



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 28, 2015 at 4:00 p.m.**

AGENDA

- 1) ROLL CALL
- 2) APPROVAL OF AGENDA
- 3) APPROVAL OF MEETING MINUTES – April 15, April 23, and May 6, 2015 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) Resolution 15.5.28 of the Board of Directors to amend the San Francisquito Creek Joint Powers Authority Conflict of Interest Code to revise the disclosure categories and designated positions
 - b) S.F. Bay-Highway 101 project construction planning
 - c) Authorize the Executive Director to execute an agreement among the SFCJPA and Santa Clara Valley Water District for management of the construction of the S.F. Bay-Highway 101 project
- 6) BOARD MEMBER MATTERS - *Non-agendized comments, requests, or announcements by Board members; no action may be taken.*
- 7) ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda can be viewed online by 4:00 p.m. on May 25, 2015 at sfcjpa.org -- click on the "Meetings" tab near the top. Supporting documents related to the Agenda items listed above will be available at the same online location by 7:00 p.m. on May 26, 2015.

NEXT MEETING: Regular Board meeting, June 25, 2015 at 4:00 p.m., Palo Alto City Council Chambers.

San Francisquito Creek Joint Powers Authority
May 28, 2015 Regular Board Meeting
Agenda Item 3
April 15, 2015 Special Board Meeting Minutes

Director Pine called the meeting to order at 11:10 a.m. at the City of East Palo Alto City Hall 2nd Floor Conference Room, East Palo Alto, CA.

DRAFT

1) ROLL CALL

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

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

Legal Present: Greg Stepanicich, Jane Usher

Others Present: Dennis Parker, East Palo Alto resident

2) APPROVAL OF AGENDA

Director Burt made a motion to approve the agenda. Director Kremen seconded. Agenda approved 3-0. Director Keith and Director Abrica not present at time of approval.

3) PUBLIC COMMENT

None.

4) CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL

Government Code Section 54956.9(d)(1)

SFCJPA's application for Clean Water Act Section 401 Certification for the San Francisquito Creek Flood Reduction, Ecosystem Restoration and Recreation Project from S.F. Bay to Highway 101, which is pending before the San Francisco Bay Regional Water Quality Control Board

Director Pine adjourned to closed session at 11:10 a.m.

5) ADJOURMENT

Chairperson Keith adjourned the meeting at 12:50 pm.
Minutes Prepared by Clerk of the Board: Miyko Harris-Parker.

San Francisquito Creek Joint Powers Authority

May 28, 2015 Regular Board Meeting

Agenda Item 3

April 23, 2015 Regular Board Meeting Minutes

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

DRAFT

1) ROLL CALL

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

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

Legal Present: Greg Stepanicich

Others Present: Trish Mulvey, Palo Alto resident; Joe Teresi, City of Palo Alto; Ann Stillman, SMCFCFCD

Pledge of Allegiance

2) APPROVAL OF AGENDA

Chairperson Keith made a motion to approve the agenda. Director Pine seconded. Agenda approved unanimously 5-0.

3) APPROVAL OF MEETING MINUTES- March 26, 2015 Board Meeting

Director Abrica made a motion to approve the March 26, 2015 meeting minutes. Director Kremen seconded. March 26, 2015 meeting minutes approved unanimously 5-0.

4) PUBLIC COMMENT

None.

5) REGULAR BUSINESS- Executive Director's Report

a) S.F. Bay-Highway 101 project construction planning

Mr. Murray introduced new SFCJPA staff member Carolyn Clarke.

Mr. Materman provided the Board with a brief update on the status of permits for the S.F. Bay-Highway 101 project.

Trish Mulvey, Palo Alto resident, asked how the public will be notified that the National Marine Fisheries Service and U.S. Fish and Wildlife Service have begun the 135 day review period. Mr. Murray responded explaining that SFCJPA staff has not been notified of the start of the 135 period but that more information is expected within the next week. Chairperson Keith directed staff to agendize this issue if any problems arise with the start time of 135 day period.

Director Pine asked about the future project maintenance when construction is completed. Mr. Murray explained that initially the maintenance will consist of inspections in the channel, vegetation maintenance and occasional removal of invasive vegetation. Mr. Materman noted that the final operations and maintenance manual is one of the deliverables to the Regional Water Board and other regulatory agencies.

San Francisquito Creek Joint Powers Authority

May 28, 2015 Regular Board Meeting

Agenda Item 3

April 23, 2015 Regular Board Meeting Minutes

Approve the Fiscal Year 2015-16 Operating Budget

Mr. Materman presented the proposed 2015-2016 operating budget for approval. Mr. Materman presented two budget scenarios for the Board to consider, option A which has total revenues of \$708,500 with expenses of \$699,950, and option B which has total revenues of \$878,500 with expenses of \$876,950. Option B includes an increase in member contributions of \$34,000 and the addition of one full time staff member. Option A has no change in the contribution or staff level.

Chairperson Keith asked for an explanation of the SFCJPA's role in land acquisition. Mr. Materman shared a few instances in which the SFCJPA has taken the lead on land acquisition on the San Mateo County side of the creek. Mr. Materman noted that Mr. Murray spends a lot of time working on property issues. Chairperson Keith and Director Pine directed staff to agendize an update on property acquisitions on both sides of the creek at the next meeting.

Director Pine stated that the SMCFCFD is supportive even though the flood control district funding is limited. Director Abrica questioned if the increase in member contributions includes the SFCPA working on the coastal project aspects as well. Mr. Materman explained that the addition of staff would mean we can make progress on all identified projects simultaneously rather than having to prioritize some at the expense of others.

Director Pine made a motion to approve Fiscal Year 2015-16 operating budget scenario B which includes an increase in member contributions of \$34,000 from \$118,000 to \$152,000 annually, and the addition of one full time staff member. Director Burt seconded. Motion to approve FY 2015-16 operating budget scenario B, which includes an increase in member contributions of \$34,000 and the addition of one full time staff member approved unanimously 5-0.

Joe Teresi, City of Palo Alto, informed the Board that the Palo Alto City Council approved an amendment to the consultant agreement for the Newell Bridge project which will restart the process and include a full EIR. Mr. Teresi noted that Caltrans did not have a signed contract on the Highway 101 project yet as they are still having bidding issues.

6) CLOSED SESSION-CONFERENCE WITH LEAGAL COUNSEL

Chairperson Keith adjourned the meeting to closed session at 4:53 pm. Re-adjourned to regular meeting at 6:15 pm; no report out.

7) BOARD MEMBER MATTERS

None.

8) ADJOURMENT

Chairperson Keith adjourned the meeting at 6:15 pm.

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

San Francisquito Creek Joint Powers Authority
May 28, 2015 Regular Meeting of the Board
Agenda Item 3
May 6, 2015 Special Board Meeting Minutes

Chairperson Keith called the meeting to order at 6:10 p.m. via conference call; 615 B Menlo Ave Menlo Park, CA

DRAFT

1) ROLL CALL

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

Members Absent: Director Abrica, City of East Palo Alto

JPA Staff Present: Len Materman, Executive Director

Legal Present: Greg Stepanicich, Jane Usher

Others Present: None

2) APPROVAL OF AGENDA

Agenda approved unanimously 4-0.

3) CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL

Government Code Section 54956.9(d)(1)

SFCJPA's application for Clean Water Act Section 401 Certification for the San Francisquito Creek Flood Reduction, Ecosystem Restoration and Recreation Project from S.F. Bay to Highway 101, which is pending before the San Francisco Bay Regional Water Quality Control Board

Chairperson Keith adjourned to closed session at 6:12 pm

4) ADJOURMENT

Chairperson Keith adjourned the meeting at 6:43 pm.

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

San Francisquito Creek Joint Powers Authority
May 28, 2015 Board Meeting
Agenda Item 5
Executive Director's Report

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

a. Resolution 15.5.28 of the Board of Directors to amend the San Francisquito Creek Joint Powers Authority Conflict of Interest Code to revise the disclosure categories and designated positions

At the February 26, 2015 Board meeting, we discussed the need for the SFCJPA to update its Conflict of Interest Code, as required of all governmental agencies by the California Political Reform Act. A conflict of interest code designates positions required to file Statements of Economic Interests (Form 700), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interests.

Our general counsel's office has worked with the Fair Political Practices Commission (FPPC) to update the Authority's conflict of interest code to reflect the current staff positions and changes to the Political Reform Act. On March 27, 2015, the SFCJPA published a Notice of Intention to amend the conflict of interest code, which commenced a 45-day public comment period on the proposed Conflict of Interest Code amendments. During this period, no member of the public requested that the Authority hold a public hearing, and thus the Board can consider and adopt the enclosed Resolution 15.5.28 that will amend the Code. Because the Authority consists of member agencies from more than one county, the final proposed Code must be submitted to the FPPC Executive Director for approval. The Conflict of Interest Code amendments will become effective the 30th day following approval by the FPPC Executive Director.

Enclosed is a memo from SFCJPA Assistant General Counsel Amanda Charne describing this process and the proposed amendments to our agency's Conflict of Interest Code.

Proposed Board action: Approve Resolution 15.5.28 and its Exhibit A (both enclosed), which amend the SFCJPA Conflict of Interest Code.

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

At SFCJPA Board meetings for over the past year, we have discussed our efforts to prepare for construction, including the relocation of utilities, in order to improve public safety and increase marsh habitat in the Creek between S.F. Bay and Highway 101. Below is a summary of construction planning activities since the last Board meeting.

Permitting

Our efforts to secure regulatory permits for the Project have been dominated by the Regional Water Quality Control Board's Water Quality Certification. Following our receipt of the Certification on April 7, I requested an extension to the 30-day period to work with Regional Water Board staff to revise four issues within the Certification. The Regional Water Board's executive officer and legal counsel informed us that the only avenue that would preserve our ability to continue to work on the Certification is the filing of a legal petition with the State Water Board, which the SFCJPA did on May 7, 2015. With that filing, the SFCJPA's outside legal counsel also sent a letter to the Regional Water Board and its executive officer, Bruce Wolfe, asking him to amend the Certification document in regards to the following four concerns included within it:

- A requirement to remove a PG&E pipeline under the creek that has been abandoned for 56 years,
- A requirement that 19 future submittals by the SFCJPA must be acceptable to the Regional Water Board's executive officer with no delineated process and no standards to define what "acceptable" means,
- A requirement that the SFCJPA report on operations and maintenance beyond the period for which these activities are covered under this Certification, and
- The need to correct and update the listed impacts and mitigations based on discussions with Regional Water Board staff.

San Francisquito Creek Joint Powers Authority
May 28, 2015 Board Meeting
Agenda Item 5
Executive Director's Report

At the May 13 meeting of the Regional Water Board, I presented our request that the Certification be revised in these four areas. At the May 28 SFCJPA Board meeting, I will provide a verbal update regarding our efforts to revise this permit.

At the April 23 SFCJPA Board meeting, I provided an update on the Corps of Engineers permit, saying that we had provided all requested materials to the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). SFCJPA and Santa Clara Valley Water District staff met with NMFS on April 24 and with USFWS on April 29 to discuss the delivered materials and to seek re-initiation of the 135-day period allotted to both of these federal agencies to provide to the Corps their respective Biological Opinions for the Project. Biological Opinions from both NMFS and USFWS are required for the Corps to issue its Clean Water Act Section 404 permit.

A significant outcome of the April 24 meeting was the statement by NMFS representatives at the meeting and subsequently confirmed in an email that "NMFS accepts the general alignment of the proposed levees and does not anticipate the need (to avoid impacts) for the JPA to reconsider the levee alignment." NMFS did request that we investigate the feasibility of introducing several habitat features in the design of the project, which has now been done by SFCJPA, SCVWD, and our consultants. At the time of the writing of this report, it is anticipated that this additional material will be delivered to NMFS on May 26, which will re-initiate the 135-day period to obtain their Biological Opinion.

The primary focus of the April 29 meeting with USFWS was the Project's impacts to Salt Marsh Harvest Mouse, and in particular, temporary disturbance of and permanent impacts to upland refugia for this federally protected species. Among mitigation requirements that will likely be suggested to the Corps by USFWS are upland revegetation and predator management. Also, USFWS permitting staff suggested that the SFCJPA work with USFWS Don Edwards National Wildlife Refuge staff to develop a plan to install permanent mounds within the Faber Tract to offset permanent upland refugia loss, and temporary floating islands to offset temporary disturbance of upland refugia from construction activities. At the time of the writing of this report, we are seeking feedback from USFWS Refuge staff on the preferred dimensions and locations of these habitat features. These features represent an important piece to complete the package for USFWS and initiate the 135-day period to obtain their Biological Opinion.

Land/Easement Acquisition

On the Palo Alto side of the creek, the Santa Clara Valley Water District (SCVWD) is working to secure the necessary land and easements, and SCVWD can provide an update at the SFCJPA Board meeting. On the East Palo Alto side of the creek, the SFCJPA has led the effort to secure the necessary easements to construct the project. Since my last update to the Board, SFCJPA staff has successfully negotiated and reached verbal agreement with the three property owners from which easements will be needed. At the time of the writing of this report, it is anticipated that SFCJPA staff will meet with San Mateo County Real Estate staff to finalize the easement agreements and offer letters to the three property owners on May 27. I will provide a verbal update on these efforts at the Board meeting.

c. Authorize the Executive Director to execute an agreement among the SFCJPA and Santa Clara Valley Water District for management of the construction of the S.F. Bay-Highway 101 project

As I reported at last month's Board meeting, staff has developed a draft Construction Management Agreement for the Project. Over the past month, our review of the draft Construction Management Agreement indicated that additional clarification was needed with regards to change orders, and a consensus among member agency staff that not all SFCJPA member agencies need to be party to the Agreement since the previously executed Construction Funding Agreement established that responsibility for construction management would be memorialized by a Construction Management Agreement between the SFCJPA and SCVWD. Enclosed is the draft of that agreement.

San Francisquito Creek Joint Powers Authority
May 28, 2015 Board Meeting
Agenda Item 5
Executive Director's Report

The purpose of this agreement is to define the roles and responsibilities of the SFCJPA and member agencies during construction. The agreement calls for the SCVWD to be responsible for the advertisement for construction bids, hiring of a construction contractor, management of construction activities, and hiring of the consultants needed to provide inspection, surveys, and testing during construction. The draft Construction Management Agreement has been modified to clarify how change orders would be processed, and to limit the parties to the Construction Management Agreement to the SCVWD and the SFCJPA. The final draft Construction Management Agreement, which has recently been reviewed by SFCJPA and SCVWD legal counsels, may be subject to minor modifications from the form presented in the enclosed document.

Proposed Board action: Authorize the Executive Director to execute the enclosed Construction Management Agreement, subject to minor modifications acceptable to the Executive Director and General Counsel, between the SFCJPA and Santa Clara Valley Water District for management of the construction of the S.F. Bay-Highway 101 project.

Submitted by:



Len Materman
Executive Director

Agenda Item 5.a.

Memorandum from legal counsel,
Resolution 15.5.28, and Conflict of Interest Code



MEMORANDUM

TO: San Francisquito Creek Joint Powers Authority

FROM: Amanda Charne, Assistant General Counsel

DATE: March 26, 2015; **Updated May 13, 2015**

SUBJECT: Conflict of Interest Code Update 2014/2015

The California Political Reform Act (Government Code Section 81000 et seq.) requires state and local government agencies to adopt and update conflict of interest codes every two years. The conflict of interest code designates positions required to file Statements of Economic Interests (Form 700), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interests.

In 2013, the San Francisquito Creek Joint Powers Authority (the “Authority”) adopted a Conflict of Interest Code. Over the last year, our office has worked with the Fair Political Practices Commission (FPPC), Technical Assistance Division, to update the Authority’s local Conflict of Interest Code. The purpose of this memorandum is to explain the reasons for the proposed changes to the designations and disclosure responsibilities for officers, employees, members and consultants of the Authority.

UPDATE: As a local government agency with jurisdiction in more than one county, the Authority was required to provide 45-day notice and a written comment period on the proposed Conflict of Interest Code amendments. FPPC Regulation, 2 CCR 18750.1(c). Accordingly, a notice of intention to amend the Conflict of Interest Code was distributed to all board members, officers and employees of the Authority and to the public on March 27, 2015. In addition, the Authority provided notice to the FPPC on March 26, 2015. No public comments or request for public hearing was received by the Authority during the comment period, which ended Tuesday, May 12, 2015.

The Board’s action in approving the proposed amendments is only the first step in updating the Authority’s Conflict of Interest Code. Following your approval, the Authority must submit the proposed Conflict of Interest Code and various supporting documents to the FPPC’s Executive Director for approval. The Authority’s amended Conflict of Interest Code becomes effective on the thirtieth day following its approval by the FPPC. FPPC Regulation, 2 CCR 18750.1(k).

Summary of Changes

Adoption of Model Code By Reference. The FPPC has adopted a regulation that contains the terms of a Model Conflict of Interest Code (the “Model Code”) codified at 2 California Code of Regulations, Section 18730, which can be incorporated by reference by local agencies as its conflict of interest code. The Authority’s 2013 Conflict of Interest Code adopted the Model Code by reference. This Code update continues to rely on the Model Code; however a copy of the Model Code has not been included. Instead, persons are directed to the FPPC Regulation 18730. The FPPC Technical Assistance Division requested this change in order to avoid the possibility of a person mistakenly relying on an outdated version of the Model Code. Now the first paragraph of the Conflict of Interest Code adopts the Model Code by reference and clarifies that individual’s holding designated positions shall file statements of economic interests with the Authority.

MEMORANDUM

San Francisquito Creek Joint Powers Authority
March 26, 2015, Updated May 13, 2015
Page 2

Appendix A – Designated Positions. The designated positions list has been moved to Appendix A in the updated Code. The designated positions have remained largely the same except for the following changes:

The amendment adds Associate Members to the list of designated positions. Although Associate Members of the Authority would not be entitled to vote on decisions of the Authority, these members would participate in making governmental decisions. Currently, there are no Associate Members of the Authority, but this position has been added to the Conflict of Interest Code in case Associate Members join the Authority in the future.

Certain job titles in the Conflict of Interest Code had become outdated. The Program Manager is now called the Project Manager. Also, the Fiscal Agent is now the Finance and Administration Manager. These positions have been updated in the updated Conflict of Interest Code.

The treatment of new positions has been clarified in accordance with FPPC Regulation 18734. New positions will be treated in the same manner as consultants pending a code amendment. The requirements for consultants and new positions are proposed to be moved from the financial disclosure Category 6 to Appendix A, Designated Positions, footnotes (a) and (b).

Appendix B - Disclosure Categories. The disclosure categories list has been moved to Appendix B in the updated Code.

The proposed Code amendment would revise Category 1 to combine Categories 2, 3 and 4 under the 2013 Conflict of Interest Code. Proposed Category 1 consolidates all income, investments, and business positions in business entities into a single disclosure category to eliminate redundancy.

The revised Category 2 refines the real property disclosure requirement. Under the 2013 Conflict of Interest Code, interests in real property are required to be disclosed if they are within the jurisdiction of the Authority or within 2 miles of the jurisdiction. Now, disclosure of real property interests will be limited to interests in real property located within one-half mile of the San Francisquito Creek, its floodplain, its watershed, and the tidal floodplain of the cities Menlo Park, East Palo Alto and Palo Alto. This change is designed to reduce confusion about the physical scope of the Authority's jurisdiction and to prevent disclosure of real property interests where no financial effect is reasonably foreseeable. The FPPC Technical Assistance Division recommended that the two-mile limit be reduced to one-half mile because financial effects from flood control improvements beyond the one-half mile limit generally are not expected absent extraordinary circumstances. It is important to note that simply because disclosure of an interest is required on the Form 700 does not mean that there will necessarily be a conflict of interest. A conflict of interest would arise if there is a reasonably foreseeable impact on a financial interest, different than the effect on the public generally.

A new category, Category 3, is proposed to require disclosure of investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources, that filed a claim, or have a claim pending, against the Authority during the previous two years. This reflects that financial interests of an individual may be affected by claims by sources of income, investments and business positions.

MEMORANDUM

San Francisquito Creek Joint Powers Authority
March 26, 2015, Updated May 13, 2015
Page 3

A new Category 4 is proposed to be added, which requires disclosure of investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources, that provide real estate services (e.g. consulting, appraisal, development, construction). This category has been included at the recommendation of the FPPC's Technical Assistance Division. Although this category would also be covered by new Category 1, it was felt that a specific category related to real estate services would be helpful as the Authority becomes more active in undertaking flood control projects.

Category 5 from the prior version of the Conflict of Interest Code is recommended to be deleted. The Authority only invests in the Local Agency Investment Fund. Therefore, no financial effect from any entity that is designated as a depository for the funds of the Authority is reasonably foreseeable.

Category 6 from the 2013 Conflict of Interest Code has been eliminated as it did not identify financial interests to be disclosed. The substance of former Category 6 as it relates to consultants and new positions is proposed to be retained in footnotes (a) and (b) to the Appendix A, Designated Positions.

Next Steps - Updated

Consider approving the proposed amendments to the Authority's Conflict of Interest Code.



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY
SFCJPA.ORG

RESOLUTION NO. 15.5.28

**A RESOLUTION OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY
AMENDING THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY
CONFLICT OF INTEREST CODE**

**THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY DOES HEREBY FIND, RESOLVE,
AND ORDER AS FOLLOWS:**

Section 1. The Political Reform Act (Government Code Section 81000, *et seq.*) requires state and local government agencies, including the San Francisquito Creek Joint Powers Authority, to adopt a Conflict of Interest Code, and to amend its Conflict of Interest Code when revisions are necessitated by changed circumstances.

Section 2. By Resolution Number 13.4.25, the Authority adopted a Conflict of Interest Code containing designated positions and disclosure categories. By this resolution the Authority is amending the designated positions and disclosure categories to which the Conflict of Interest Code applies, among other changes.

Section 3. The Conflict of Interest Code, as hereby amended, specifically enumerates each of the positions within the Authority which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest and the Authority has satisfied the procedural requirements preliminary to amending the Conflict of Interest Code.

Section 4. The Fair Political Practices Commission (the "FPPC") has adopted a regulation that contains the terms of a Model Conflict of Interest Code (the "Model Code"). The Model Code, codified at 2 California Code of Regulations Section 18730, can be incorporated by reference by the Authority as its Conflict of Interest Code. After public notice and hearing, the FPPC may amend the Model Code to conform to amendments to the Political Reform Act.

Section 5. The Model Code, and any amendments to it duly adopted by the FPPC, are hereby incorporated into the Conflict of Interest Code of this Authority by reference. This regulation and the attached Appendices designating officials and employees and establishing economic disclosure categories shall constitute the Conflict of Interest Code for the San Francisquito Creek Joint Powers Authority, which is attached hereto as Exhibit "A".

Section 6. All officials and employees required to submit a statement of economic interests shall file their statements with the Executive Director or his or her designee. All statements shall be available for public inspection and reproduction (Gov. Code Section 81008).

Section 7. The Authority hereby directs the General Counsel to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years in accordance with the requirements of Government Code Sections 87306 and 87306.5. The revised Code should reflect any changes in employee designations. If no revisions to the Code are required, the Authority shall submit a report to the Fair Political Practices Commission no later than October 1st of the same year, stating that amendments to the Code are not required.

Section 8. The Executive Director is directed to certify to the passage and adoption of this resolution and to do all things necessary to carry out this resolution.

PASSED AND ADOPTED this 28th day of May, 2015.

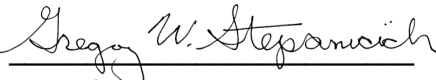
ATTEST:

APPROVED:

Executive Director

Chairperson

APPROVED AS TO FORM:



Legal Counsel

EXHIBIT "A"



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY
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SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code Section 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices, designating positions (Appendix A) and establishing disclosure categories (Appendix B), shall constitute the conflict-of-interest code of the **San Francisquito Creek Joint Powers Authority (Authority)**.

Individuals holding designated positions shall file their statements of economic interests with the **Authority**, which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.) All statements will be retained by the **Authority**.

SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

CONFLICT OF INTEREST CODE

APPENDIX A

DESIGNATED POSITIONS

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
Board of Directors and Alternates	1, 2, 3, 4
Associate Members	1, 2, 3, 4
Executive Director	1, 2, 3, 4
General Counsel	1, 2, 3, 4
Project Manager	1, 2, 4
Finance and Administration Manager	1
Consultants/New Positions ^{a, b}	(see below)

a) For consultants who serve in a staff capacity with the Authority, the consultant shall disclose based on the disclosure categories assigned elsewhere in this code for that staff position. For example, the General Counsel position is filled by an outside consultant, but acts in a staff capacity.

b) For consultants who do not serve in a staff capacity or new positions, such persons must disclose pursuant to Disclosure Categories 1, 2, 3 and 4 unless the Executive Director determines in writing that a particular consultant or new position is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in Categories 1, 2, 3 or 4. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and must be retained for public inspection in the same manner and at the same location as this conflict of interest code.

SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY
CONFLICT OF INTEREST CODE
APPENDIX B
DISCLOSURE CATEGORIES

Designated positions must report financial interests in accordance with the assigned disclosure categories.

Category 1: Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources, that provide services (e.g. engineering and environmental consulting firms), supplies, materials, machinery, or equipment of the type utilized by the Authority.

Category 2: Interests in real property located within one-half mile of the San Francisquito Creek, its floodplain, its watershed, and the tidal floodplain of the cities of Menlo Park, East Palo Alto and Palo Alto.

Category 3: Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources, that filed a claim, or have a claim pending, against the Authority during the previous two years.

Category 4: Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources, that provide real estate services (e.g. consulting, appraisal, development, construction).

Agenda Item 5.c.

Draft Construction Management Agreement

DRAFT Agreement

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

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

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

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

R E C I T A L S

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

- F. Due to the Corps' delay in completing the Feasibility Study and the Member Agencies' desire to begin addressing the risk of flooding in their jurisdictions, Authority and Member Agency staff conducted a process of evaluating alternatives for an initial capital project and recommended a preferred alternative with conceptual design drawings to Authority's Board of Directors for consideration.
- G. On July 23, 2009, Authority's Board of Directors unanimously approved the staff's recommended Project and authorized its Executive Director to pursue funding opportunities and to contract with qualified consultants to perform 1) planning and design services and 2) environmental impact assessment and planning for the Project.
- H. Authority, Water District, and the San Mateo County Flood Control District entered into an agreement on November 3, 2009 to fund the design and environmental documentation of the Project.
- I. Authority hired a design engineering firm to prepare design documents and an environmental consulting firm to prepare environmental documents for the Project.
- J. Certification of the Final Environmental Impact Report by Authority took place in October 2012. On July 25, 2013, Authority's Board of Directors approved the Project, making the required CEQA findings. The Project plans currently are being finalized.
- K. In 2014, the Authority and all of its members entered into an agreement to provide construction funding.
- L. The Parties desire to enter into this Agreement to designate Water District as the entity responsible for managing the construction of the Project.

P R O V I S I O N S

1. Project Purposes

The Project's purposes are to improve flood protection, restore the ecosystem, and provide recreational opportunities within the Project's reach, with the following specific objectives: 1) protect properties and infrastructure between Highway 101 and the San Francisco Bay from San Francisquito Creek flows resulting from 100-year riverine flood flows in conjunction with a 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. Roles and Responsibilities of Parties

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

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

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

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

3. Agreement Term

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

4. Land and Right of Way Acquisitions

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

5. Natural Resource and Other Regulatory Permits

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

6. Bid Advertising and Contractor Selection

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

6.2 Authority and Water District will cooperate in the advertising of the availability of the bid packages. Water District will conduct the process for the solicitation and opening of bids and selection of contractors in accordance with its lawful procedures and all applicable laws. Before the award of any construction contract is made, Water District shall verify with Authority to ensure bids have been received that are within the amount of monies available to fund the Project, including providing for a fifteen percent (15%) contingency above the bid amount for change orders or other expenses that may arise during construction of the Project. Authority shall have the right to direct Water District to reject all bids if the bid amounts exceed available funds for the construction of the Project.

7. Construction Management

Water District shall administer the construction contract and manage all construction activities, and incur the costs and hire the subcontractors and/or consultants necessary to provide inspection, survey, and testing to construct the Project. Water District, at its discretion, may approve any change orders as it deems appropriate within the contingency amount and that do not cumulatively exceed the monies available to fund construction of the Project. Any change orders that will increase the cost of the Project above the monies available to fund construction of the Project shall be subject to approval by Authority. The Executive Director of Authority may authorize individual change orders that result in a cost increase equal to or less than \$25,000.00 above the monies available to fund construction of the Project. The Executive Director of Authority shall inform the Authority's Board of Directors of any such authorization at the next regularly scheduled meeting of the Authority's Board of Directors. An individual change order or a set of change orders that result in a cost increase greater than \$25,000.00 above the monies available to fund construction of the Project may only be authorized by a formal action of Authority's Board of Directors. Authority shall inform Water District of any construction management conditions or requirements imposed by grant funding administered by Authority, and Water District shall comply with all grant funding conditions and requirements.

8. Mutual Hold Harmless and Indemnification Obligations

- 8.1 In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but, instead, the Member Agencies agree that, pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the another party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other party under this Agreement. The obligations set forth in this paragraph will survive termination and expiration of this Agreement.
- 8.2. In the event of concurrent intentional or unintentional misconduct, negligent acts or omissions by any one of the Parties (or each of their respective officers, directors and/or employees), then the liability for any and all claims for injuries or damages to persons and/or property which arise out of each and any of their performance of the terms and conditions of this Agreement shall be apportioned according to the California law of comparative negligence. The Parties hereto are not jointly and severally liable on any liability, claim, or lawsuit.
- 8.3. The construction contract and bid documents will require the construction contractor to agree to appropriate indemnity provisions allowable by law to protect the Parties, and to secure and maintain in full force and effect all times during construction of the Project and until the Project is accepted by the Parties, general liability and property damage insurance, business automobile insurance and such other insurance as the Parties deem

appropriate, in forms and limits of liability acceptable to the Parties, naming Water District, Authority and each of its Member Agencies and their respective directors, council members, officers, employees and agents as additional insureds from and against all damages and claims, losses, liabilities, costs or expenses arising out of or in any way connected to the construction of the Project.

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

9. Retention of Records, Right to Monitor and Audit

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

10. Governing Law and Compliance with Laws

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

11. Notices

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

Authority:

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

Water District:

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

12. Severability

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

13. Termination

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

14. Assignability

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

15. Entire Agreement

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

16. Further Actions

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

17. Venue

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

18. Counterparts

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

19. Non-Waiver

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

20. Third Parties

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

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

Separate Signature pages follow for each Party to this Agreement.

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

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

Separate Signature pages were implemented individually for each Party.

APPROVED AS TO FORM:

San Francisquito Creek Joint Powers Authority

Gregory Stepanicich
General Counsel

By: _____
Len Materman
Executive Director

Date: _____

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

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

Separate Signature pages were implemented individually for each Party.

APPROVED AS TO FORM:

Santa Clara Valley Water District

Leslie Orta
Senior Assistant District Counsel
Santa Clara Valley Water District

By: _____
Beau Goldie
Chief Executive Officer

Date: _____

Exhibit A

CONSTRUCTION MANAGEMENT SERVICES

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

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

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

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

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