Indemnification

- 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 Water District's construction contract will require the construction contractor 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 paragraph #6. Indemnification will survive and continue in full force and effect after the termination, completion, suspension, and expiration of this Agreement.

7. 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 paragraph #9. Termination, of this Agreement. The records shall be subject to the examination and/or audit of either Party.

8. 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 paragraph #9. Termination.

9. 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 paragraph #9.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 as approved by the governing body of each Party or pursuant to a delegation of such authority.

10. 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: Norma Camacho, Interim Chief Executive Officer
ncamacho@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: Carlos Martinez, City Manager
cmartinez@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.

11. 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.

12. 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.

13. 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.

14. 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 as described above in paragraph #5. Method and Timing of Transactions.

15. 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.

16. Entire Agreement

This First Amended Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written, including but not limited to the original Agreement dated August 11, 2014. This First Amended Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by authorized representatives of all Parties.

17. 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.

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.

(remainder of page intentionally left blank)
Signatures follow on next pages

**FIRST AMENDED 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
SFCJPA General Counsel

By: _____
Len Materman
Executive Director

Date: _____

Date: _____

**FIRST AMENDED 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 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: _____
Leslie Orta
Senior Assistant District Counsel
Office of the District Counsel

By: _____
Barbara Keegan
Chair/Board of Directors

Date: _____

Date: _____

ATTEST: MICHELE L. KING, CMC

Clerk/Board of Directors

**FIRST AMENDED 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: _____
Molly Stump
City Attorney

By: _____
James Keene
City Manager

Date: _____

Date: _____

**FIRST AMENDED 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: _____

**FIRST AMENDED 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: _____
William L. McClure
City Attorney

By: _____
Alex D. McIntyre
City Manager

Date: _____

Date: _____

**FIRST AMENDED 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: _____

Agenda Item 5.c.

Authorize the Executive Director to execute an Agreement with the Santa Clara Valley Water District to fund bid and construction engineering support consultant services, and a portion of utility relocations and project mitigations, for the San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101

DRAFT AGREEMENT BY AND BETWEEN THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY AND THE SANTA CLARA VALLEY WATER DISTRICT TO FUND BID AND CONSTRUCTION ENGINEERING SUPPORT CONSULTANT SERVICES AND UTILITY RELOCATION FOR THE SAN FRANCISQUITO CREEK FLOOD REDUCTION, ECOSYSTEM RESTORATION, AND RECREATION PROJECT SAN FRANCISCO BAY TO HIGHWAY 101

This Agreement (“Agreement”) by and between 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 Parties or individually as Party, is made and entered into as of the date it is fully executed.

RECITALS

WHEREAS, on July 23, 2009, the Authority’s Board of Directors 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 Initial Capital Project on San Francisquito Creek Between East Bayshore Road and San Francisco Bay, a construction project (Project) that is now referred to as the “San Francisquito Creek Flood Reduction Ecosystem Restoration and Recreation Project, San Francisco Bay to Highway 101 Project” (the “Project”); and,

WHEREAS, the Authority, the Water District, and the San Mateo County Flood Control District entered into an agreement on November 3, 2009 to fund the design and environmental documentation of the Project. Amendment No. One to that Agreement is dated August 9, 2011; Amendment No. Two is dated October 8, 2013; and Amendment No. Three is dated March 26, 2015; and,

WHEREAS, the Authority hired an environmental consulting firm, Jones and Stokes (now known as ICF International) to prepare the necessary environmental documentation for the Project. The final Environmental Impact Report 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 with the County of San Mateo Office of the Recorder, on July 30, 2013; and,

WHEREAS, the Authority hired HDR Engineering, Inc. (Consultant) to perform planning and design services. The Project design documents were completed and advertised for bids and award of the construction contract by the Water District is now pending; and,

WHEREAS, the Authority and all of its members entered into an agreement (“Construction Funding Agreement”) effective August 11, 2014 to provide construction funding for the Project; and,

WHEREAS, the Construction Funding Agreement provides for payment by the Authority of a portion of utility relocation expenses necessary to implement the Project; and,

WHEREAS, the Authority and the Water District entered into an agreement effective December 22, 2015 designating the Water District as the entity responsible for managing construction of the Project, which includes the bidding and construction activities.

WHEREAS, the Parties desire to have Consultant, the Project's engineer-of-record, perform bidding and construction phase engineering services. The Authority will amend its existing agreement with Consultant to add such services, and this Agreement is now necessary in order to provide for the Water District to fund such Authority expense, in accordance with the terms and conditions stated herein.

NOW, THEREFORE, for the consideration and upon the terms and conditions hereinafter specified, the Parties agree as follows:

PROVISIONS

1. Responsibilities of the Authority

- a. The Authority has amended its Agreement with Consultant to perform bidding phase services. The Authority will amend its existing agreement with Consultant to provide for Consultant to:
 - (1) Perform engineering support services relating to Project construction. These support services shall include, but not be limited to the following: submittal reviews; Requests for Information reviews and responses; potential change orders and change orders review, input and recommendations; participation in partnering sessions; assistance with dispute resolution including Dispute Review Board participation, review of claims; providing analysis, input and recommendations on issues relating to Project design; preparing a set of conformed design documents for construction; and preparing Project record drawings.
 - (2) Communicate directly with the Water District on Project construction matters and provide all necessary and appropriate assistance including but not limited to: analysis of issues and recommended solutions; attend Project construction progress meetings, issue-related meetings, dispute resolution and partnering meetings; upon request, review various communications and provide input and recommendations; and provide other construction management support services as the Water District or Authority may request.
- b. The Authority will amend its existing agreement with the Consultant to provide for an extension to its term sufficient to allow for Consultant to complete the services described in this Agreement.
- c. On March 30, 2016 the Authority amended its current agreement with the Consultant to perform bidding phase services for a not-to-exceed amount of \$58,736. The Authority will now amend its existing agreement with the Consultant to provide for a not-to-exceed compensation limit for construction engineering support services in the amount of \$794,264. The Task/Fee Table describing Consultant's services to be performed is attached as Exhibit A and incorporated herein by this reference.
- d. Payments and Invoices

(1) Invoices

- (a) Authority will invoice the Water District monthly for an amount equal to the Consultant's monthly invoices, as approved by the Parties.
- (b) Authority will require invoices from the Consultant to include the following detailed information:
 - i) Consultant's monthly invoices will represent work performed and reimbursable costs incurred during the identified billing period; will be consistent with the scope of services described in the amended agreement; and must include the following:
 - ii) Personnel Category and employee name itemized with all labor charges by Scope of Service Task.
 - iii) Direct charges by Scope of Service Task.
 - iv) Consultant's summary of the amount Consultant has been billed by their subconsultants and subcontractors and further detailed by Scope of Service Task.
 - v) Direct charges must reflect actual Consultant fees only.
- (c) Before submitting monthly invoices, the Monthly Progress Report and draft invoice (in Adobe PDF format) will be provided by the Consultant for preliminary review by the Authority and the Water District's Project Managers. Upon preliminary approval by the Authority and Water District, the Consultant will mail the complete signed and dated hardcopy invoice, including all supporting documentation. The Authority and Water District's preliminary review of the draft invoice does not represent final approval of the hardcopy invoice, but is intended to reduce potential for re-submittals of hardcopy invoice by Consultant.
- (d) Invoices will include a summary of labor expenditures, direct costs, and billed subconsultant charges. Billing statements, transmitted separately from the Monthly Progress Reports, will be organized such that the billing categories correspond with the Scope of Services tasks.
- (e) Authority will remit payments to Consultant upon receipt of payments from Water District.

(2) Reimbursable Expenses

Authority will limit certain reimbursable expenses payable to its Consultant such as for automobile mileage, which shall be reimbursable only in accordance with the following requirements:

(a) Automobile travel mileage expenses will be paid at the current IRS rate. District will not reimburse Consultant and its subconsultants for mileage and travel time to and from District Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. District will reimburse Consultant and its subconsultants for mileage incurred from District Headquarters or Consultant's and subconsultants' firm addresses, whichever is closer to the destination, to Project site and to meeting locations such as community outreach meetings, partnering meetings, Dispute Review Board meetings, and meetings with regulatory agencies, if directed or authorized by the District.

(3) Prevailing Wages

Authority will require its Consultant to pay prevailing wage rates as required by the California state Labor Code as follows:

(a) Prevailing Wages

- i. The services to be performed pursuant to this Agreement are considered "Public Works" subject to California Labor Code §1771, et. seq. and the applicable implementing regulations.
- ii. Labor Code Section §1720 includes "Inspection and Land Surveying" in its definition of "Public Works." If Consultant's services include such work, Consultant and its subconsultants must comply with all Labor Codes applicable to prevailing wages.
- iii. The Consultant and its subconsultants shall not engage in the performance of public work, as defined in California Labor Code Section 1771.1, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5.
- iv. The General Prevailing Wage Rates issued by the California Department of Industrial Relations may be adjusted by the State throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Consultant will not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
- v. This Agreement is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. The Consultant and subconsultants must furnish the records specified in Labor Code §1776 directly to the Labor Commissioner monthly, in a format prescribed by the Labor Commissioner.

- vi. All records or documents required to be kept to verify statutory compliance with the prevailing wage requirement must be made available for audit at no cost to the District, at any time during regular business hours, upon written request by the District.
- e. Management of the Consultant

The Authority maintains full responsibility for managing the Consultant and administering its agreement with Consultant, including amendments thereto, during the term of this Agreement.
- f. Authority shall pay for a portion of costs associated with utility relocation utilizing funds as provided for in the Construction Funding Agreement and funds provided for in Section 2.d., Responsibilities of the Water District, herein. Authority will provide District with documentation of such costs, as approved by Authority.

2. Responsibilities of Water District

- a. Contribute an amount not-to-exceed eight hundred, fifty-three thousand dollars (\$853,000) to Authority, for expenses incurred by the Consultant in performing bidding and construction phase services for the Project, as engineer-of-record in accordance with Amendment No. 6 dated March 30, 2016 and Amendment No. 7 to the Authority's existing agreement with the Consultant. Without prior approval from the Authority, costs for work beyond the scope of the Authority's agreement with the Consultant resulting from a Water District request shall be the responsibility of the Water District and not subject to the cost not-to-exceed amount described above.
- b. Review and provide input to the Authority on all Consultant invoices for services performed relating to bidding and construction phase services for the Project.
- c. Remit payment to Authority within thirty days of receipt of Consultant invoices, as approved by the Parties.
- d. Contribute to the Authority an amount not-to-exceed seventy-five thousand dollars, (\$75,000) for the sole purpose of paying a portion of Authority's increased costs to relocate utilities and mitigate for Project construction. Authority will provide documentation of such costs and of Authority's approval of such costs.

3. 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 Parties agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold the other Party, its 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, suspension, completion, and expiration of this Agreement.

- b. In the event of concurrent intentional or unintentional misconduct, negligent acts or omissions by one of the Parties, or of its officers, directors and/or employees, 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 issued by the Water District 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 the Water District, the Authority, and each of its Member Agencies and their respective directors, 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, suspension, completion, or expiration this Agreement.

4. 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, completed, suspended, or is terminated earlier pursuant to Section 5., Agreement Term of this Agreement. The records shall be subject to the examination and/or audit of either Party.

5. Agreement Term

This Agreement shall expire one hundred eighty (180) days after the Authority's agreement with its Consultant expires or is terminated earlier by the Parties, or amended by a written amendment hereto.

6. Termination

- a. If a Party fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, the other Party may terminate this Agreement but only after giving written notice of the failure of performance to the Party committing the failure. 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 the breaching Party.
- b. A final notice of termination may be given only after completion of the notice and cure process described in Section 6.a., Termination, and only with the approval of the governing body of the Party terminating the Agreement.
- c. In event of termination, the terminated Party shall deliver to the other Party, upon request, copies of reports, documents, and other work performed by such Party according to the terms of this Agreement.
- 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 both Parties approved by the governing body of each Party.

7. 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 below, or at such other address as either Party may hereafter notify the other Party in writing.

Authority:

San Francisquito Creek Joint Powers Authority
615 B Menlo Avenue
Menlo Park, CA 94025
Attention: Len Materman, Executive Director
(650) 324-1972; len@sfcjpa.org

Water District:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attention: Norma Camacho, Interim Chief Executive Officer
(408) 265-2600; ncamacho@valleywater.org

Service of any such notice or other communication so made shall be deemed effective on the day of actual delivery, whether accepted or refused, as evidenced by (a) addressee's

return receipt if by certified mail, or (b) as confirmed by the courier service if by courier; provided that if such actual delivery occurs after 5:00 p.m., local time, 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 communication via electronic mail shall be effective to give any notice hereunder.

8. Severability

In the event that 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 force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

9. 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 governments.

10. Venue

In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or the County of San Mateo, or where otherwise appropriate exclusively in the United States Court, Northern District of California.

11. Assignability and Subcontracting

The 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 Party. Notwithstanding, the Authority may contract with an accounting firm or financial institution to fulfill its obligations under this Agreement.

12. Ownership of Materials

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

13. 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 instrument in writing signed by authorized representatives of the Authority and Water District.

14. Further Actions

The Authority and Water District agree to execute all instruments and documents and to take all actions as may be reasonable required to consummate the transaction contemplated by this Agreement.

15. 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.

16. 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.

17. 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, the Authority and Water District have executed this Agreement as of the date it is fully executed.

Separate Signature pages are implemented individually for each Party.

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EXHIBIT A

TASK/FEE TABLE for CONSULTANT'S BID AND CONSTRUCTION ENGINEERING SUPPORT SERVICES

Tasks	Costs
1.0 Project Management	\$63,376
2.0 Pre Construction Support	\$52,624
3.0 Engineering During Construction	\$654,278
4.0 Construction Documentation	\$82,722
Total	\$853,000

The budget costs for each task described above may be transferred between tasks as agreed upon in writing by the Parties, provided that the total budget amount is not exceeded.

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**AGREEMENT BY AND BETWEEN THE SAN FRANCISQUITO CREEK JOINT POWERS
AUTHORITY AND THE SANTA CLARA VALLEY WATER DISTRICT TO FUND BID AND
CONSTRUCTION ENGINEERING SUPPORT CONSULTANT SERVICES AND UTILITY
RELOCATION FOR THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the Authority and Water District have executed this Agreement as of the date and year stated below.

Separate Signature pages are implemented individually for each Party.

APPROVED AS TO FORM:

SAN FRANCISQUITO CREEK JOINT
POWERS AUTHORITY

Signature

By: _____
Len Materman, Executive Director

Greg Stepanicich
Authority Counsel

Date: _____

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**AGREEMENT BY AND BETWEEN THE SAN FRANCISQUITO CREEK JOINT POWERS
AUTHORITY AND THE SANTA CLARA VALLEY WATER DISTRICT TO FUND BID AND
CONSTRUCTION ENGINEERING SUPPORT CONSULTANT SERVICES AND UTILITY
RELOCATION FOR THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101**

IN WITNESS WHEREOF, the Authority and Santa Clara have executed this Agreement as of the date and year stated below.

Separate Signature pages are implemented individually for each Party.

APPROVED AS TO FORM:

SANTA CLARA VALLEY WATER DISTRICT

Signature

By: _____

Norma Camacho,
Interim Chief Executive Officer

Leslie Orta
Senior Assistant District Counsel

Date: _____

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Agenda Item 5.d.

Authorize the Executive Director to execute Contract Amendment No. 7 with HDR, Inc. to provide support to the Santa Clara Valley Water District during Bay-Highway 101 project construction

**DRAFT AMENDMENT NO. 7 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. 7 (“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 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, again on December 21, 2015 through execution of Amendment No. 5, and again on March 30, 2016 through execution of Amendment No. 6. 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, Consultant is currently performing bid support services as set forth in Amendment No. 6; and WHEREAS, it is appropriate for Consultant, who prepared the design plans and specifications for the Project and is providing bid support services, to also provide construction 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 construction support services, and

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

WHEREAS, the parties desire to amend the term of the Agreement, extending it to December 31, 2018.

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, No 5, and No 6, 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, 2018.
3. Exhibit C, Compensation, is amended to add \$794,264 for the additional services for a new total not to exceed cost under the Agreement to be \$2,469,284.
4. Except as specifically amended by this Amendment No. 7, all terms and conditions stated in the original Agreement as amended by Amendments Nos. 1, 2, 3, 4, 5, and 6 shall remain in full force and effect.

**DRAFT AMENDMENT NO. 7 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. 7 through the signatures of their duly authorized representatives.

SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

HDR Engineering, Inc.,
[a Nebraska corporation]

Len Materman
Executive Director

Holly Kennedy, PE
Vice President

Date

Date



May 23, 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 Construction 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 construction 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 JPA 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. Construction is scheduled to occur from June – October 2016, June – October 2017, and June – October 2018. This fee estimate is limited to 60 weekly project team meetings, assumed to be 1 hour in duration, during the project duration.

Deliverables:

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

2 Engineering During Construction

At the request of the JPA, HDR shall work directly with the District to provide engineering services during construction of the Project. Such services shall include attending the pre-construction meeting, reviewing Contractor submittals within HDR's purview, responding to technical questions and requests for information, and potential change orders.

2.1 Meetings and Site Visits

- **2.1.1** – HDR shall attend and assist at one (1) pre-construction meeting at the District and on-site, as requested by District Engineer. The geotechnical engineer of record (GEI) will be present at this meeting.
- **2.1.2** – HDR shall attend project team meetings as requested by District, or by HDR with District's approval, other meetings and telephone conference calls with the Contractor, District, and other parties as determined appropriate and necessary by District, in order to discuss and coordinate the construction progress, resolve technical issues, concerns, and related activities. HDR assumes 1 meeting per week for the duration of the construction. One meeting per month will be attended in person, along with a representative from the geotechnical engineer firm of record, GEI. (This subtask assumes a total of 12 meetings at 6 hours per meeting). The remaining meetings will be attended via teleconference with a representative from the geotechnical engineer firm of record, GEI (This subtask assumes a total 38 meetings at 1 hour per meeting).



- **2.1.3** – HDR shall perform site visits as requested by the District or by HDR as approved by District. HDR assumes two site visits per month. (24 site visits at 6 hrs/visit).
- **2.1.4** – The HDR Team will provide geotechnical oversight of levee construction, including site visits as needed to ensure proper levee fill placement. The geotechnical engineering firm of record, GEI, will perform 2 site visits per week for 16 weeks during the levee construction. GEI Consultants will be on site on a full time basis for up to 12 weeks during flood wall construction to observe and document the sheet pile installation including depth, consistency of sheet pile interlock, and evaluation of site conditions and construction procedures to confirm they are consistent with design assumptions (assumes 100 lineal feet of sheet pile floodwall installed per day).
Geotechnical quality assurance testing will be performed to assess the levee fill and flood wall backfill. Quality control testing will be performed by others.

Deliverables:

1. Written response to questions asked during the pre-construction meeting and all other project meetings.
2. Attendance at meetings and/or conference calls as required by District to respond to issues and assist in resolving issues.
3. Daily field reports completed each day of GEI field involvement documenting site work completed.

2.2 Contractor Submittal Review

HDR shall review construction submittals forwarded by the District. The District will serve as the Construction Manager for the project and will only forward submittals that require HDR’s involvement for resolution. The deliverables listed below shall be prepared and submitted. Per the Contract Specifications, approximately 175 submittal reviews will be required. HDR estimates 4 hours to review and respond to each submittal. Assistance from GEI is assumed for 8 of the 175 submittals.

Deliverables / Assumptions:

1. HDR shall review, respond and return all Contractor Submittals and re-submittals as promptly as possible, but in no case shall Contractor submittals be returned later than five (5) working days from HDR’s receipt of the Contractor’s submittal from the District. HDR shall review, respond, and return unacceptable or incomplete Contractor’s submittals within three (3) working days from receipt of Contractor’s submittals by the District.



2. HDR shall notify the District immediately of any potential delays in meeting the response times stated above.
3. HDR shall notify the District immediately of any submittal review comment that could result in a Change Order.
4. If HDR makes notes on the Contractor Submittal that constitutes a change to the requirements of the Contract Documents, HDR shall state in HDR's submittal response that a Change Order request will be issued and immediately notify the District in writing of the need to issue a Change Order request.

2.3 Requests for Information (RFI)

During the construction period, the Contractor may ask the District questions on details of the Contract, substitutions, and alternative approaches, etc. If the Contractor's inquiry is related to HDR's design and cannot be readily answered from the construction Contract, The District may request HDR to respond to the inquiry with written clarifications and return the response to the District for the District to address with the Contractor. For budgeting purposes, HDR estimates 125 RFIs with 4 hours to review and respond to each. It is estimated that GEI will be required to assist with 8 of the 125 RFIs.

Deliverables / Assumptions:

1. Responses to RFIs received from the District.
2. Render written decisions within three (3) working days unless otherwise agreed to between HDR and the District. HDR must notify the District immediately if more time is required to respond to RFI's. The District may approve an extension of time and will document approval in writing.
3. HDR shall provide the District Engineer written responses to request for substitutions of equipment, materials, or methods within seven (7) working days after receipt of complete information.
4. HDR shall evaluate whether its RFI response will result in a change to the requirements of the Contract Documents. If HDR's response to an RFI will change the requirement of the Contract Documents, HDR must:
 - a. Promptly notify the District in writing that the response to the RFI is a change to the requirements of the Contract Documents; and
5. Prepare a cost estimate, if any, for each change to the Contract documents resulting from HDR's response to a RFI.
6. District may request HDR to assist the District in ascertaining any adjustment in the Contract time or Contract Sum with the Contractor resulting from Contract modifications based on HDR's response to an RFI.



2.4 Construction Change Order Assistance

HDR shall provide support to the District with change orders. For budgeting purposes, HDR anticipates 65 change orders at 6 hours for each change.

Deliverables:

1. As requested by the District, HDR shall be required on an as-needed basis to design, write, or review change order documentation. Anticipated HDR assignments may include: research and respond back to District whether work proposed by the District or the Contractor warrants the need for a change order and whether it should be considered as extra work; review of design calculations and intent; and review of cost estimates.
2. If a Change Order is required as the result of the probable error or omission with respect to the services performed under the Basis of Design, HDR must prepare and submit to the District, along with the Change Order documentation, a cost estimate for the value of Change Order Work. If determined by the District that the Change Order was not due to an error or omission under the basis of design on the part of the HDR, HDR will be compensated for preparation of Change Order estimate.

2.5 Schedule Review and Analysis

HDR shall assist the District in reviewing the construction contractor's baseline schedule and subsequent monthly updates for the duration of construction. HDR shall advise if the construction contractor's schedule is consistent with the contract construction documents with emphasis on milestone dates and construction sequencing. HDR assumes 15 schedules at 3 hours per review.

Deliverables:

1. Email comments on schedules.

Assumptions:

1. Contractor shall provide printed copies of the schedule (in accordance with Section 11.06.02 of the Construction Contract) for review by HDR.
2. Review of the schedule cost loading will not be done by HDR.
3. Analysis of schedule changes due to change orders, weather delays, and construction claims will be performed by the District and HDR if District requires.
4. The Contractor's as-built schedule will be reviewed by the District Engineer.



5. Attendance by HDR at meetings to discuss the schedule will be conducted under Subtask 2.1.2, Project Team Meetings.

2.6 Engineering Support for Dispute Resolution

HDR shall coordinate with and provide recommendations to assist the District in the resolution of construction contractor's claims and disputes or other matters that may arise during construction, if requested by the District. HDR will summarize, in writing, all opinions, recommendations, and analyses. HDR shall participate for the District if any dispute is referred to the Dispute Resolution Board, in accordance with Section 5.10 of the Construction Contract Specifications, if requested by the District. For claims, disputes and other matters in question between the District and construction contractor, HDR shall render written opinion/recommendations within ten (10) working days.

HDR shall notify the District immediately if more time is required, for reasonable cause, to respond to dispute, claim or other matters. HDR's request for time extension is subject to District approval as confirmed by email.

HDR's written opinions/recommendations on disputes, claims or other matters in question between the District and Contractor are subject to the provisions of the Contract Construction documents.

Deliverables:

1. Email written opinions on construction contractor's claims and disputes.

Assumptions:

1. Meeting attendance by HDR for dispute resolution will take place under Subtask 1.3, Meetings and Coordination.
2. Professionals beyond HDR's project team will not be required.

3 Construction Documentation

3.1 Construction Documentation Report

HDR will assist the District in preparing a Construction Documentation Report (CDR) to summarize the changes, questions, and overall construction sequencing. HDR and GEI will prepare an appendix summarizing HDR's involvement in construction design support services including the following items:



- Submittals reviewed by HDR
- Responses to RFIs provided by HDR
- Design Changes Issued by HDR
- Record Drawings
- Certification Documentation of HDR's scope of services

3.2 Project Record Drawings

HDR will assist the District with preparing Record Drawings which accurately depict changes resulting from field conditions, design changes, project scope changes, or by other means, since the initial Construction Contract Drawings and addenda were adopted and approved by the District Board of Directors. As a Project condition of final payment, the Contractor shall provide the District redlined mark-up drawings that were maintained throughout the construction reflecting how the Contractor actually constructed the Project. These redlined mark-up drawings shall serve as the basis for HDR's record drawings.

During HDR field visits and/or following the Contractor's completion of redlined drawings, HDR shall review the Contractor's redlines for conformance with HDR's design.

HDR shall prepare and maintain a set of Engineer-of-Record Drawings by marking up the full-size Revised Final Drawings with all addenda issued during project advertisement and all changes recommended by HDR and accepted by the District during the Project's construction. Such changes may be the result of information that was approved in RFIs, change orders, field memoranda, or by other means approved by the District. HDR shall conduct work on this subtask as construction progresses to allow for completion of the entire drawing set within the time period required.

HDR shall confirm consistency between HDR's Engineer-of-Record Drawings and the contractor's redlined mark-up drawings. Any inconsistencies shall be resolved before issuing record drawings.

Deliverables:

1. Review of Contractor's as-built drawings: HDR shall coordinate with the District to participate in review of the Contractor's redline mark-ups for consistency with RFIs, Field Orders, Change Orders, and other approved modifications during construction of the Project.
2. Signed and Stamped Final set of reproducible Record Drawings by HDR, prepared in Mylar and electronic file as directed by the District.

The final Engineer-of-Record Drawings must be submitted to District within twenty (20) working days from request by the District.



Budget

HDR will perform these activities on a time and materials basis, with a not-to-exceed fee of \$794,264. 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