



SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY  
[SFCJPA.ORG](http://SFCJPA.ORG)

**Notice of Special Meeting of the  
BOARD OF DIRECTORS  
City of Palo Alto Council Chambers  
250 Hamilton Avenue, Palo Alto, California  
June 8, 2016 at 3:30 p.m.**

AGENDA

1. ROLL CALL
2. 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.*
3. REGULAR BUSINESS – Executive Director’s Report
  - a. S.F. Bay-Highway 101 project: discuss construction planning
  - b. Authorize the Executive Director to execute the First Amended Agreement among the San Francisquito Creek Joint Powers Authority, San Mateo County Flood Control District and Santa Clara Valley Water District for funding a Feasibility Study with the U.S. Army Corps of Engineers
  - c. Authorize the Executive Director to execute an Actual Cost Contract with Pacific Gas & Electric that commits the San Francisquito Creek Joint Powers Authority to reimburse PG&E for 44.3% of the actual costs, up to a not-to-exceed amount of \$3,140,770, to modify natural gas transmission pipeline to improve that pipeline and accommodate the S.F. Bay-Highway 101 project
4. ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda and supporting documents can be viewed online by 5:00 p.m. on June 6, 2016 at [sfcjpa.org](http://sfcjpa.org) -- click on the “Meetings” tab near the top.

NEXT MEETING: Regular Board meeting, June 23, 2016 at 4:00 p.m., Palo Alto City Council Chambers.

**San Francisquito Creek Joint Powers Authority**  
**June 8, 2016 Board Meeting**  
**Agenda Item 3**  
**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: 1) finalizing a cost share agreement with PG&E to modify its gas transmission pipeline, 2) working with multiple parties to enable construction to begin soon, and 3) submitting a proposal for project funding to the U.S. Environmental Protection Agency. At this Board meeting, we will provide a brief update on project planning since the May 26 Board meeting.

**b. Authorize the Executive Director to execute the First Amended Agreement among the San Francisquito Creek Joint Powers Authority, San Mateo County Flood Control District and Santa Clara Valley Water District for funding a Feasibility Study with the U.S. Army Corps of Engineers**

In 2005, after completing a reconnaissance study, the SFCJPA and Army Corps of Engineers entered in to a Feasibility Cost Share Agreement to complete a Feasibility Study of the creek watershed and floodplain with the intent of developing a construction project supported by federal funding. This agreement specifies that the Corps and SFCJPA each provide 50% of Study costs. That same year, the Santa Clara Valley Water District (SCVWD) and San Mateo County Flood Control District (SMCFCD) agreed to split the cost (up to \$1.5 million each) of the SFCJPA share of the estimated \$6 million Study. To date, the SCVWD and SMCFCD have each contributed \$930,848 toward the costs of the Study, leaving a remaining funding commitment for each agency of up to \$569,152. Since 2005, federal funding for the Study has been inconsistent, which has resulted in delays.

Because of the risk of catastrophic flooding between S.F. Bay and Highway 101, and because improvements upstream cannot be completed before work there is completed, in 2009 the SFCJPA decided to move forward with design and environmental planning for this segment of the creek and not wait for the Corps Study to be finalized. We are now poised to begin construction of the Bay-Highway 101 project.

The SFCJPA and its member agencies developed estimates for the costs to mitigate for the project and construct its levees, floodwalls and utilities, and entered into a funding agreement in 2014 to cover those costs. In April of 2016, it became apparent that this funding agreement would not provide sufficient revenue, resulting in a need to amend the 2014 agreement with most agencies agreeing to contribute additional funding towards the project.

As part of this first amendment to the funding agreement, approved by the SFCJPA Board on May 26, 2016, unspent SMCFCD funding totaling \$569,152.17 that was previously dedicated to the Corps Study is now to be used for construction of the Bay-Highway 101 project. This limits the SMCFCD contribution to the Corps Study to the amount that has been expended to-date, which totals \$930,847.83.

To continue and complete the Corps' Study for areas upstream of Highway 101, the SCVWD has agreed to increase its commitment to the Study up to \$2,069,152.17 to cover the new shortfall resulting from the re-purposing of SMCFCD funds. The attached document titled "First Amended Agreement for funding a Feasibility Study for San Francisquito Creek among the San Francisquito Creek Joint Powers Authority, the San Mateo County Flood Control District and the Santa Clara Valley Water District" provides for this additional commitment by the SCVWD toward the Corps' Study.

Proposed Board Action: Authorize the Executive Director to execute the First Amended Agreement for funding a Feasibility Study for San Francisquito Creek among the San Francisquito Creek Joint Powers Authority, the San Mateo County Flood Control District and the Santa Clara Valley Water District.

**San Francisquito Creek Joint Powers Authority**  
**June 8, 2016 Board Meeting**  
**Agenda Item 3**  
**Executive Director's Report**

- c. Authorize the Executive Director to execute an Actual Cost Contract with Pacific Gas & Electric that commits the San Francisquito Creek Joint Powers Authority to reimburse PG&E for 44.3% of the actual costs, up to a not-to-exceed amount of \$3,140,770, to modify natural gas transmission pipeline to improve that pipeline and accommodate the S.F. Bay-Highway 101 project**

Over the past six months, I have negotiated with PG&E a cost share percentage for PG&E's work to improve and modify its gas transmission pipeline crossing the creek in the area of our S.F. Bay-Highway 101 project. Following a substantial increase from PG&E's early cost estimate for this work, and a discussion with PG&E representatives at the April 14, 2016 SFCJPA Board meeting, SFCJPA Board members Ruben Abrica and Pat Burt wrote to PG&E leadership to describe the project's history and the benefits to PG&E of the pipeline modification and the SFCJPA's financial contributions to it. As a result of this letter, PG&E leadership met with SFCJPA staff and me in mid-May, and at the May 26 SFCJPA Board meeting, we discussed the outcome of this meeting and Board members provided direction on the framework of an acceptable contract with PG&E.

The attached Actual Cost Contract is the result of these negotiations, and it has been reviewed by SFCJPA legal counsel. It obligates the SFCJPA to pay 44.3% of the actual net costs of construction, up to \$3,140,770. This is the amount the SFCJPA included in the recently amended construction and mitigation funding agreement, and capping pipeline costs at this level eliminates the potential for future cost increases for this item. Because there are other pressures on the overall project budget, we are working with PG&E to achieve further gas pipeline costs reductions, 44.3% of which would be realized as savings to the SFCJPA.

Proposed Board Action: Authorize the Executive Director to execute an Actual Cost Contract with Pacific Gas & Electric that commits the San Francisquito Creek Joint Powers Authority to reimburse PG&E for 44.3% of the actual costs, up to a not-to-exceed amount of \$3,140,770, to modify natural gas transmission pipeline to improve that pipeline and accommodate the S.F. Bay-Highway 101 project.

Submitted by:



Len Materman  
Executive Director

## Agenda Item 3.b.

Authorize the Executive Director to execute the First Amended Agreement among the San Francisquito Creek Joint Powers Authority, San Mateo County Flood Control District and Santa Clara Valley Water District for funding a Feasibility Study with the U.S. Army Corps of Engineers

**FIRST AMENDED AGREEMENT FOR FUNDING A FEASIBILITY STUDY FOR  
SAN FRANCISQUITO CREEK AMONG THE  
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,  
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT  
AND THE SANTA CLARA VALLEY WATER DISTRICT**

This First Amended Agreement (“Agreement”), amending the terms and conditions of the original Agreement dated November 29, 2005, is made and entered into as of the date it is fully executed by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, a California joint powers authority (“Authority”), the SAN MATEO COUNTY FLOOD CONTROL DISTRICT, a special district of the State of California (“Flood District”), and the SANTA CLARA VALLEY WATER DISTRICT, a special district of the State of California (“Water District”), collectively referred to as Parties, or individually as Party.

**RECITALS**

- A. San Francisquito Creek (“Creek”) has a history of flooding the communities in and around East Palo Alto, Menlo Park and Palo Alto, most recently in December 2012, impacting residential properties adjacent to the Creek.
- B. Following the flood of 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 full members of the Authority. The Authority was authorized to represent its member agencies as the local sponsor for a U.S. Corps of Engineers’ (“USACE”) 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 progressed to the feasibility study (“Study”) phase of the San Francisquito Creek Flood Damage Reduction and Ecosystem Project (“FDRER”), which requires a cost sharing agreement with the 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 FCSA requires the Authority, as the local sponsor, to contribute to the USACE, in cash or in-kind services, fifty percent (50%) of the cost of the USACE’ evaluation of flood control protection as the local share of the Study Costs as defined in the FCSA (the “Study Costs”).

- F. Flood District and Water District, on behalf of themselves and the other members of the Authority within their respective jurisdictions, on July 23, 2001, agreed to provide up to \$1.5 million each as the local share to fund the Study Costs and the Authority Costs.
- G. In November 2005, the Parties executed this Agreement to fund the Study Costs and the Authority Costs. In the original Agreement, the Flood District and the Water District Agreed to contribute up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) each to fund the Authority's contribution to the Study Costs. To date, the Flood District and Water District have each contributed \$930,847.83 toward Study Costs, leaving a remaining funding commitment for each agency of up to \$569,152.17.
- H. On January 25, 2007, the Authority entered into an Implementation Agreement with each of its member agencies that identified roles and responsibilities during the feasibility phase of the Project (the "Implementation Agreement").
- I. The USACE's ability to complete the Study has been impacted by unanticipated delays due to federal funding constraints and USACE's processes.
- J. 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, the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101 ("SF Bay to 101 Project"), and recommended a preferred alternative with conceptual design drawings to the Authority Board of Directors for consideration.
- K. On July 23, 2009, the Authority's Board of Directors unanimously approved the staff's recommended SF Bay to 101 Project; authorized its Executive Director to pursue funding opportunities and recommend to the Authority's Board of Directors contracts with qualified consultants to perform (1) planning and design services and (2) environmental impact assessment and planning for the SF Bay to 101 Project.
- L. 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 SF Bay to 101 Project.
- M. The Authority hired a design engineering firm and an environmental consulting firm to prepare design documents and an Environmental Impact Report ("EIR") for the SF Bay to 101 Project.
- N. On October 25, 2012, the final EIR for the SF Bay to 101 Project 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.
- O. In June 2014, the Parties, along with the Cities of East Palo Alto, Menlo Park and Palo Alto, entered into a construction funding agreement to fund the SF Bay to 101 Project.
- P. On February 23, 2016, the Water District Adopted the Plans and Specifications and Authorized Advertisement for Bids for Construction of the SF Bay to 101 Project.

- Q. On April 28, 2016, the Water District conducted a public bid opening and identified the apparent lowest bid.
- R. Based upon the apparent lowest bid and the other identified SF Bay to 101 Project construction and mitigation activities costs, a funding shortfall was identified. The Parties, along with the cities of Palo Alto, East Palo Alto and Menlo Park, intend to amend the SF Bay to 101 Project construction funding agreement in order to secure sufficient funding to allow the Water District to award the construction contract.
- S. Award of the construction contract by the Water District Board is currently scheduled for June 14, 2016.
- T. To fund the construction of the SF Bay to 101 Project, the Parties desire to amend this Agreement to reduce the Flood District's financial contribution to the Study and reallocate such funds toward construction funding for the SF Bay to 101 Project.

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

### **AGREEMENT**

#### **1. Funding Payment and Amount**

- A. The Parties agree to limit the Flood District's contribution to the Study Costs to the amount that has already been expended to-date, which totals \$930,847.83, provided the Flood District agrees to reallocate its remaining commitment of \$569,152.17 towards its \$2,060,000 funding commitment for construction of the SF Bay to 101 Project.
- B. As a result of the Flood District's reduced funding obligation toward the Study Costs, the Water District agrees to increase its contribution commitment to the Study Costs up to \$2,069,152.17, of which \$930,847.83 has already been expended, leaving a remaining commitment of up to \$1,138,304.34, which includes its initial commitment amount and the amount the Flood District is reallocating to construction of the SF Bay to 101 Project.
- C. In connection with the remaining Study Costs, Water District shall deposit into an escrow account as described in Section 2. Escrow Account of this Agreement, the amount requested by Authority, within twenty (20) days of receiving Authority's request for payment.
- D. Authority will submit to Water District requests for payment in accordance with estimated costs provided by the USACE to meet the local sponsor's share of USACE's costs for the succeeding fiscal year.
- E. The amount, method and timing of any credit for any approved in-kind services provided by either Flood District or Water District shall be as provided for in the Implementation Agreement.

## 2. Escrow Account

- A. USACE has established an independent interest bearing escrow account to receive the cash contributions required for Study Costs. The escrow account is segregated from any Authority accounts. Escrow instructions for the escrow account have been approved by both Flood District and Water District.
- B. All prior escrow account fees or charges have been deducted equally from the cash contribution amount deposited by Flood District and Water District. The escrow account shall be overseen by the Authority subject to disbursement as herein provided.
- C. All interest that accrues from monies deposited in the escrow account, will be applied toward Study Costs.

## 3. Disbursement of Funds

- A. The Authority shall review all requests for payment from the USACE pursuant to the FCSA submitted by the USACE. Upon determining that a request for payment or portion of a request for payment is deemed appropriate and justified by Authority's Executive Director, Authority shall promptly issue escrow instructions to Water District to deposit funds into the escrow account for USACE to draw down for Study Costs. The Authority shall not disburse funds from the escrow account except in accordance with this Section.
- B. The Authority shall provide semi-annual reports to the Flood District and Water District of receipts and expenditures made to and from the escrow account.

## 4. Management of FCSA and Study

The Authority, in its sole discretion, shall be responsible for the performance of the Authority's obligations as described in the FCSA related to conducting and overseeing the Study. Flood District and Water District shall have no rights or obligations pursuant to the FCSA to conduct or oversee the Study, except as provided in this Agreement or as provided in the Implementation Agreement. Flood District and Water District are members of the Authority's project management team that will consult with and provide advice to the Executive Director on the implementation of the FCSA.

## 5. 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 Parties 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, suspension, completion, 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.

## 6. **Retention of Records, Right to Monitor and Audit**

- A. Unless a longer period of time is required by law or federal or state grant funding agreements, the Parties shall maintain all financial records related to this Agreement and/or the Project for five (5) years after the Agreement expires or is terminated earlier pursuant to Section 8. Termination, of this Agreement. The records shall be subject to the examination and/or audit of each Party.
- B. Each year on January 2, or on a date mutually agreed to by the Parties and prior to termination and upon termination, the Authority shall submit to Flood District and Water District a statement of activities and balances for the escrow account to each Party. The Authority shall comply with all program and fiscal reporting requirements set forth in the FCSA and as required by this Agreement.

## 7. **Agreement Term**

This Agreement shall automatically terminate one hundred and eighty (180) days after the completion of the Study or termination of the FCSA.

## 8. **Termination**

- A. Termination for Cause
  - 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.

2. A final notice of termination may be given only after completion of the notice and cure process described in Section 8.A. and only with the approval of the governing body of the Party terminating the Agreement.

B. Termination for Convenience

Any Party may terminate this Agreement by providing sixty (60) days written notice to all Parties. Authority will send Water District a final invoice within sixty (60) days of the effective date of termination of this Agreement for any Study Costs incurred prior to effective date of termination not paid for by existing monies on deposit in the escrow account and Water District will remit payment to Authority within thirty (30) days of receipt of such invoice.

9. **Refund of Undisbursed Funds**

Undisbursed funds and interest shall be returned to Flood District and Water District within sixty (60) days of the completion of the Study or the termination of the FCSA and payment of all financial obligations of the Authority to the USACE under the FCSA.

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](mailto:len@sfcjpa.org)

Flood District: Department of Public Works  
555 County Center, 5th Floor  
Redwood City, California 94063  
Attention: James Porter, Director  
[jporter@smcgov.org](mailto:jporter@smcgov.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](mailto:ncamacho@valleywater.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 shall govern this Agreement. In the performance of this Agreement each party shall 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 Agreement, 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 Court, Northern District of California, in either Redwood City or San Jose, 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 perform services required pursuant to 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, Authority may contract with an accounting firm or an escrow company to fulfill its obligations described in Section 2. Escrow Account.

**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 all Parties without restriction or limitation upon their use.

16. **Entire Agreement**

This Agreement constitutes the entire agreement between the Authority, Flood District 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, Flood District, and the Water District.

17. **Further Actions**

The Authority, Flood District 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.

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.

*(SIGNATURES FOLLOW ON NEXT PAGES)*

**First Amended Agreement for Funding a Feasibility Study for  
San Francisquito Creek Among the  
San Francisquito Creek Joint Powers Authority,  
the San Mateo County Flood Control District  
and the Santa Clara Valley Water District**

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 for Funding a Feasibility Study for  
San Francisquito Creek Among the  
San Francisquito Creek Joint Powers Authority,  
the San Mateo County Flood Control District  
and the Santa Clara Valley Water District**

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: \_\_\_\_\_  
Norma J. Camacho  
Interim Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**First Amended Agreement for Funding a Feasibility Study for  
San Francisquito Creek Among the  
San Francisquito Creek Joint Powers Authority,  
the San Mateo County Flood Control District  
and the Santa Clara Valley Water District**

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: \_\_\_\_\_  
John Beiers  
County Counsel

By: \_\_\_\_\_  
Warren Slocum  
President, Board of Supervisors, San Mateo

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Agenda Item 3.c.

Authorize the Executive Director to execute an Actual Cost Contract with Pacific Gas & Electric that commits the San Francisquito Creek Joint Powers Authority to reimburse PG&E for 44.3% of the actual costs, up to a not-to-exceed amount of \$3,140,770, to modify natural gas transmission pipeline to improve that pipeline and accommodate the S.F. Bay-Highway 101 project



**DRAFT ACTUAL COST CONTRACT**

**PM 31189651**

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

**RECITALS:**

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

**AGREEMENT:**

1. Upon the receipt by PG&E of notice in writing from Authority, PG&E will commence and thereafter diligently prosecute the rearrangement of PG&E's facilities as nearly as possible in accordance with PG&E's Official IFC Drawing No. 31189651, attached hereto and marked Exhibit "A". PG&E will replace the 20" gas transmission pipe with 24" gas transmission pipe as depicted on the attached Exhibit "A", provided, however, that PG&E shall not be obligated to perform such work until necessary land rights have been acquired in a form satisfactory to PG&E for any of PG&E's facilities that must be replaced in a new location.
2. In the event the construction of temporary facilities is necessary, PG&E may use lands owned or controlled by Authority for the purpose of making such temporary installation provided that Authority shall have approved the location thereof. Upon completion of construction of such facilities in their permanent location, PG&E shall remove all temporary facilities.
3. During the progress of the work, PG&E may bill Authority not more than once each month for the actual net costs incurred by PG&E not previously reimbursed by Authority to the date of such billing, and Authority shall reimburse PG&E therefor. The actual cost is presently estimated to be \$7,089,775.00. Upon the completion of the work, Authority shall reimburse PG&E for 44.3% of the actual net cost which PG&E has incurred in effecting the rearrangement of PG&E's facilities, less the \$227,560.00 paid by the Authority in advance. Including this advance payment, the Authority's share under this Agreement shall not exceed \$3,140,770.00.

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

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

6. For such portion of PG&E's existing facilities as will remain in the present location on land or rights of way acquired by Authority, the parties will enter into a Consent to Common Use in the form attached and marked Exhibit C. PG&E will convey or quitclaim to Authority its land or land rights occupied by facilities to be abandoned or removed within the land or rights of way required by Authority for the construction of its project.

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

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

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

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

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

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

12. This Agreement is the entire agreement of the parties relating to PG&E's Gas Transmission Line 101 (PM # 31189651) for the Authority's flood control project and supersedes all prior negotiations, understandings, and agreements whether written or oral. This Agreement may be amended only by written agreement signed by both parties and no purported oral amendment to this Agreement shall be valid.

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

PACIFIC GAS AND ELECTRIC COMPANY

SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY

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

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By: Len Materman  
Executive Director