



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
August 24, 2017 at 3:30 p.m.**

AGENDA

1. ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF MEETING MINUTES: June 29, 2017 Regular Board meeting
4. PUBLIC COMMENT – *Individuals may speak on any topic for up to three minutes; during any other Agenda item, individuals may speak for up to three minutes on the subject of that item.*
5. REGULAR BUSINESS – Executive Director's Report
 - a. S.F. Bay-Highway 101 project: discuss construction activities and planning
 - b. S.F. Bay-Highway 101 project: authorize the Executive Director to execute a contract with Westland Contractors, Inc. to relocate a fire hydrant to East Bayshore Road in East Palo Alto
 - c. S.F. Bay-Highway 101 project: authorize the Executive Director to execute a contract with Hanford Applied Restoration & Conservation to construct restoration features in the Faber Marsh
 - d. Upstream of Highway 101 project update
 - e. Upstream of Highway 101 project: authorize the Executive Director to execute Amendment Number 2 to the January 8, 2013 consultant agreement with ICF Jones & Stokes for the project Environmental Impact Report
6. BOARD MEMBER COMMENTS – *Non-agendized requests or announcements; no action may be taken.*
7. ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda and supporting documents related to items on the Agenda can be viewed online by 3:30 p.m. on August 21, 2017 at sfcjpa.org -- click on the "Meetings" tab near the top.

NEXT MEETING: Regular Board meeting, September 28, 2017 at 3:30 PM, City of Palo Alto Council Chambers

San Francisquito Creek Joint Powers Authority
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Agenda Item 3
June 29, 2017 Board Meeting Minutes

Director Pine called the meeting to order at 3:55 p.m. at the City of Palo Alto Council Chambers, Palo Alto, California.

DRAFT

1) ROLL CALL

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

Members Absent: Director Abrica, City of East Palo Alto
Director Scharff, City of Pal Alto

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

Others Present: Trish Mulvey, Palo Alto resident; Jerry Hearn, Portola Valley Resident;
Dennis Parker, East Palo Alto resident; Michel Jeremias, City of Palo Alto;
Russell Chen, SCVWD; Ann Stillman, SMCFCD; Susan Glendening, Regional Water Quality Control Board; Xaiver Fernandez, Regional Water Quality Control Board

2) APPROVAL OF AGENDA

Director Keith made a motion to approve the agenda. Director Kremen seconded. Agenda approved 3-0. Director Abrica and Director Scharff not present.

3) APPROVE BOARD MEETING MINUTES: MAY 25, 2017 REGULAR BOARD MEETING

Director Keith made a motion to approve the May 25, 2017 Regular Board meeting minutes. Chairperson Pine seconded. May 25, 2017 Regular Board meeting minutes approved 3-0. Director Abrica and Director Scharff not present.

4) PUBLIC COMMENT

Jerry Hearn, Portola Valley resident; shared a summary of the City of Palo Alto's Buckeye Creek hydraulic evaluation project meeting he attended. Mr. Hearn noted that a presentation will be made to the Palo Alto Parks and Recreation Committee in July.

5) REGULAR BUSINESS

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

Mr. Materman provided the Board with an update on the Bay- Highway 101 project activities.

Director Kremen asked if there was anything toxic found during the cleanup. Mr. Murray replied saying that the debris along the Palo Alto floodwall line appeared to be landfill from the 1950's. Mrs. Byler noted that the material is not suitable for unrestricted disposal and will be disposed at a "Class-II" landfill due to detections of pesticide and lead above Regional Water Board Environmental Screening Levels. Director Kremen asked if there was a way recoup the funds expended from the debris cleanup. Russell Chen, SCVWD Project Manager, stated that the SCVWD is currently tracking the costs associated with this issue, and that concrete material on the East Palo Alto side is being removed so the sheet piles can be installed.

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Mr. Materman discussed the closure of the Friendship bridge as a result of utility relocation activities. He also discussed the May 26, 2017 Dispute Resolution Board (DRB) meeting and the DRB's subsequent recommendations that could significantly increase project costs related to soil import and export. Mr. Materman outlined actions that the SCVWD is taking to reduce the financial impact, including identifying available sources of soil to build the new levees.

Chairperson Pine directed staff to report back to the Board updates on these soil-related costs.

Director Keith asked if there was going to be improved signage in the trail area after completion of the project. Director Kremen asked if a "your tax dollars at work" message could be added to current signage in the project area. Mr. Materman confirmed there will be new signage upon project completion and that we will work to add similar language to temporary signage.

Dennis Parker, East Palo resident, complimented the SFCJPA staff on the summary provided of the current project status, noting the information was very easy to share with his neighbors.

Upstream of Highway 101 project update

Mr. Materman provided the Board with an update on the project upstream of Highway 101.

Director Keith emphasized that any floodwall alternative will not be an acceptable to Menlo Park residents as floodwalls will decimate the entire side of the creek. Director Keith also asked which of the five proposed upstream detention sites in Alternative 3 would be evaluated. Mr. Materman replied that there would be one to three sites analyzed in some detail.

Director Keith stated that removing the sack concrete on the Palo Alto side is a superior idea to removing the vegetation on the other side.

Director Kremen expressed his hope that we can have a holistic project as he does not want to see what happened in San Jose this past winter happen here, and that he does not want to place aesthetics above protecting the people.

Director Keith asked if the Pope-Chaucer Bridge is included in the EIR and if we have funding to complete its design. Mr. Materman responded that bridge replacement is in the EIR and we have funding for the new design.

Director Kremen asked if anything is not on the table regarding upstream detention on Stanford land. Mr. Materman listed the possible sites for upstream detention discussed in the EIR: Searsville Reservoir, former Boething tree nursery, Webb Ranch, Stanford Golf Course, and Lake Lagunita, and that Stanford considers the golf course and Lake Lagunita Lake as unsuitable for this purpose.

Trish Mulvey, Palo Alto resident; discussed the consultant hired to work on the public engagement process and suggested using a decision tree to help people understanding this project's complexity. Mrs. Mulvey noted that Flood 2.0 guidance has been issued, and asked if the Board could discuss its recommendations.

6) BOARD MEMBER COMMENTS

Director Kremen shared with the Board that the SCVWD might be working with state legislators across the nation to develop a flood bill that can expedite permitting in previously-flooded areas.

7) ADJOURNMENT

Chairperson Pine adjourned the meeting at 5:03 pm.

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

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Agenda Item 5
Executive Director's Report

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

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

Over the past year, we have discussed construction activities for our project to improve public safety and recreation, and increase marsh habitat, along San Francisquito Creek from the Bay to Highway 101. The following summarizes the progress of construction activities since the last Board meeting eight weeks ago.

The SFCJPA, Santa Clara Valley Water District (SCVWD), cities of Palo Alto and East Palo Alto continue to meet weekly with the SCVWD's levee and floodwall contractor (Teichert Construction) to coordinate construction activities, work sequencing, and permit compliance. Additionally, the SFCJPA continues to coordinate utility relocation with those entities, the City of Palo Alto's Golf Course project, PG&E, and the East Palo Alto Sanitary District (EPASD).

The following activities are underway or planned for 2017:

- On June 1, a diversion system, aided by the use of a wet well at the City of Palo Alto Pump Station, was installed to bypass water coming down the creek around the construction site.
- Floodwall installation began on June 10, and will continue on the Palo Alto side from East Bayshore Road to Geng Road, and on the East Palo Alto side from East Bayshore Road to Daphne Way for the remainder of this construction season. Also this year in the floodwall area, Teichert Construction will install marsh plantings outside the low-flow channel.
- The existing Palo Alto levee from East Bayshore Road to Geng Road and in-channel sediment on the East Palo Alto side are currently being excavated; some of the excavated soils are being used to build a trail/maintenance road behind the new floodwalls.
- Excavated material from both sides of the creek that are suitable for levee fill are being used to construct the new Palo Alto side levee on former Palo Alto Golf Course land.
- Since construction of floodwalls in the upstream portion of the project between East Bayshore Road and Geng Road/Daphne Way will be completed this year, and construction of levees from Geng Road/Daphne Way to downstream of Friendship Bridge will be completed next year, the SFCJPA's design consultant has developed tie-in features to be built this fall that will connect the new floodwalls to the existing levees. These features will provide interim flood protection this winter in the gaps between this year's work and next year's work to begin in June 2018.
- On August 21, PG&E mobilized on-site to install the cross-creek portion of their new gas pipeline. Upon completion, PG&E will remove portions of the abandoned line that are outside the existing channel (in 2018, Teichert will remove the portions under the existing channel and levees).
- Once PG&E completes installation, Teichert Construction will degrade the abandoned levee that separates the creek from the outer Faber Tract to the north of the Palo Alto Airport runway. The SFCJPA has secured FAA clearance for project activities, and continues to work with Airport management to minimize the impacts of construction activities on Airport operations.
- Once Teichert Construction has completed its work at the outer Faber Tract, a contractor to the SFCJPA will begin to restore the Faber Tract marsh and install marsh plants in that area. The contract to do this work is agenda item 5.c. at today's Board meeting.
- From September 1 to November 15, 2017, the East Palo Alto Sanitary District will install a new sewer line under the creek and tie into its line along the north side of the Palo Alto Golf Course.

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- As described last meeting, the Dispute Resolution Board (DRB) findings for import/export of soil have the potential to significantly affect project costs. To minimize the financial impacts of this issue, project partners are working to identify sources of free or low cost fill that meets the project's geotechnical and environmental criteria. Another project being conducted by the Santa Clara Valley Water District at McKelvey Park near Permanente Creek, can provide a significant portion of the soil that we need for this year, and SCVWD and SFCJPA staff are working to arrange for imports to begin this month. We have not yet identified a low-cost recipient of soil export and are evaluating areas where excavated soils that do not meet levee geotechnical standards can be placed permanently on the project site to minimize offhaul and disposal costs. We have established that some of the sediment excavated from the channel will be used on our project as a marsh base in the areas with rock slope protection.
- Caltrans is projecting to complete its in-channel work on the Highway 101 bridge replacement project by early October of this year.
- A quarterly project partnering session was held August 8, with continued progress toward project goals of completing all work safely by the end of 2018. This meeting included an executive session with key stakeholders to formulate solutions to key project issues.

b. S.F. Bay-Highway 101 project: authorize the Executive Director to execute a contract with Westland Contractors, Inc. to relocate a fire hydrant to East Bayshore Road in East Palo Alto

On December 17, 2016, the SFCJPA entered in to a contract with the utilities engineering firm of Freyer and Laretta, Inc (FLI) to design a new fire hydrant and water line to replace an existing fire hydrant adjacent to the incoming floodwall in East Palo Alto. The new hydrant will be installed along East Bayshore Road at a location recommended by the Menlo Park Fire Protection District.

The project was advertised for construction bids on June 29, 2017. Bids were received on July 19, with Westland Contractors, Inc. providing the lowest responsive bid. The cost of construction will be \$87,000. Funds for this work are provided by State grants secured by the SFCJPA.

A construction contract reviewed by SFCJPA legal counsel was included in the bid packets, and is attached here for Board approval. The City of East Palo Alto has agreed to waive the regular fee for an encroachment permit to install the new line and hydrant along its public right of way.

Proposed Board Action: Authorize the Executive Director to execute the enclosed contract with Westland Contractors, Inc. to relocate a fire hydrant to East Bayshore Road in East Palo Alto for the S.F. Bay to Highway 101 project

c. S.F. Bay-Highway 101 project: authorize the Executive Director to execute a contract with Hanford Applied Restoration & Conservation to construct Bay-Highway 101 project restoration features in the Faber Marsh

Included in the environmental regulatory permits for the project were requirements to restore portions of the Faber Tract marsh as mitigation for project impacts to marsh species. In the fall of 2016, the SFCJPA conducted a public pre-qualification process to identify contractors that were interested in submitting bids for marsh restoration construction activities in and around the Faber Tract marsh that have specific experience in this type of work in sensitive habitats. This process resulted in three contractors being pre-qualified to bid on the project. In the months that followed, the SFCJPA and our ecological consultant, HT Harvey and Associates, completed the design and contract documents needed to invite bids on the project. These documents were released to the pre-qualified contractors on July 26, 2017.

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One complete and responsive bid was received by the due date of August 16, 2017 from Hanford Applied Restoration & Conservation (Hanford ARC), a Bay Area construction group with a history of successful projects of this type. Hanford ARC's bid, which includes three years of any required maintenance, has a not-to-exceed amount \$697,038. A construction contract with Hanford ARC, developed with SFCJPA legal counsel, is attached for Board approval. The marsh restoration construction activities will begin immediately following Teichert's work in the outer Faber Tract marsh, likely in mid-November.

Proposed Board Action: Authorize the Executive Director to execute the enclosed contract with Hanford Applied Restoration & Conservation to construct S.F. Bay-Highway 101 project restoration features in the Faber Marsh.

d. Upstream of Highway 101 project update

As discussed at previous Board meetings, the SFCJPA continues to move forward with project planning and environmental documentation for a capital project upstream of Highway 101.

Over the summer, we have continued to work with our Environmental Impact Report consultant (ICF), SCVWD staff, and Stanford University and its consultants, to more precisely define and refine project alternatives and gather information on temporary and permanent impacts. Our objective is to move forward with a project that is meaningful to – and supported by – our communities, and achievable in the near future within regulatory, land, and cost constraints.

In addition to meeting requirements of the EIR process, the SFCJPA is planning two extra workshops to engage the public and ensure that the proposed project will best achieve the needs of interested stakeholders and to identify the Least Environmentally Damaging Practicable Alternative (LEDPA), which is a requirement of our permits. On July 20, 2017 SFCJPA Director and Palo Alto Mayor Greg Scharff, SFCJPA Alternate Director Lisa Gauthier and I met with leadership of the Regional Water Quality Control Board to discuss these public meetings and other issues related to our upcoming permit application. The SFCJPA has secured the services of the Center for Collaborative Policy at Sacramento State University, one of the service providers recommended to the SFCJPA by the Regional Water Quality Control Board, to provide facilitation at the stakeholder workshops. We are working now to schedule the first workshop.

On this project, the SFCJPA is partnering with the U.S. Army Corps of Engineers to prepare federal environmental documents that parallel the SFCJPA's EIR. Advancing two separate documents preserves our ability to seek federal funding and early input from federal regulatory agencies, and our ability to implement improvements on our own or on our own schedule, should the federal process be delayed or terminated. Corps staff have requested, and we recently provided, \$50,000 to establish the federally preferred project alternative (called the National Economic Development, or NED, Plan). The Corps has informed us that the cost to complete its Draft Feasibility Report/EIS is \$600,000. Before providing those funds, SFCJPA and SCVWD staff will review the NED plan, and at the September SFCJPA Board meeting we plan to discuss the costs and benefits of moving forward with the Corps.

e. Upstream of Highway 101 project: authorize the Executive Director to execute Amendment Number 2 to the January 8, 2013 consultant agreement with ICF Jones & Stokes for the project Environmental Impact Report

At the December 13, 2012 meeting, the SFCJPA Board authorized the Executive Director to sign a contract with ICF Jones & Stokes, Inc. (ICF) to conduct environmental planning for flood protection, ecosystem restoration and recreational improvements along San Francisquito Creek upstream of Highway 101.

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In January 2017, the SFCJPA Board authorized the Executive Director to execute Amendment 1 to that agreement, which was a no-cost rescoping (updating) of the work. At this time, SFCJPA staff have drafted Amendment 2 to that agreement, which proposes to:

1. exercise Optional Task 9 of the Agreement and direct ICF to prepare two Biological Assessments at a cost not to exceed \$45,890, and
2. add to the Scope of Work and exercise Task 13, to prepare analysis required by federal and state permits for the Least Environmentally Damaging Practicable Alternative (LEDPA), at a cost not to exceed \$64,400.

A Biological Assessment must be prepared by a project owner prior to submitting an application for a Clean Water Act Section 404 permit, which is administered by the U.S. Army Corps of Engineers, for each federal resource agency with which the Corps is required to seek formal consultation for that project. A Corps permit for the SFCJPA's work upstream of Highway 101 will require formal consultation from the U.S. Fish and Wildlife Service and National Marine Fisheries Service due to the possibility of impacts to protected species under the jurisdiction of those two agencies.

Prior to submitting permit applications to the Corps and the Regional Water Quality Control Board, a project owner must also prepare an analysis that demonstrates that the proposed project represents the Least Environmentally Damaging Practicable Alternative (LEDPA). A LEDPA analysis is required under the Clean Water Act for the Corps' Section 404 permit and for the Regional Water Board Clean Water Act Section 401 permit (which has requirements beyond the analysis for the Corps). The LEDPA analysis to be prepared under Task 13 is intended to satisfy the needs for both the Corps' 404(b)1 analysis and the Regional Water Board.

Funding for this contract is from a funding agreement between the SFCJPA and SCVWD. Enclosed in this Board packet is a proposed Amendment 2 to that Agreement, with revised versions of Exhibits A, B, and C.

Proposed Board Action: Authorize the Executive Director to execute Amendment Number 2 (enclosed) to the January 8, 2013 consultant agreement with ICF Jones & Stokes for the S.F. Bay-Highway 101 project Environmental Impact Report.

Submitted by:



Len Materman
Executive Director

Agenda Item 5.b.

S.F. Bay – Highway 101 project:

Draft contract with Westland Contractors, Inc.

to relocate a fire hydrant to

East Bayshore Road in East Palo Alto

AGREEMENT FOR PUBLIC IMPROVEMENT

WATER MAIN EXTENSION AND HYDRANT PROJECT

THIS AGREEMENT, made in duplicate and entered into in the SFCJPA of Menlo Park, County of San Mateo, State of California on _____, 2017 by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, hereinafter called "SFCJPA", and Westland Contractors, Inc, a California Corporation, hereinafter called "Contractor." Contractor's California State Contractor's license number is 1018057. Contractor's Department of Industrial Relations registration number is 1000042471.

WITNESSETH:

WHEREAS, SFCJPA has taken appropriate proceedings to authorize construction of the public work and improvements herein provided for and to authorize execution of this Agreement; and

WHEREAS, pursuant to State law and SFCJPA requirements, a notice was duly published for bids for the contract for the improvement hereinafter described; and

WHEREAS, on _____, after notice duly given, the SFCJPA awarded the contract for the construction of the improvements hereinafter described to Contractor, which the Board found to be the lowest responsive, responsible bidder for these improvements; and

WHEREAS, SFCJPA and Contractor desire to enter into this Agreement for the construction of said improvements.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. Scope of work.

Contractor shall perform the work described in those Contract Documents entitled: WATER MAIN EXTENSION AND HYDRANT PROJECT, SFCJPA PROJECT NO. 84100 in a good and workmanlike manner.

2. The Contract Documents.

The complete contract between SFCJPA and Contractor consists of the following documents: this Agreement; Notice Inviting Sealed Bids, attached hereto as Exhibit A; Instructions to Bidders; the accepted Bid Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted before the Notice of Award), attached hereto as Exhibit B; the specifications, provisions, addenda, complete plans, profiles, and detailed drawings contained in the bid documents titled "WATER MAIN EXTENSION AND HYDRANT PROJECT, SFCJPA PROJECT NO. 84100" attached as Exhibit C; the State of California Standard Specifications 2010, as promulgated by the California Department of Transportation; prevailing wage rates of the State of California applicable to this project by State law; and all bonds; permits from regulatory agencies with jurisdiction; change orders, and supplemental agreements which are collectively hereinafter referred to as the Contract Documents.

All rights and obligations of SFCJPA and Contractor are fully set forth and described in the Contract Documents, which are hereby incorporated as if fully set forth herein. All of the above described documents are intended to cooperate so that any work called for in one, and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents.

3. Contract Price.

The SFCJPA shall pay, and the Contractor shall accept, in full, payment of the work above agreed to be done, the sum of Eighty-Seven Thousand dollars (\$87,000.00), called the "Contract Price". This price is determined by the lump sum and unit prices contained in Contractor's Bid. In the event authorized work is performed or materials furnished in addition to those set forth in Contractor's Bid and the Specifications, such work and materials will be paid for at the unit prices therein contained. Said amount shall be paid in progress payments as provided in the Contract Documents.

4. Termination

At any time and with or without cause, the SFCJPA may suspend the work or any portion of the work for a period of not more than 90 consecutive calendar days by notice in writing to Contractor that will fix the date on which work will be resumed. Contractor will be granted an adjustment to the Contract Price or an extension of the Time for

Completion, or both, directly attributable to any such suspension if Contractor makes a claim therefor was provided in the Contract Documents.

The occurrence of any one or more of the following events will justify termination of the contract by the SFCJPA for cause: (1) Contractor's persistent failure to perform the work in accordance with the Contract Documents; (2) Contractor's disregard of Laws or Regulations of any public body having jurisdiction; (3) Contractor's disregard of the authority of the Engineer; or (4) Contractor's violation in any substantial way of any provision of the Contract Documents. In the case of any one or more of these events, the SFCJPA, after giving Contractor and Contractor's sureties seven calendar days written notice of the intent to terminate Contractor's services, may initiate termination procedures under the provisions of the Performance Bond. Such termination will not affect any rights or remedies of SFCJPA against Contractor then existing or that accrue thereafter. Any retention or payment of moneys due Contractor will not release Contractor from liability. At the SFCJPA's sole discretion, Contractor's services may not be terminated if Contractor begins, within seven calendar days of receipt of such notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 calendar days of such notice.

Upon seven calendar days written notice to Contractor, SFCJPA may, without cause and without prejudice to any other right or remedy of SFCJPA, terminate the Contract for SFCJPA's convenience. In such case, Contractor will be paid for: (1) work satisfactorily completed prior the effective date of such termination, (2) furnishing of labor, equipment, and materials in accordance with the Contract Documents in connection with uncompleted work, (3) reasonable expenses directly attributable to termination, and (4) fair and reasonable compensation for associated overhead and profit. No payment will be made on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

5. Antitrust Claims.

In entering into this Agreement, Contractor offers and agrees to assign to SFCJPA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. § 15) or under the Cartwright Act (Business and Professions Code Section 16700 *et seq.*) arising from purchases of goods, services, or materials

pursuant to the Agreement. This assignment shall be made and become effective at the time SFCJPA tenders final payment to Contractor without further acknowledgment by the parties.

6. Prevailing Wages.

SFCJPA and Contractor acknowledge that the Project is a public work to which prevailing wages apply.

7. Workers' Compensation.

Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by signing this Contract, the Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract.”

8. Provisions Cumulative.

The provisions of this Agreement are cumulative and in addition to and not in limitation of any other rights or remedies available to the SFCJPA.

9. Notices.

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notices required to be given to the SFCJPA shall be addressed as follows:

Kevin Murray
Project Manager
San Francisquito Creek JPA
615 B Menlo Avenue
Menlo Park, CA 94025

Notices required to be given to Contractor shall be addressed as follows:

Name:
Company: Westland Contractors, Inc.
Address:

10. Interpretation

As used herein, any gender includes the other gender and the singular includes the plural and vice versa.

11. Waiver or Amendment.

No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the SFCJPA and the Contractor. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

12. Controlling Law.

This Agreement is to be governed by and interpreted in accordance with the laws of the State of California.

13. Successors and Assignees.

This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto but may not be assigned by either party without first obtaining the written consent of the other party.

14. Severability.

If any term or provision of this Agreement is deemed invalid, void, or unenforceable by any court of lawful jurisdiction, the remaining terms and provisions of the Agreement shall not be affected thereby and shall remain in full force and effect.

15. Indemnity.

Contractor shall indemnify, defend, and hold the SFCJPA, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of, pertaining or relating to the actual or alleged negligence, recklessness or willful misconduct of Contractor, its employees, subcontractors, or agents, or on account of the performance or character of the services, except for any such claim arising out of the sole negligence or willful misconduct of the SFCJPA, its officers, employees, agents, or volunteers. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify SFCJPA shall be limited to that allowed by state law. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

IN WITNESS WHEREOF, two identical counterparts of this Agreement, consisting of five pages, including this page, each of which counterparts shall for all purposes be deemed an original of this Agreement, have been duly executed by the parties hereinabove named on the day and year first hereinabove written.

SFCJPA,

ATTEST:

By _____
Len Materman, Executive Director

"CONTRACTOR"

Approved as to form:

JPA Legal Counsel

By _____
Print Name and Title

Agenda Item 5.c.

S.F. Bay-Highway 101 project:

Draft contract with

Hanford Applied Restoration & Conservation to
construct restoration features in the Faber Marsh

CONTRACT

SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY CONTRACT FOR TIDAL MARSH AND UPLAND HABITAT ENHANCEMENTS IN AND AROUND FABER TRACT MARSH

THIS CONTRACT ("Contract") is made and entered this _____ day of _____, 20____ ("Effective Date"), by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, a Joint Powers Authority of the State of California ("JPA") and Hanford Applied Restoration and Conservation, a California corporation, ("Contractor"). Contractor's California State Contractor's license number is 461167.

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Contract Documents. The Contract Documents consist of this Contract, the Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying the Bid and any post-Bid documentation submitted before the Notice of Award), the Bonds, permits from regulatory agencies with jurisdiction, General Provisions, Special Provisions, Plans, Standard Plans, Standard Specifications, Reference Specifications, The Reference Documents Listed on Appendix I, Addenda, Change Orders, and Supplemental Agreements. The Contract Documents are attached hereto and incorporated herein by reference.

2. Scope of Services. Contractor shall perform the Work in a good and workmanlike manner for the project identified as **TIDAL MARSH AND UPLAND HABITAT ENHANCEMENTS IN AND AROUND FABER TRACT MARSH** ("Project"), as described in this Contract and in the Contract Documents.

3. Compensation. In consideration of the services rendered hereunder, JPA shall pay Contractor a not to exceed amount of Six Hundred Ninety-Seven Thousand Thirty Eight dollars (\$697,038.00) in accordance with the prices as submitted in the Bid.

4. Incorporation by Reference. All of the following documents are attached hereto and incorporated herein by this reference: Workers' Compensation Certificate of Insurance, Additional Insured Endorsement (Comprehensive General Liability), Additional Insured Endorsement (Automobile Liability), and Additional Insured Endorsement (Excess Liability).

5. Antitrust Claims. In entering into this Contract, Contractor offers and agrees to assign to JPA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. § 15) or under the Cartwright Act (Business and Professions Code Section 16700 *et seq.*) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time JPA tenders final payment to Contractor without further acknowledgment by the parties.

6. Prevailing Wages. JPA and Contractor acknowledge that the Project is a public work to which prevailing wages apply.

7. Workers' Compensation. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In

accordance with the provisions of Labor Code Section 1861, by signing this Contract, the Contractor certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract."

8. Titles. The titles used in this Contract are for convenience only and shall in no way define, limit or describe the scope or intent of this Contract or any part of it.

9. Authority. Any person executing this Contract on behalf of Contractor warrants and represents that he or she has the authority to execute this Contract on behalf of Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

10. Entire Agreement. This Contract, including the Contract Documents and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between JPA and Contractor. This Contract supersedes all prior oral or written negotiations, representations or agreements. This Contract may not be modified or amended, nor any provision or breach waived, except in a writing signed by both parties that expressly refers to this Contract.

11. Counterparts. This Contract may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed the Contract the day and year first above written.

SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

By: _____
Executive Director

ATTEST:

By: _____
Clerk of the Board

APPROVED AS TO FORM:

By: _____
General Counsel

Dated: _____

Hanford Applied Restoration and Conservation
("CONTRACTOR")

By: _____

By: _____

Agenda Item 5.e.

Upstream of Highway 101 project:

Draft Amendment Number 2 to the
January 8, 2013 consultant agreement with
ICF Jones & Stokes for the project
Environmental Impact Report

AMENDMENT NO. 2 TO AGREEMENT FOR ENVIRONMENTAL PLANNING FOR FLOOD PROTECTION, ECOSYSTEM RESTORATION AND RECREATION IMPROVEMENTS ON SAN FRANCISQUITO CREEK UPSTREAM OF HIGHWAY 101 BETWEEN THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY AND ICF JONES AND STOKES, INC.

This Amendment No.2 ("Amendment"), effective as of the date it is fully executed by the parties, amends the terms of the Consultant Agreement ("Agreement") between THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY (Authority) and ICF Jones & Stokes Inc. ("Consultant"), dated January 8, 2013 and amended on January 26, 2017.

Capitalized terms not otherwise defined will have the meaning set forth in the Agreement.

WHEREAS, Authority desires to exercise Optional Task 9.0 of the Agreement and direct Consultant to prepare two (2) Biological Assessments at a cost Not To Exceed \$46,000.00, and

WHEREAS, Authority desires to add Optional Task 13.0, prepare analysis required by federal and state permits for the Least Environmentally Damaging Practicable Alternative, to the Scope of Work, and

WHEREAS, Authority desires to exercise Optional Task 13.0 of the Agreement and direct Consultant to prepare a 404(b)1 Analysis at a cost Not To Exceed \$62,400.00

NOW, THEREFORE, in consideration for the mutual promises and agreements contained herein and notwithstanding anything to the contrary in the Agreement, Consultant and Authority hereby agree as follows:

1. Exhibit A, Scope of Services, is deleted in its entirety and replaced by Revised Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full.
2. Exhibit B, Schedule of Performance, is deleted in its entirety and replaced by Revised Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full.
3. Exhibit C, Compensation, is deleted in its entirety and replaced by Revised Exhibit C, attached hereto and incorporated herein by this reference as though set forth in full.
4. The Not To Exceed Amount of the Agreement is increased to \$893,521.
5. All other terms and conditions stated in the original Agreement remain in full force and effect.

AUTHORITY

CONSULTANT

By:

Title:

Date:

By:

Title:

Date:

Revised Exhibit A –Scope of Services

Project Understanding

This Scope of Work (SOW) involves completion of an Environmental Impact Report, Biological Assessments, Clean Water Act 404b1 alternatives analysis and associated studies for the San Francisquito Creek Flood Protection, Ecosystem Restoration and Recreational Improvement Project between Hwy 101 and El Camino Real. This revised SOW was developed to account for the project's need for Biological Assessments and a Clean Water Act 404b1 alternatives analysis. Optional tasks for public outreach and permitting are also included. The anticipated term for this scope of work is December 19, 2016 – April 30, 2018.

Task Structure

ICF will perform the tasks listed below for the proposed work as requested by the San Francisquito Creek Joint Powers Authority (SFCJPA). The scope has been separated into nine major tasks and four optional tasks:

- Task 1.0 – Project Administration
- Task 2.0 – Review Updated and New Information
- Task 3.0 – Revise Project Description
- Task 4.0 – Conduct Environmental Investigations and Studies
- Task 5.0 – Develop Draft Environmental Impact Report
- Task 6.0 – CEQA Public Noticing and Participation
- Task 7.0 – Develop Final Environmental Impact Report
- Task 9.0 – Prepare Biological Assessments
- Task 13.0 – Prepare analysis required by federal and state permits for the Least Environmentally Damaging Practicable Alternative
- Task 8.0 – Outreach Support (Optional Task)
- Task 10.0 – Prepare Department of the Army Section 404/10 Individual Permit Application (Optional Task)
- Task 11.0 – Prepare Application for Section 401 Water Quality Certification (Optional Task)
- Task 12.0 – Prepare Application for Streambed Alteration Agreement (Optional Task)

Task 1.0 Project Administration

ICF will provide project administration services during the term of the Agreement. ICF's project manager, Adam Wagschal, will be responsible for managing the ICF team; providing the resources to complete the job; monitoring project budgets and schedules; providing status reports; and maintaining an efficient, effective document-tracking system. Key project staff will be available for telephone consultation and regular team meetings throughout the duration of the Agreement on any significant issues (or potential deviations) related to the project schedule, work plan, or fees.

1.1 Prepare Progress Reports and Scheduling Revisions

ICF will submit monthly invoices, status reports, and project schedule reports. These documents will conform to format and content guidelines agreed upon by ICF and the SFCJPA.

Deliverables

- Monthly invoices, status reports, and project schedule updates (electronic and paper copies).

Assumptions:

- Up to fifteen monthly invoices and associated documentation will be submitted.

1.2 Attend Project Management Related Meetings

ICF will attend monthly project team meetings. ICF will prepare the meeting agendas, action items, and meeting notes in consultation with the SFCJPA project manager. These meetings will be conducted at the SFCJPA office in Menlo Park or another nearby location. Conference calls may be substituted for in-person meetings at the discretion of the SFCJPA project manager.

Deliverables:

- Meeting preparation materials, meeting agendas, and meeting summary notes.

Assumptions:

- Up to fifteen monthly meetings will be held.

Task 2.0 Review Updated and New Information

This task involves obtaining and reviewing any updated and new project information (e.g., updated design plans and construction schedule) that comprise the new elements of the project.

Assumptions:

- SFCJPA will actively work with ICF to identify and retain information needed for EIR development.

Task 3.0 Revise Project Description

We understand that the project description has been modified since ICF last worked on the project. ICF will work with the project team to produce a draft detailed project description, including discussion of both project and program level elements for analysis in the EIR.

Deliverables:

- Draft, revised, and final project description.

Assumptions:

- ICF will develop up to two draft project descriptions for SFCJPA review and comment and a final project description.
- SFCJPA will provide all information required for development of the project description.

Task 4.0 Conduct Environmental Investigations and Studies

Under the previous scope of work for this project, ICF worked with SFCJPA to identify data gaps and begin environmental investigations. Tree surveys were started and a wetland delineation was conducted for channel improvement sections. Additionally, a cultural resources investigation was developed by Far Western Anthropological Research Group. This scope of work includes wetland delineations at the project's potential detention basins and completion of the tree surveys. A traffic study may also be required by Palo Alto, East Palo Alto, or Menlo Park for the project. This scope of work does not include a traffic study. We recommend the SFCJPA contract directly with a smaller traffic firm if such a study is required. We can provide recommendations for qualified firms.

4.1 Wetland Delineation

ICF completed a wetland delineation for the project's channel improvement sections. This sub-task is for a wetland delineation at the project's potential detention basins. The delineation will determine the type and extent of wetlands and other waters of the United States that may be subject to regulation by the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The delineation will be conducted in accordance with guidelines issued by the Corps, including documentation of the delineation and field verification of work completed with appropriate Corps personnel. ICF will submit a draft wetland delineation report to the SFCJPA for review and prepare a final wetland delineation report that incorporates comments from the SFCJPA.

Deliverables:

- Draft and Final U.S. Army Corps of Engineers Waters of the U.S. Jurisdictional Delineation (one electronic copy in MS Word format and five paper copies; wetlands mapping in GIS format).

Assumptions:

- One meeting with SFCJPA and one field verification meeting with the Corps.
- One draft and one final wetland delineation report.
- SFCJPA will provide detailed maps of the potential detention basins.
- As needed, SFCJPA will gain access to the sites for ICF to complete the delineation.

4.2 Complete Tree Survey and Tree Survey Report

Approximately 70% of the required tree survey was completed in 2014. The purpose of the tree survey is to document existing trees that could be effected by implementation of the project. The location of potentially effected trees is recorded along with information regarding tree species, size

and health. This sub-task will complete the required field work and report preparation.

Deliverables:

- Draft, Revised Draft, and Final Tree Survey Report.

Assumptions:

- It is assumed that previously collected data remains acceptable for inclusion in the Tree Survey Report and subsequent analysis in the EIR.

4.3 Alternatives Screening Report

ICF has begun a screening level analysis of all the flood protection alternatives. However, the draft documents will need to be revised to reflect the revised project description and information from future Field Investigations. Based on the results of the Field Investigations and review of existing alternatives, ICF will complete the screening level analysis of all the flood protection alternatives provided by SFCJPA, and potential recreational and environmental enhancements, to fulfill the requirements of CEQA. We understand that at this time the SFCJPA has no preferred alternative. The report would summarize the screening analysis to date and create a CEQA-appropriate environmental screening that considers many factors, including feasibility. The analysis would also include screening of all upstream detention options.

In order to provide the SFCJPA with a legally defensible document that anticipates challenges from a variety of stakeholders we recommend the following:

- ICF will review the hydrology and hydraulic modeling developed by the SCVWD. This will be the primary basis for the analysis of alternatives related to hydrology, hydraulics, and water quality (e.g. sediment transport and channel dynamics). This review will verify that the assumptions in the CEQA analyses are consistent with the assumptions of the modeling.
- ICF will develop a list of clarifying questions for SFCJPA response, so that the descriptions of alternatives appropriately describes hydrology, hydraulics, and water quality assumptions and features included in alternative analysis modeling runs.
- ICF will provide the SFCJPA a list of CEQA assumptions for review and comment, to verify that operation and maintenance of the creek as a flood conveyance facility is accurately described for the life of the project (e.g. baseline Searsville Dam assumptions, creek sediment and vegetation maintenance, federal flood control levee maintenance, city/county bridge maintenance, Caltrans bridge maintenance, outfall operation and maintenance, etc.)
- ICF will also provide the SFCJPA a list of CEQA assumptions for review and comment to verify that the operation and maintenance of proposed facilities, floodwalls, bypass tunnels, etc. is accurately described.
- ICF will work with the SFCJPA to develop a list of CEQA assumptions for recreational and environmental enhancement alternatives based on the SFCJPA's program goals and objectives in addition to baseline CEQA thresholds.

Deliverables:

- Draft, revised draft, and final alternatives screening report.

Assumptions:

- SFCJPA will provide adequate detail regarding project alternatives to inform the alternatives screening report.
- ICF assumes up to two meetings with the SFCJPA and appropriate staff from its member agencies, to review and discuss the CEQA assumptions set forward for all alternatives prior to initiating the screening process.

Task 5.0 Develop Draft Environmental Impact Report

ICF's work under Task 5 would follow the format and structure of ICF's work on the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation San Francisco Bay to Highway 101 Project. ICF would work with the SFCJPA prior to initiation of Task 5 to discuss our previous work and identify areas where the SFCJPA may want to diverge from the previous format.

5.1 Conduct Environmental Scoping

ICF will prepare for and participate in a CEQA scoping meeting. ICF will help answer questions from the public and will develop a summary of environmental issues raised during the scoping meeting.

Deliverables:

- Presentation materials, handouts and notes.
- Documentation of public scoping comments in MS Word or Excel.

Assumptions:

- Scoping meeting will be attended by two ICF staff.
- ICF assume that the SFCJPA will secure the meeting location, produce and distribute notification posters and invitations, provide audio-visual equipment and translation as needed, and provide refreshments.

5.2 Prepare Administrative Draft EIR

ICF will prepare an Administrative Draft EIR to be delivered to the SFCJPA. The project team will review the Administrative Draft and provide consolidated comments to ICF for use in preparing the Draft EIR.

As part of the Administrative Draft EIR, ICF will prepare a Mitigation Monitoring and Reporting Program for the project. Required format is a matrix showing impacts, mitigation measures, timing, status, and document references.

Deliverables:

- Administrative Draft EIR, Including Mitigation Monitoring and Reporting Program. Ten bound paper copies, one camera-ready copy, and one electronic copy in MS Word format.

5.3 Prepare Draft EIR

Based on Project Team comments provided to ICF, ICF will revise the Administrative Draft EIR. The resulting document will be the Draft EIR, including the Mitigation Monitoring and Reporting Program. SFCJPA will review a screen check copy of the Draft EIR to ensure that comments have been incorporated prior to printing.

Deliverables:

- Screen Check Draft EIR (electronic copy in MS Word format).
- Draft EIR - Fifteen bound paper copies for the State Clearinghouse and twenty additional bound paper copies, ten CDs in PDF format, and one electronic copy in PDF and MS Word format for the SFCJPA.

Task 6.0 CEQA Public Noticing and Participation

6.1 Prepare Notice of Completion

In coordination with SFCJPA, ICF will prepare the Notice of Completion for filing with the State Clearinghouse. ICF will be responsible for the NOC filing with the State Clearinghouse, including production of EIR copies for the clearinghouse at our Sacramento Office, as was done for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project San Francisco Bay to Highway 101 Project.

Deliverables:

- Draft and Final Notice of Completion (one electronic copy in MS Word format).

6.2 Prepare Notice of Availability

In coordination with SFCJPA, ICF will prepare the Notice of Availability for publishing in the PaloAlto Daily News, San Mateo County Daily Journal and Palo Alto Weekly.

Deliverables:

- Draft and Final Notice of Availability (one electronic copy in MS Word format).

6.3 Prepare for and Attend Public Meetings

ICF will provide support for SFCJPA staff for up to eight public meetings within the watershed to present the project and collect public comments on the Draft EIR. Optionally, up to three of these meetings could be conducted during DEIR scoping. ICF will provide documented public comments to SFCJPA. Additionally, ICF will coordinate with US Army Corps of Engineer's staff so information regarding the Project's Environmental Impact Statement can presented at the meetings as appropriate.

Deliverables:

- Meeting notes containing public comments in MS Word or Excel.

Assumptions:

- ICF assumes that the SFCJPA will secure meeting locations, produce and distribute notification posters and invitations, provide audio-visual equipment and translation as needed, and provide refreshments.

6.4 Respond to Public Comments

SFCJPA will collect and collate written public comments on the Draft EIR and provide these collated comments to ICF. In collaboration with SFCJPA, ICF will prepare responses to public comments on the Draft EIR for review by SFCJPA.

Deliverables:

- Draft, revised, and final response to comments in addition to an electronic copy in MS Word format required for a screen check. This document will be part of the Final EIR.

Task 7.0 Develop Final Environmental Impact Report

7.1 Prepare Final EIR

Based on the public comments and the Draft Response to Comments, ICF will prepare the Administrative Final EIR, incorporating the public comments and responses and content of the Draft EIR. The Administrative Final EIR will include the Mitigation Monitoring and Reporting Program.

ICF will provide the Administrative Final EIR to SFCJPA for review. Based on comments on the Administrative Final EIR, ICF will prepare the Final EIR. SFCJPA will review a screen check copy of the Final EIR to ensure that comments have been incorporated.

Deliverables:

- Administrative Final EIR. One electronic copy in MS Word format required.
- Screencheck Final EIR. One electronic copy in PDF format required.
- Final EIR, including the Mitigation Monitoring and Reporting Program, response to comments, and technical appendices (for example, maps, GIS files, presentation materials, technical data). For the Final EIR, thirty (30) to forty (40) bound paper copies, one camera-ready copy, 10 CDs in PDF format, and one electronic copy in PDF and MS Word format.

7.2 Prepare Findings and Statement of Overriding Considerations

In coordination with SFCJPA, ICF will prepare the CEQA Findings and Statement of Overriding Considerations (if needed), as directed. ICF will submit the Draft Findings and Statement of Overriding Considerations to SFCJPA for comment, and prepare the final version of these documents based on comments resulting from that review.

Deliverables:

- Draft and Final Findings and Statement of Overriding Considerations.

7.3 Prepare Notice of Determination (NOD)

ICF will prepare the Notice of Determination, in coordination with SFCJPA.

Deliverables:

- Draft and Final Notice of Determination. One electronic copy in MS Word format.

7.4 Assist with Public Hearing/Adoption of FEIR

ICF will provide support to SFCJPA for the public hearing at which the SFCJPA Board of Directors considers the Final EIR for approval. This support may include answering technical questions at the meeting/hearing. ICF will record public comments during this meeting and provide these to SFCJPA.

Deliverables:

- Meeting notes and public comments.

Task 9.0 Prepare Biological Assessments

San Francisquito Creek provides habitat for three animal species that are listed as Threatened under the Endangered Species Act (ESA): Central California Coast Steelhead (*Oncorhynchus mykiss*), California red-legged frog (*Rana aurora daytonii*) and California tiger salamander (*Ambystoma californiense*). Because the project has a federal nexus (i.e., it will require a permit from the US Army Corps of Engineers), take of these species can be permitted through an ESA Section 7 consultation processes. Red-legged frog and California tiger salamander take would be permitted through consultation with US Fish and Wildlife Service (USFWS) and steelhead take would be permitted through consultation with National Marine Fisheries Service (NMFS). Each of these consultations would rely on a BA. ICF will prepare the two BAs that will support ESA Section 7 consultations for steelhead, California red legged frog and California tiger salamander.

In preparing the BAs, ICF will:

- Assess habitat suitability for listed species.
- Coordinate with SFCJPA to determine effects on species
- Support SFCJPA efforts for formal and or informal consultation/coordination with the USFWS and NMFS.

Deliverables

- Two draft BAs (one for steelhead and one for red-legged frog and California tiger salamander) including all mapping, tables and figures for San Francisquito Creek Joint Powers Authority (SFCJPA) review and comment.
- Two BAs resolving SFCJPA review comments for submittal to USFWS and NMFS.
- Two final BAs resolving USFWS and NMFS comments.

Assumptions

- Existing information is adequate to support development of the BAs, no further field work is needed.
- BAs will only be required for steelhead, red legged frog and California tiger salamander, no other species will require take authorization under the ESA.

Task 13.0 Prepare analysis required by federal and state permits for the Least Environmentally Damaging Practicable Alternative

This task involves completion of a Clean Water Act (CWA) Section 404(b)(1) Alternatives Analysis. Section 404(b)(1) alternatives analysis involves development of a range of project alternatives that are analyzed, in compliance with federal CWA Section 404(b)(1) Guidelines, to identify the Least Environmentally Damaging Practicable Alternative (LEDPA) among them. The primary focus of the analysis is a comparison of the quantity or scale of discharges to waters of the United States and waters of the state among the alternatives; however, the analysis must also take into account other environmental impacts and benefits. The U.S. Army Corps of Engineers (USACE) and San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) can only issue Clean Water Act Section 404 and 401 permits for projects that meet the Guidelines. In other words, no discharge into jurisdictional waters shall be permitted if there is a practicable alternative which would have less adverse impact on aquatic resources, so long as the alternative does not have other significant adverse environmental consequences (40 CFR § 230.10a). It is not uncommon for a Section 404(b)(1) Alternatives Analysis to result in identification of a LEDPA that differs, slightly or substantially, from the preferred alternative identified in a California Environmental Quality Act or National Environmental Policy Act document for the same project. The LEDPA identified through this process will become the project that is put forward in the permit applications for authorization under CWA Section 404 and 401.

13.1 Agency Coordination Meetings

ICF would participate in up to two meetings with the USACE and SFBRWQCB to discuss content, level of analysis, and other expectations for the report. Additionally, the Section 404(b)(1) Alternatives Analysis would be discussed with SFCJPA staff during standing meetings that are already scheduled to support EIR development.

13.2 Develop Alternatives

Using existing information to the greatest extent possible, and with input from the SFCJPA, ICF will develop a range of alternatives (typically 4 or more) to be considered in the analysis. One of the alternatives to be devised and considered will be a “no fill” alternative.

13.3 Technical Analysis and Screening of Alternatives

Each alternative will be evaluated relative to the project objectives and additional screening criteria, which will include the following considerations that are consistent with the Section 404(b)(1) Guidelines, and will meet the robust evaluation of alternatives required by the USACE and SFBRWQCB for their internal process:

- Cost (cost will include justification related to any cap on overall project cost);
- Logistics (e.g., ability to schedule, stage, access site, and conduct necessary sequence of activities to complete the action);
- Technologies (consideration of feasible technologies that could also meet project objectives); and

- Environmental Impact, including to wetlands, streams, riparian habitat and buffers.

The evaluation of the alternatives relative to these screening criteria will focus on, but may not be limited to, the following elements: hydrologic and hydraulic analysis, quantitative wetland/buffer impacts, channel and streambank erosion, sediment transport, and qualitative evaluation of potential impacts and improvements to fish habitat and other special-status species. To address Basin Plan requirements, the analysis also will incorporate potential impacts on the designated beneficial uses of San Francisquito Creek. The analysis will address both direct and indirect impacts from excavation and fill discharges, including (but not limited to) earth moving and grading, vegetation impacts, and channel morphology and associated fluvial processes. The Water Board's dredge and fill permit checklist will be utilized to facilitate analysis of direct and indirect impacts on the creek's beneficial uses from each alternative. This analysis will determine which alternatives are practicable.

13.4 Factual Determinations and Identification of LEDPA

The 404(b)(1) document will include a summary of screening results that clarifies relative impacts and practicability of the alternatives. Pursuant to 40CFR 230.10, the practicable alternatives will be further examined to identify which of them constitutes the LEDPA. Under 40CFR 230.10 the direct and indirect impacts of each practicable alternative should be examined with respect to physical, chemical, and biological components of the aquatic ecosystem. This step may introduce additional avoidance and minimization measures that enable a practicable alternative to achieve status as the LEDPA.

Deliverables

- Draft Table of Alternatives and Screening Criteria (electronic copy)
- Final Table of Alternatives and Screening Criteria (electronic copy)
- Draft Section 404(b)(1) Alternatives Analysis Report (electronic copy)
- Final Section 404(b)(1) Alternatives Analysis Report (electronic copy, in format compatible with USACE requirements for public noticing)

Assumptions

- Only two scoping meetings will be required.
- A maximum of twenty alternatives will be screened to determine if they warrant detailed analysis. A maximum of six alternatives will be analyzed in detail.
- SFCJPA will provide construction scenarios and project design information for each alternative adequate for the analysis.
- SFCJPA will provide cost estimates for each alternative.
- SFCJPA will provide all needed modelling and special studies, including any required sediment modelling.
- Wetland delineations will not be required beyond what has already been conducted in the project area. For areas where wetland delineations have not been conducted, existing information will be adequate. Analysis of existing imagery may be used to fill some information gaps.

- The Final Section 404(b)(1) Alternatives Analysis Report will be included as an attachment to the SFCJPA’s CWA Section 404 Individual Permit application, which USACE will post for 30-day public notice.
- The Final Section 404(b)(1) Alternatives Analysis Report will be included as an attachment to the SFCJPA’s application for CWA Section 401 Water Quality Certification, which SFBRWQCB will post for 30-day public notice.
- SFCJPA may choose to allow USACE and SFBRWQCB to review the Draft Section 404(b)(1) Alternatives Analysis Report before the CWA Section 404 Individual Permit application is submitted. This scope and budget includes resources for preparing responses to SFCJPA and agency comments; however, preparing responses to public comments is not covered in this scope and budget.

Task 8.0 Outreach Support (Optional Task)

ICF will assist in planning and coordinating up to three additional meetings to disseminate project information to the public. ICF will attend meetings and provide support equipment and materials, as requested. Meetings shall seek to obtain preliminary public input on SFCJPA flood control, ecosystem restoration, and recreational improvements addressed in the EIR, and identify issues or problems highlighted by the affected communities. ICF will record and provide to SFCJPA comments from the meetings. The meetings would likely occur in each of the three affected communities of East Palo Alto, Palo Alto, and Menlo Park.

ICF may also provide the following (not included in the current cost proposal):

- Materials formatted for SFCJPA website.
- Newsletters.
- Additional public outreach information.

Deliverables:

- Presentation materials, handouts and notes.
- Documentation of comments from meetings.
- Materials formatted for SFCJPA Website (not included in the current cost proposal).
- Newsletters (not included in the current cost proposal).
- Additional public outreach information (not included in the current cost proposal).

Task 10.0 Prepare Department of the Army Section 404/10 Individual Permit Application (Optional Task)

Because the project will result in the discharge of fill material to waters of the United States and work below the mean high tide of a Navigable Waterway, ICF will prepare a Standard Department of the Army Permit Application package (Individual Permit [IP]) for USACE that describes the project, impacts to waters of the United States, onsite mitigation for impacts, and includes documents that address the other federal environmental laws including the NHPA, ESA, and Section 401 of the CWA. The application will also address how the project meets the U.S. Environmental Protection Agency’s (EPA’s) Section 404(b)(1) Guidelines by summarizing the alternative development process done in coordination with USACE, to date. ICF will conduct the following tasks in order to develop the Individual Permit application.

10.1 Determine Extent of Impacts to Waters of the United States

To determine the location and area of impacts to waters of the United States, ICF will prepare impact maps using the already completed wetland delineation maps overlain with the project footprint. ICF's regulatory specialists and GIS staff will use these maps to create an impact table showing permanent and temporary impacts to waters of the United States.

Deliverables

- An impact map and accompanying table that identifies and tabulates all impacts to waters of the United States resulting from the project.

Assumptions

- SFCJPA or their engineers will provide the project footprint in an electronic format that can be used by ICF's mapping staff to create impact maps.
- The project footprint provided will not change.
- The required wetland delineation is already complete and adequate.

10.2 Attend a Pre-Application Meeting with USACE

Under this task, ICF will arrange and attend a pre-application meeting with SFCJPA, USACE, and other appropriate agencies to discuss the proposed project and permitting issues. At the meeting we will determine the most efficient strategy to obtain a Section 404 Permit and discuss any other topics including information on project alternatives that USACE will need with the application to satisfy EPA's Section 404(b) (1) Guidelines.

Prior to the meeting, ICF will prepare and send out an agenda and meeting materials about environmental and cultural resources in the area that will be important for avoidance and minimization strategies.

Deliverables

- Prior to the meeting ICF will send out draft meeting materials to SFCJPA. After incorporating any suggested changes, ICF will send the final materials to USACE and meeting attendees.
- Following the meeting, ICF will prepare a memorandum detailing the pre-application meeting, main discussions, and decisions.

10.3 Prepare and Submit 404 Permit Application

ICF will complete the application form (ENG 4345), and attach additional sheets that describe the project need and purpose, project description, project impacts, addresses of adjoining property owners (to be provided by SFCJPA) and other information required in regulations to make the application complete. To advance the permit process, ICF may prepare a draft public notice that can be used by USACE to notify the public of the application. In addition, ICF will submit copies of the final biological assessment, cultural resources report, and Section 404(b)(1) alternatives information with the permit application. A cover letter will be provided with the submittal.

Deliverables

- Draft Public Notice for USACE.

- Draft Application Form and attachment sheets.
- Final Application Form and attachment sheets.
- Cover Letter to USACE.

Assumptions

- SFCJPA will provide the means for ICF to quantify the types and materials to be discharged to waters of the United States (drawings or construction specifications).
- SFCJPA will provide addresses of adjoining property owners.

10.4 Respond to Public Notice Comments

Once the USACE has received a complete application for the individual permit, they will publish a public notice. The public notice is sent to interested parties, including adjoining property owners, interested individuals, agencies, and organizations. Comments received on the public notice are sent to the applicant for response. ICF, coordinating with the project engineers and SFCJPA, will prepare and submit to USACE a response to all public notice comments. ICF will consult with organizations or individuals as necessary when responding to comments.

Deliverables

- A draft of the response to public notice comments will be furnished to SFCJPA for review before submission to USACE.

10.5 Manage the USACE Permit Review Process

ICF's strategy for delivering an earlier permit decision involves frequent, proactive communication and preparing documents for USACE. Representing SFCJPA, ICF expects regular coordination with USACE to answer questions, address concerns and otherwise keep the review process on track. ICF will seek opportunities to facilitate and expedite USACE review, including drafting USACE's permit decision document and special conditions for the USACE permit.

Assumptions

- One bi-weekly phone call with SFCJPA and up to two meetings with USACE.

Task 11.0 Prepare Application for Section 401 Water Quality Certification

Clean Water Act (CWA), Section 401, requires that the discharge of dredged or fill material into waters of the United States, including wetlands, does not violate state water quality standards. As required by Section 404 of the CWA, water quality certification from the Regional Water Quality Control Board (RWQCB) must be obtained for permit compliance. ICF will compile the necessary information and submit a complete certification package to RWQCB. Additionally, ICF will coordinate with the RWQCB throughout the process to seek appropriate compliance documentation.

Deliverables

- Draft request for certification for review by SFCJPA.
- Revised request for certification for action by the RWQCB.

Assumptions

- The project area will be subject to formal certification rather than a waiver.
- The discretionary action is for the construction of the improvements and does not cover operation.
- The project design (i.e., plans and specifications) will include best management practices (BMPs) to seek avoidance, minimization, or mitigation of effects on water quality.

Task 12.0 Prepare Application for Streambed Alteration Agreement

A streambed alteration agreement, in compliance with Section 1602 of the California Fish and Game Code, is required when projects will substantially divert, obstruct, or change the natural flow of a river, stream or lake; substantially change the bed, channel, bank of a river, stream, or lake; or use material from a streambed.

ICF will prepare and submit the application package, describing the project features; construction period; construction methods; impacts to vegetation, fish, and wildlife; and the proposed monitoring plan. ICF will coordinate with CDFW throughout the process.

Deliverables

- Draft application for review by SFCJPA.
- Revised application for action by CDFW.

Revised Exhibit C – Compensation

The costs associated with Amendment 1, which were the remaining costs to complete preparation of the EIR, were \$429,316. This new amendment (Amendment 2) includes additional costs of \$45,890 for Biological Assessments and \$64,400 to prepare analysis required by federal and state permits for the Least Environmentally Damaging Practicable Alternative. These costs do not include the Optional Tasks listed below. The new not-to-exceed amount is thus increased to \$893,521. Consultant shall not exceed the costs within each Task listed below without prior written approval of the SFCJPA.

Cost Overview	
Task 1.0 – Project Administration	\$46,773
Task 2.0 – Review Updated and New Information	\$5,000
Task 3.0 – Revise Project Description	\$10,000
Task 4.0 – Conduct Environmental Investigations and Studies	\$43,700
Task 5.0 – Develop Draft Environmental Impact Report	\$185,000
Task 6.0 – CEQA Public Noticing and Participation	\$68,900
Task 7.0 – Develop Final Environmental Impact Report	\$53,343
Task 9.0 – Prepare Biological Assessments	\$45,890
Task 13.0 – Prepare analysis required by federal and state permits for the Least Environmentally Damaging Practicable Alternative	\$64,400
Direct Expenses	\$16,600
Total	\$539,606

Optional Tasks	
Task 8.0 – Outreach Support	\$18,000
Task 10.0 – Prepare Department of the Army Section 404/10 Individual Permit Application	\$30,000
Task 11.0 – Prepare Application for Section 401 Water Quality Certification	\$15,000
Task 12.0 – Prepare Application for Streambed Alteration Agreement	\$15,000