



SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY

**Notice of Regular Meeting of the Board of Directors**

**Thursday, March 23, 2023**

**3:30 P.M.**

**Menlo Park City Council Chambers**

**701 Laurel Street, Menlo Park, CA 94025**

**\*Members of the Public may speak on any agenda item for up to three minutes\***

**Hybrid Registration:**

**Register in advance for this meeting:**

**<https://us02web.zoom.us/meeting/register/tZcsf-GsrDkoEtEDL03UtugDehg3w7Rg0FiN>**

**After registering, you will receive a confirmation email containing information about joining the meeting.**

1. CALL TO ORDER AND ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF MEETING MINUTES March 9, 2023, Special Board Meeting
4. PUBLIC COMMENT: *Individuals may speak on a non-agendized topic for up to three minutes.*
5. ACTION ITEMS
  - A. Review and consider accepting the updated Master Service Agreement with HDR, Inc. for services related to the SAFER Bay project and adopt resolution 23-03-23-A.
  - B. Review and consider recommending approval of the updates to the San Francisquito Creek Joint Powers Authority Members Agreement, the “Second Amended and Re-stated Agreement”, and adopt resolution 23-03-23-B.
6. Information Items
  - A. Board Handbook Update

**750 Menlo Ave. Suite 250. Menlo Park, CA 94025**

**SFCJPA.ORG**



SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY

B. Executive Director's Report

7. Board Member Announcements, Information Items, and Requests (Information only)

8. Closed Session

A. Public Employee Performance Evaluation

TITLE: Executive Director

9. ADJOURNMENT

PLEASE NOTE: Board meeting Agenda and supporting documents can be viewed online no later than 3:30 p.m. on Monday, March 20, 2023, at [sfcjpa.org](http://sfcjpa.org) -- click on the "Meetings" tab near the top. The Board Meeting package will be emailed to those on our Board Meeting distribution list prior to the Board meeting date. Contact SFCJPA Board Clerk, Miyko Harris-Parker at [MHParker@sfcjpa.org](mailto:MH Parker@sfcjpa.org) if you are not on this list and would like to be added.

**San Francisquito Creek Joint Powers Authority**  
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**Agenda Item 3**  
**March 9, 2023, Special Board Meeting Minutes**  
**DRAFT**

Director Abrica called the meeting to order at 3:32 p.m., at the City of Menlo Park Council Chambers, Menlo Park, CA. This meeting was held in a hybrid with all members of the Board and SFCJPA staff in person and other meeting attendees participating in person and vial streaming video and teleconference call.

Public input was solicited on each item and all public comments received are noted herein.

**1) ROLL CALL**

Members Present:        Director Ruben Abrica, City of East Palo Alto  
                                 Director Drew Combs, City of Menlo Park  
                                 Director Rebecca Eisenberg, Santa Clara Valley Water District (Valley Water)  
                                 Director Greer Stone, City of Palo Alto  
                                 Director Dave Pine, San Mateo County Flood and Sea Level Rise Resiliency District

SFCJPA Staff Present: Margaret Bruce, Executive Director  
                                 Miyko Harris-Parker, Staff  
                                 Kevin Murray, Staff  
                                 Tess Byler, Staff

Legal Present:            Lori Liu

**2) APPROVAL OF AGENDA**

ACTION: Motion and second (Combs/Eisenberg) to approve the agenda, passed 5-0.

Roll call vote:  
Director Abrica Aye  
Director Combs Aye  
Director Eisenberg Aye  
Director Pine Aye  
Director Stone Aye

**3) APPROVAL OF MEETING MINUTES: January 26, 2023, Regular Meeting minutes**

ACTION: Motion and second (Stone/Eisenberg) to approve the January 26, 2023, Regular Meeting minutes, passed 5-0.

Roll call vote:  
Director Abrica Aye  
Director Combs Aye  
Director Eisenberg Aye  
Director Pine Aye  
Director Stone Aye

**4) PUBLIC COMMENT**

Jerry Hearn shared with the Board that Climate Resilient Communities (CRC) (a community partner with the SFCJPA) received a Community Partnership Award from Stanford University for recognition of CRC's work in climate adaption in frontline communities. Mr. Hearn encouraged the Board and staff to send well wishes to dedicated community member Trish Mulvey as she had recently been hospitalized.

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**5) CONSENT AGENDA**

2023 Board Meeting Schedule – Approve 2023 meeting schedule.

Accept the 2023 Edition of the SFCJPA Comprehensive Plan via Resolution 23-03-09-A

ACTION: Motion and second (Pine/Stone) to approve the Consent Agenda passed 5-0.

Roll call vote:

Director Abrica Aye

Director Combs Aye

Director Eisenberg Aye

Director Pine Aye

Director Stone Aye

**6) ACTION ITEMS**

Board reorganization – Board roles and Committee assignments

ACTION: Motion and second (Abrica/Eisenberg) to approve Board roles and Committee assignments passed 5-0.

Director Abrica nominated Director Combs for Chair.

Director Eisenberg nominated herself for Vice-Chair.

Personnel Committee: Director Abrica and Director Stone.

Finance Committee: Director Pine and Director Eisenberg.

ACWAJPIA Board Director and Alternate: Director Combs and Senior Project Manager Tess Byler.

Roll call vote:

Director Abrica Aye

Director Combs Aye

Director Eisenberg Aye

Director Pine Aye

Director Stone Aye

Authorize the Executive Director to negotiate scope of work and contract terms for a survey of the Creek channel, not to exceed \$45,000.

ACTION: Motion and second (Stone/Abrica) to approve authorizing the Executive Director to negotiate scope of work and contract terms for a survey of the Creek channel, not to exceed \$45,000, passed 5-0.

Roll call vote:

Director Abrica Aye

Director Combs Aye

Director Eisenberg Aye

Director Pine Aye

Director Stone Aye

Director Eisenberg asked if \$45,000 will be enough authorization for the surveying and if the consultants will have access to everywhere they need to survey. Ms. Bruce stated that staff will come back to the Board if the costs exceed \$45,000 and that the access to property is uncertain at this time.

Director Stone asked if Stanford and Valley Water would share in the costs associated with survey. Ms. Bruce responded saying that sharing the costs with Stanford and Valley Water is a goal.

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Director Abrica expressed the importance of having the surveying work completed.

Xenia Hammer asked if the surveying would affect the timing of the Newell Bridge and Pope Chaucer Bridge projects. Ms. Bruce explained that the surveying may or may not affect the timing of the projects.

**7) INFORMATION ITEMS**

Study Session on Reach 2: The Urban Reach 2 Project extends from East Bayshore Road to just upstream of the Pope Chaucer Bridge. Staff and Project Partners will present an update on the status of the Reach 2 project: impacts of the New Year's Eve storm and what we are doing, project elements planning and design, permitting, access & easements, and funding.

Executive Director Margaret Bruce, City of Palo Alto Public Works Assistant Director Holly Boyd, U.S. Army Corps of Engineers Senior Project Manager Jamie O'Halloran, Valley Water Associate Geotechnical Engineer Madu Thummaluru presented a summary of the New Year's Eve storm and updates on the Reach 2 project.

Director Eisenberg requested maps and images of the Newell and Pope Chaucer bridge's project elements.

Dick Held asked if there is a plan in place to use supplemental sandbagging near Pope Chaucer bridge. Mr. Held noted that the dates mentioned in the presentation for expected construction start differ from the dates listed in the Comprehensive plan. Mr. Held questioned why after twenty-five years funding is still in question for the Newell Bridge project.

Jeff Shore asked if the Reach 2 project has been designed to handle the Stanford project.

Jim Wiley congratulated the Board and staff on the modeling update.

Eduardo-Pelegri-Llopart requested that staff provide a visual timeline of what has occurred over the past twenty-five years with the creek and the SFCJPA.

Xenia Hammer voiced strong support for the designs for the Newell and Pope Chaucer projects.

Ms. Bruce stated that the Comprehensive Plan will be updated to address the current scheduling as understood by all SFCJPA project partners. Ms. Bruce explained that the Reach 2 project was not specifically designed with the Stanford project in mind and that project partners are paying attention to the elements of the Stanford project.

Director Combs acknowledged that tree removal will be significant and asked staff to speak briefly on the matter. Senior Project Manager Tess Byler provided a general number of more than 500 trees evaluated in the Reach 2 area and said the minutes would reflect current number of trees to be removed as shown below by Site and City in the following table. This number does not include any from top of bank as that is currently being evaluated.

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<b>Reach 2 Area</b>	<b>Trees removed</b>
<b>Site 1: 8 trees</b>	8
Palo Alto: 8	
East Palo Alto: 0	
Menlo Park: 0	
<b>Site 2: 55 trees</b>	55
Palo Alto: 3	
East Palo Alto: 52	
Menlo Park: 0	
<b>Site 3: 8 trees</b>	8
Palo Alto: 0	
East Palo Alto: 8	
Menlo Park: 0	
<b>Site 4: 2 trees</b>	2
Palo Alto: 1	
East Palo Alto: 1	
Menlo Park: 0	
<b>Site 5: 1 tree</b>	1
Palo Alto: 1	
East Palo Alto: 0	
Menlo Park: 0	
<b>Pope Chaucer Bridge: 86 trees</b>	
Palo Alto: 50	50
East Palo Alto: 0	0
Menlo Park: 36	36
<b>Total</b>	<b>160</b>

Director Stone asked if after the Reach 2 project is completed, which is a 70-year event project, will we be able to address increased flood capacity over time. Senior Project Manager Kevin Murray explained that the original design of the project was a project for a 100-year event and that the design was not accepted by the public therefore we regrouped and adjusted our approach to reduce impacts and protect to the 70-year event.

Director Pine asked for clarification on the gap in funding for the Newell bridge. Ms. Boyd stated that the current gap estimates were prepared last fall and that the project team is working with the consultant to verify current gap amount and then reapply to Caltrans for the funding for the gap.

Executive Director's Report

Ms. Bruce presented the Executive Director's report.

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**8) BOARD MEMBER COMMENTS, INFORMATION ITEMS, REQUESTS and ANNOUNCEMENTS**  
**(Information only)**

Director Eisenberg requested to have a deep dive on the SFCJPA projects.

**9) ADJOURNMENT**

Adjourned at 5:37 pm.

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

**Agenda Item 5.A. Updated Master Service Agreement with HDR, Inc. for SAFER Bay project**

**Background**

The Master Service Agreement with HDR, Inc., was executed with Board approval after a competitive bid and award process in accordance with SFCJPA contract procedures that included a panel of outside reviewers. In late October 2013, the SFCJPA signed a Master Service Agreement with HDR, Inc., the lead firm in a consultant team that includes the firms ESA and HT Harvey, to conduct project planning and design activities along the Bayfront areas of East Palo Alto and Menlo Park. The project was halted 2019-2021 due to funding issues and has progressed using the limited funding from our California Department of Water Resources (DWR) grant.

On March 3, 2023, the Governing Board of the San Francisco Bay Restoration Authority (SFBRA) approved a supplemental award of up to \$3,980,000 in grant funding to the San Francisquito Creek Joint Powers Authority (SFCJPA) for planning and design of the SAFER Bay Project in East Palo Alto and Menlo Park. This funding augments \$1,000,000 that was awarded 2022 by the SFBRA. Funding for the SFBRA is from 2016’s voter approved Measure AA twenty-year \$12 parcel tax. Additional funding for SAFER Bay is from the California Department of Water Resources, with local match from the Cities of East Palo Alto and Menlo Park.

The SFBRA funding will allow us to complete CEQA, engineering designs up to 30% for all reaches in East Palo Alto and Menlo Park, and required technical evaluations for permitting that were not included in 2013.

The MSA specifies that work is funded by Task Orders. To date the following expenditures have occurred by Task Order:

<b>Task Order</b>	<b>Work Performed</b>	<b>Approved Fee</b>	<b>Spent Fee</b>
1	Feasibility Study, East Palo Alto and Menlo Park, 2016	\$559,976	\$552,864.26
2	Feasibility Study, Palo Alto, 2019	\$468,995	\$391,216
3	Moving forward with design and environmental documentation of selected project elements in East Palo Alto and Restoration options for Ponds R1 and R2 in Menlo Park	\$1,290,000	\$936,881.30
4	Continuing with above, using additional \$1,000,000 funding from SFBRA. This task order would be modified to include the supplemental funding of \$3,980,000.	\$1,320,210	0
<b>Total</b>		<b>\$3,639,181</b>	<b>\$1,880,961.60</b>



The current MSA specifies *“In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \$4,300,000.00 unless specifically approved in advance, in writing, by Authority.”*

As shown in the table, the total spent amount of approximately \$1,880,961.60 and the SFBRA total award of \$4, 980,000 totals \$6,860,961.60, which exceeds the cap specified in the MSA of \$4,300,000. Additional funding is from DWR Grant No. 4600009954 totaling approximately \$706,027, for a total of \$7,566,988.60 in possible funding.

### **Discussion**

The \$4,300,000 MSA cap was based on a cost estimate from 2013 for a more limited scope of work than is now necessary. Based on additional and more current information, tasks must be added. To fully utilize available grant funding and enable SAFER Bay’s CEQA work, the MSA cost cap must be increased, in accordance with MSA requirements. Expanding the cost cap will enable completion of CEQA, engineering design up to 30% and required evaluations for permitting for the SAFER Bay Project.

### **Recommendation**

Update the MSA cap not to exceed \$7,600,000 and incorporate SAFER Bay project areas and tasks by approving resolution 23-03-23-A.

RESOLUTION NUMBER 23-03-23-A

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY  
UPDATED MASTER SERVICE AGREEMENT FOR SAFER  
BAY PROJECT**

**BE IT RESOLVED** by the Board of Directors of the San Francisquito Creek Joint Powers Authority that the Board of Directors hereby agrees to increase the funding limit specified in the Master Service Agreement between the San Francisquito Creek Joint Powers Authority and HDR Inc. from \$4,300,000 to not to exceed \$7,600,00 in order to complete CEQA and engineering designs up to 30% and utilize up to the total of \$4.98M in funding that has been authorized by the San Francisco Bay Restoration Authority as well as remaining funds in DWR Grant Number 4600009954.

Approved and adopted on March 23, 2023, the undersigned hereby certify that the foregoing Resolution was duly adopted by the Board of Directors of the San Francisquito Creek Joint Powers Authority.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Vice Chairperson                      Date: 03/23/2023

\_\_\_\_\_  
Chairperson    Date: 03/23/2023

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel                                      Date: 03/23/2023

## **Agenda Item 5.B. Second Amended Restated SFCJPA Members Agreement**

### **Background**

When the SFCJPA was formed in 1999 a founding members agreement established the framework within which the organization operated. In 2020, with the establishment of the San Mateo County Flood and Sea Level Rise Resiliency District and that organization's assumption of the San Mateo County Flood Control functions, the SFCJPA members agreement was reviewed and the elements relating to the new agency member were updated. During the 2020 process, many additional updates were noted as being necessary, although not urgent.

### **Discussion**

Over the past two years the members agreement has been evaluated and discussed among member senior staff, technical leads, and legal counsels, and many improving edits have been recommended. The clean draft document and marked-up version of the current draft document is included in the board packet for your review.

Elements of the agreement that have been clarified though this process include:

- Reconciliation of original document text to actual practice (for example: hiring of JPA staff, and board roles).
- Clarification of SFCJPA authority for and decision-making process regarding land acquisition.
- Clarification of San Mateo Agencies representation on the SFCJPA Board to prevent duplicative representation.
- Clarification of SFCJPA scope regarding shoreline projects and watershed stewardship.
- Modernization and simplification of language for clarity.
- Addition of now-standard clauses common to local government agreements.
- Format reconciliation.

Recently, key member representatives and legal staffs have met and conferred. The attached document reflects the complete and final input of all parties with mutual concurrence.

### **Recommendation**

Review the proposed final Second Amended and Restated SFCJPA Members Agreement document. Provide any additional input or direction.

If the Board is satisfied with this document, approve this document via the associated board resolution, and direct staff to coordinate the ratification of the Second Amended and Restated SFCJPA Members Agreement with all member agencies.

**SECOND AMENDED AND RESTATED  
JOINT POWERS AGREEMENT**

**FOR THE**

**SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY**

AMENDED AND RESTATED

as of

\_\_\_\_\_, 2023

**SECOND AMENDED AND RESTATED JOINT POWERS AGREEMENT FOR  
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY**

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## **SECOND AMENDED AND RESTATED JOINT POWERS AGREEMENT FOR THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY**

This Second Amended and Restated Agreement Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority (Agreement) is made by and among the City of East Palo Alto, the City of Menlo Park, the City of Palo Alto, the San Mateo County Flood and Sea Level Rise Resiliency District, and the Santa Clara Valley Water District (each a Member Entity and collectively, the Member Entities), all of which are public entities organized and operating under the laws of the State of California, and each of which is a public agency as defined in California Government Code section 6500. This Agreement is effective upon full execution by all Member Entities (Effective Date).

### **RECITALS**

- A. The Joint Exercise of Powers Act, Government Code sections 6500 et seq. (JPA Law), permits two or more local public entities by agreement to jointly exercise any power common to them.
- B. Following years of effort to address environmental and flooding concerns related to the watershed and floodplain of San Francisquito Creek (encompassing approximately 50 square miles from the Santa Cruz Mountains to San Francisco Bay), and soon after the flood of record in 1998 damaged approximately 1,700 properties, the Member Entities established the San Francisquito Creek Joint Powers Authority (Authority) pursuant to that certain “Joint Powers Agreement Creating the San Francisquito Creek Joint Powers Authority,” dated as of May 18, 1999, to collectively contribute resources and implement policies and projects of mutual interest relating to the primary natural features that unite them, including the San Francisquito Creek.
- C. The Joint Powers Agreement Creating the San Francisquito Creek Joint Powers Authority, dated as of May 18, 1999, was thereafter revised pursuant to the Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority, Amended and Restated as of January 1, 2020.
- D. Each Member Entity agrees to contribute resources and funding towards implementation of projects of mutual interest and benefit relating to San Francisquito Creek and San Francisco Bay shoreline.
- E. The governing body of each Member Entity has determined that it is in the Member Entity’s best interest and the public interest that this Second Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority be executed.

NOW, THEREFORE, the Member Entities, by, between and among themselves, in consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

#### **1. Creation of the San Francisquito Creek Joint Powers Authority**

Pursuant to the JPA Law, the Member Entities create a public agency, separate and apart from the Member Entities to be known as the San Francisquito Creek Joint Powers Authority (Authority). Pursuant to Government Code section 6508.1, the debts, liabilities,

and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this Agreement. A Member Entity may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. For purposes of, and to the extent required by, Government Code section 6509, in exercising its powers, the Authority shall be subject to the restrictions upon the manner of exercising the powers of the City of Menlo Park, except as otherwise authorized or permitted by the JPA Law.

## **2. Purposes**

This Agreement is entered into by Member Entities under the JPA Law for the following purposes:

- a. Develop and maintain projects to reduce the risk of flooding in and around San Francisquito Creek.
- b. Develop and maintain projects to reduce the risk of coastal flooding from along the San Francisco Bay shoreline.
- c. Maintain, restore, enhance the environment, and create recreational opportunities, where possible, in implementing the other purposes stated herein.
- d. Provide regional information related to flood preparedness and emergency response agencies and others to enhance their ability to communicate about and respond to flood risks.
- e. Secure and administer funding for the benefit of the Authority's operations, capital projects, and related work.

## **3. Parties to Agreement**

Withdrawal or expulsion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining. Pursuant to Assembly Bill 825 (Chapter 292, Statutes of 2019), which amended the San Mateo County Flood Control District Act to provide for the San Mateo County Flood and Sea Level Rise Resiliency District, the Member Entities agree that the San Mateo County Flood and Sea Level Rise Resiliency District (OneShoreline) is the entity formerly known as the San Mateo County Flood Control District, and as such is subject to the terms and conditions of this Agreement.

## **4. Term of Agreement**

This Agreement continues in full force until terminated in accordance with paragraph 17. Termination and Distribution.

## **5. Powers of the Authority**

The Authority shall have all powers common to the Member Entities, and such additional powers granted to it by law, necessary to fulfill the purposes of this Agreement. The Authority, through its Board of Directors, is authorized to do all acts necessary to fulfill

the purposes of this Agreement referred to in paragraph 2. Purposes including, but not limited to, each of the following:

- a. Make and enter into contracts;
- b. Incur debts, liabilities, and obligations, provided that no debt, liability, or obligation of the Authority shall be a debt, liability, or obligation of a Member Entity except as separately agreed to by a Member Entity;
- c. Receive contributions and donations of property, funds, services, and other forms of assistance from any source;
- d. Acquire, hold, and dispose of real property, including, without limitation, the power to convey real property to a Member Entity, as deemed appropriate by the Authority's Board of Directors, and as accepted by the Member Entity, provided, however, that the Authority shall not exercise the power of eminent domain in the jurisdiction of a Member Entity unless the Member Entity adopts a resolution consenting to the Authority's exercise of eminent domain within its jurisdiction.
- e. Sue and be sued in its own name;
- f. Contract with independent consultants and contractors;
- g. Receive, collect, and disburse monies;
- h. Hire staff in conformance with an approved operating budget;
- i. Assign, delegate, or contract with a Member Entity or third party to perform any of the Authority's duties including, but not limited to, acting as administrator for the Authority; and
- j. Exercise all other powers and carry out other duties as necessary and proper to fulfill the provisions of this Agreement.

## **6. Member Entity Approvals and Responsibilities**

Each Member Entity has the approval authority, obligations, and responsibilities set forth in this Agreement. The Member Entities retain the following powers:

- a. The designation of each Member Entity's Director and alternate as specified in paragraph 9. Board of Directors;
- b. Approval of an amendment to this Agreement as specified in paragraph 19. Amendments;
- c. Approval of the Member Entity's funding or other contribution for a capital project as specified in paragraph 7. Capital Project Participation; and
- d. Approval of the Member Entity's contribution to the annual budget of the Authority as specified in paragraph 12. Operating Budget.



## 7. Capital Project Participation

The Authority may approve a contract for a capital project or any discrete phase of a capital project in accordance with the following conditions:

- a. The Authority's Board of Directors has determined that the Authority will have the funds necessary to pay for that capital project or that discrete phase of the project being approved; and
- b. Any funding or other contribution from a Member Entity to that capital project or to that discrete phase of the capital project has been approved by the Member Entity's governing body or designee. Each Member Entity shall have the right to determine independently whether to participate in any capital project.

## 8. Membership

Member Entities may be added to the Authority by amending this Agreement, as described in paragraph 19. Amendments, and Member Entities may withdraw or be expelled, as described in paragraph 15. Withdrawal and paragraph 16. Expulsion.

## 9. Board of Directors

- a. **Directors.** There shall be a Board of Directors to govern the Authority. The Board of Directors shall be comprised of one Director designated by each Member Entity. Each Director shall have one vote on the Board of Directors. Each Director shall have an alternate designated by the governing body of each Member Entity. No two Directors and no two Alternate Directors shall be from the same governing body of any Member Entity.
- b. **Alternates.** All references in this Agreement to a Director refer to and include the Director's alternate, when acting in place of a Director.
- c. **Compensation.** Directors are not entitled to compensation by the Authority. The Board of Directors may authorize reimbursement of expenses incurred by Directors in connection with serving as a Director.
- d. **Term.** The term of office of a Director shall terminate when such person ceases to be a member of the governing body of the Member Entity or the Member Entity designates another Director and/or alternate to serve.
- e. **Powers.** The powers of the Board of Directors are each of the powers of the Authority not specifically reserved to the Member Entities by this Agreement. No Action of the Authority shall be effective or binding unless and until such action has been authorized by the Board of Directors and either 1) is consistent with the budget approved by the Board of Directors pursuant to paragraph 12. Operating Budget, or 2) complies with paragraph 7. Capital Project Participation.
- f. **Meetings.** The Board of Directors shall hold at least one regular meeting each year, at which time the Board of Directors shall elect its officers pursuant to paragraph 10. Officers. The Board of Directors shall fix the date, hour, and place at which each regular meeting is to be held. To the extent practicable, each Board of Directors meeting shall be held in Northern Santa Clara County or Southern San Mateo County. The Chair presides at all meetings. A special

meeting may be called upon written request by the Chair or at least two Directors.

- g. **Brown Act.** Each regular, adjourned regular, or special meeting of the Board of Directors shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Government Code §54950, et seq.).
- h. **Notices, Agendas, Minutes.** The Board of Directors shall appoint or hire a Clerk of the Board of Directors who shall be responsible for preparing minutes of each regular and special meeting of the Board of Directors, and issuing notices and agendas in accordance with the law.
- i. **Quorum.** No business may be transacted by the Board of Directors without a quorum of members of the Board of Directors being present except that less than a quorum may adjourn from time to time. A quorum consists of a majority of the members of the Board of Directors.
- j. **Action of the Board of Directors.** Except as otherwise specified in this Agreement, or required by law, any action of the Board of Directors shall require a vote of a majority of the Directors.

#### 10. **Officers**

- a. The officers of the Authority are the Chair, and Vice-Chair.
- b. The officers shall be elected or appointed by the Board of Directors at its first meeting of the calendar year unless delayed by an action of the Board of Directors.
- c. The term of office for Chair and Vice Chair shall be determined by a vote of the Board of Directors. The officers shall assume the duties of their offices upon being elected or appointed, as appropriate.
- d. If the Chair or Vice Chair ceases to be a member of the Board of Directors, the Board of Directors shall elect or appoint a new officer at the next regular meeting of the Board of Directors held after the vacancy occurs.

#### 11. **Fiscal Year**

Each fiscal year of the Authority shall begin on July 1 of a calendar year and end on June 30 of the next following calendar year.

#### 12. **Operating Budget**

- a. The Board of Directors shall adopt an annual operating budget, which shall be separate from the budget for any capital project of the Authority. The operating budget shall include the proposed contribution from each Member Entity and other sources of income for the fiscal year.
- b. The operating budget shall not be effective unless and until the governing body of each Member Entity approves that Member Entity's contribution to the operating budget.
- c. A Member Entity's contribution shall become due and payable to the Authority upon adoption of the annual operating budget by the Board of Directors and

approval of the Member Entity's contribution to the budget by that Member Entity's governing body.

### 13. **Annual Audit and Audit Reports**

The Board of Directors shall cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions, and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be filed no later than as required by State law. The Authority shall pay the cost of the financial audit from its annual operating budget in the same manner as other administrative costs.

### 14. **Establishment and Administration of Funds**

- a. **Accountability.** The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the establishment and administration of funds, in particular, Government Code §6505. The funds shall be accounted for on a full accrual basis.
- b. **Investment/Disbursement.** The Authority shall receive and disburse funds only in accordance with policies and procedures established by the Board of Directors and in conformity with applicable law.
- c. **Insurance/Bonds.** The Authority shall procure, carry and maintain, in full force and effect, at all times during the term of this Agreement, such insurance and bonds to protect the Authority and the Board of Directors, officers, employees, agents, and Member Entities, as deemed appropriate by the Board of Directors.
- d. **Depository and Auditor Controller.** The Board of Directors shall designate one of its officers, employees or a third party to perform all acts required by Government Code §6505 (regarding an annual audit), §6505.1 (regarding charge of and access to property), §6505.5 (regarding the depository and custodian of money), and §6505.6 (regarding independent audit where an officer or employee acts as treasurer, auditor, or both), as such laws are amended from time to time.

### 15. **Withdrawal**

- a. Member Entities may withdraw from the Authority for subsequent fiscal years by providing written notice to the Authority and each Member Entity on or before May 1 of any fiscal year. Withdrawal shall be effective on July 1 of the next fiscal year. This shall be the exclusive means by which a Member Entity may withdraw from the Authority.
- b. Any Member Entity that withdraws shall remain liable for any budget contributions or capital project participation approved before withdrawal.
- c. Any Member Entity that withdraws shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that Member Entity's performance or failure to perform the obligations assumed before the Member Entity withdraws from this Agreement. Any Member Entity that withdraws shall remain subject to the provisions of paragraph 21. Indemnification

with respect to any event or occurrence taking place before the Member Entity withdraws.

## 16. Expulsion

- a. The Authority may expel a Member Entity from the Authority by a four-fifths (4/5) vote of the Authority Board of Directors for a breach of this Agreement determined by the Board of Directors to be a material breach.
- b. Any Member Entity that has been expelled pursuant to this paragraph shall have no further liability or obligation pursuant to this Agreement after the effective date of such expulsion; except such Member Entity shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity was expelled, including any budget contributions or capital project participation approved before expulsion.
- c. Any Member Entity that has been expelled shall remain subject to the provisions of paragraph 21. Indemnification with respect to any event or occurrence taking place before the Member Entity was expelled.

## 17. Termination and Distribution

- a. **Termination.** This Agreement shall continue until terminated. This Agreement may be terminated by the written consent of four-fifths (4/5) of the Member Entities. The Agreement may only be terminated after disposing of all claims, distribution of assets, and performance of all other functions necessary to conclude the obligations and affairs of the Authority.
- b. **Concluding Affairs.** The Board of Directors is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority, including for the disposition, division, or distribution of any property acquired as a result of the joint exercise of powers.
- c. **Surplus.** In the event that the Authority is terminated, any surplus money on deposit in any fund or account of the Authority shall be returned to Member Entities in proportion to the contributions made to that fund or account, as required by Government Code §6512.
- d. **Property.** All real property and any improvements thereon, that were owned by a Member Entity and contributed to the Authority shall be returned to the Member Entity, upon its approval, that contributed such property.
- e. **Member Entity Obligations.** In no event shall any funds or assets be distributed, divided or returned to a Member Entity until such Member Entity has either paid their share of all outstanding debts and obligations that were incurred while they were a Member Entity, or executed a contract with the Authority to pay for all outstanding debts and obligations that were incurred while they were a Member Entity.

**18. Prohibition Against Assignment**

No Member Entity may assign a right, claim, or interest it may have under this Agreement, and any such assignment shall be void. No creditor, assignee, or third-party beneficiary of a Member Entity has a right, claim, or title to any part, share, interest, fund, or asset of the Authority.

**19. Amendments**

This Agreement may only be amended by approval by the governing body for each and every Member Entity. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date on which it will be considered. An amendment is effective upon full execution by all Member Entities.

**20. Severability**

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

**21. Indemnification**

- a. Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, any Member Entity, any member of the Board of Directors, and each officer, employee and agent of the Authority or Member Entities, for their actions taken within the scope of their duties while acting on behalf of the Authority.
- b. In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Member Entities pursuant to Government Code Section 895.6, the Member Entities agree that all losses or liabilities incurred by a Member Entity shall not be shared pro rata but, instead, the Member Entities agree that, pursuant to Government Code Section 895.4, each Member Entity hereto shall fully indemnify and hold each of the other Member Entities, 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 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Member Entity, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Member Entity pursuant to this Agreement. No Member Entity, nor any officer, board member, employees, 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 other Member Entity 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 Member Entity pursuant to this Agreement. The rights, duties, and obligations of the Member Entities as set forth above in this paragraph 21. Indemnification, survive completion, termination, expiration, and suspension of this Agreement.

**22. Choice of Law and Venue**

The Parties agree that this Agreement is to be governed, construed, and enforced in accordance with the laws of the State of California. The Parties also agree that the

venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Santa Clara County or San Mateo County in the State of California. The Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

**23. Counterparts**

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

**24. Agreement Complete**

The foregoing constitutes the full and complete Agreement of the Member Entities. There are no oral understandings or agreements not set forth in writing herein.

**25. No Third-Party Beneficiaries**

Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity, other than the Parties hereto, any legal or equitable right, remedy, or claim under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

**26. Nonwaiver of Rights**

The failure of either Party to this Agreement to object to or to take affirmative action with respect to any conduct of the other Party that is in violation of the terms of this Agreement will not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.

**27. Agreement Execution**

Unless otherwise prohibited by law or policy of any Member Entity, the Member Entities agree that an electronic copy of a signed agreement, or an electronically signed agreement, has the same force and legal effect as an agreement executed with an original ink signature. The term "electronic copy of a signed agreement" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed agreement in a portable document format. The term "electronically signed agreement" means an agreement that is executed by applying an electronic signature using technology in compliance with the Electronic Signature Act (California Civil Code §1633).

**28. Equal Opportunity**

a. Equal Opportunity Employer

Each of the Member Entities is an equal opportunity employer and requires their contractors to have and adhere to a policy of equal opportunity and non-discrimination, including that such contractors will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional

development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

b. Compliance with Applicable Equal Opportunity Laws

All equal opportunity and non-discrimination policies of Member Entity contractors must be in conformance with applicable state and federal guidelines including the Federal Equal Opportunity Clause, 41 Code of Federal Regulations, Part 60-1, §60-1.4; Title VII of the Civil Rights Act of 1964 as amended; the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (§503 and §504); the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.); the California Fair Employment and Housing Act (Government Code §12900 et. seq.); and California Labor Code §1101 and §1102.

c. Investigation of Claims

Member Entity contractors must designate a specific position within its organization to be responsible for investigating allegations of non-compliance with the anti-discrimination and anti-harassment provisions of this Section 28. Contractors must conduct a fair, prompt, and thorough investigation of all allegations directed to the contractor by any Member Entity. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, the contractor must take prompt, effective action against the offender.

**29. Notices**

Unless otherwise specified in this Agreement, all requests for written approval or legal notices must be sent to the representatives' addresses on file with the Authority. All notices are deemed to have been given when made in writing and when delivered or mailed to the representatives at their respective addresses.

IN WITNESS WHEREOF, the Member Entities hereto have executed this Agreement on the dates as set for the below.

*(SIGNATURES TO FOLLOW ON SEPARATE PAGES)*

*(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)*

DATED: \_\_\_\_\_, 2023

**CITY OF MENLO PARK**

By: \_\_\_\_\_  
Name  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Name  
City Clerk

**APPROVE AS TO FORM:**

\_\_\_\_\_  
City Attorney

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DATED: \_\_\_\_\_, 2023

CITY OF PALO ALTO

By: \_\_\_\_\_  
Name  
Mayor

ATTEST:

By: \_\_\_\_\_  
Name  
City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
City Attorney

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DATED: \_\_\_\_\_, 2023

**CITY OF EAST PALO ALTO**

By: \_\_\_\_\_  
Name  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Name  
City Clerk

**APPROVE AS TO FORM:**

\_\_\_\_\_  
City Attorney

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DATED: \_\_\_\_\_, 2023

**SANTA CLARA VALLEY WATER DISTRICT**

By: \_\_\_\_\_  
John L. Varela  
Chair, Board of Directors

**ATTEST:**

By: \_\_\_\_\_  
Michele L. King, CMC  
Clerk, Board of Directors

**APPROVE AS TO FORM:**

\_\_\_\_\_  
District Counsel  
J. Carlos Orellana

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DATED: \_\_\_\_\_, 2023

**SAN MATEO COUNTY FLOOD AND  
SEA LEVEL RISE RESILIENCY DISTRICT**

By: \_\_\_\_\_  
Name  
Chair, Board of Directors

**ATTEST:**

By: \_\_\_\_\_  
Name  
Clerk, Board of Directors

**APPROVE AS TO FORM:**

\_\_\_\_\_  
Brian Kulich  
Lead Deputy County Counsel  
General Counsel

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RESOLUTION NUMBER 23-03-23-C

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY  
ACCEPTANCE OF THE 2023 SECOND AMENDED AND  
RESTATED SAN FRANCISQUITO CREEK JOINT POWERS  
AUTHORITY MEMBERS AGREEMENT**

**BE IT RESOLVED** by the Board of Directors of the San Francisquito Creek Joint Powers Authority that the Board of Directors hereby accepts the Second Amended and Restated San Francisquito Creek Joint Powers Authority members agreement and does direct staff to coordinate the ratification of the same by the individual member agencies of the San Francisquito Creek Joint Powers Authority.

Approved and adopted on March 23, 2023, the undersigned hereby certify that the foregoing Resolution was duly adopted by the Board of Directors of the San Francisquito Creek Joint Powers Authority.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Vice Chairperson                      Date: 03/23/2023

\_\_\_\_\_  
Chairperson                                      Date: 03/23/2023

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel                      Date: 03/23/2023

**SECOND AMENDED AND RESTATED**  
**JOINT POWERS AGREEMENT**

**FOR THE**

SAN FRANCISQUITO CREEK  
JOINT POWERS ~~AGREEMENT~~ **AUTHORITY**

AMENDED AND RESTATED

as of

\_\_\_\_\_, 2023

**SECOND AMENDED AND RESTATED JOINT POWERS AGREEMENT FOR  
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY  
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**SECOND AMENDED AND RESTATED JOINT POWERS AGREEMENT  
FOR THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY**

This Second Amended and Restated Agreement Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority (“Agreement”) is made by and among the City of East Palo Alto, the City of Menlo Park, the City of Palo Alto, the ~~City of East Palo Alto, the Santa Clara Valley Water District, and the~~ San Mateo County Flood and Sea Level Rise Resiliency District (“~~and the Santa Clara Valley Water District~~ (each a Member Entity and collectively, the Member Entities”), all of which are public entities organized and operating under the laws of the State of California, and each of which is a public agency as defined in California Government Code section 6500. This Agreement is effective upon full execution by all Member Entities (Effective Date).

RECITALS

A. The Joint Exercise of Powers Act, being Government Code sections 6500 et seq. (the “JPA Law”), permits two or more local public entities by agreement to jointly exercise any power common to them.

B. Following years of effort to address environmental and flooding concerns related to the watershed and floodplain of San Francisquito Creek (encompassing approximately 50 square miles from the Santa Cruz Mountains to San Francisco Bay), and soon after the flood of record in 1998 damaged approximately 1,700 properties, the Member Entities established the San Francisquito Creek Joint Powers Authority (Authority) pursuant to that certain “Joint Exercise Powers Agreement Creating the San Francisquito Creek Joint Powers Authority,” dated as of May 18, 1999, to collectively contribute resources and implement policies and projects of mutual interest relating to the primary natural features that unite them, including the San Francisquito Creek (“Creek”).

C. The Joint Powers Agreement Creating the San Francisquito Creek Joint Powers Authority, dated as of May 18, 1999, was thereafter revised pursuant to the Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority, Amended and Restated as of January 1, 2020.

D. Each Member Entity agrees to contribute resources and funding towards implementation of projects of mutual interest and benefit relating to San Francisquito Creek and San Francisco Bay shoreline.

~~C.E.~~ The governing body of each Member Entity has determined that it is in the Member Entity’s best interest and ~~in~~ the public interest that this Second Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority be executed to make minor procedural updates, including the change on January 1, 2020 of the San Mateo County Flood Control District to the San Mateo County Flood and Sea Level Rise Resiliency District.

NOW, THEREFORE, the Member Entities, by, between and among themselves, in



consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

~~1. CREATION OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY.~~

1. Creation of the San Francisquito Creek Joint Powers Authority

Pursuant to the JPA Law, the Member Entities create a public agency, separate and apart from the Member Entities to be known as the San Francisquito Creek Joint Powers Authority (~~the~~ “Authority”). Pursuant to Government Code section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this Agreement. A Member Entity may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. For purposes of, and to the extent required by, Government Code section 6509, in exercising its powers, the Authority shall be subject to the restrictions upon the manner of exercising the powers of the City of Menlo Park,

except as otherwise authorized or permitted by the JPA Law.

## 2. Purposes

~~2. PURPOSES.~~ This Agreement is entered into by Member Entities under the JPA Law for the following purposes:

~~a. — To facilitate and perform bank stabilization, channel clearing and other Creek maintenance.~~

~~b. To plan flood control measures for the~~

~~a. Develop and maintain projects to reduce the risk of flooding in and around San Francisquito Creek watershed.~~

~~b. Develop and maintain projects to reduce the risk of coastal flooding from along the San Francisco Bay shoreline.~~

~~e.a. To take actions necessary to preserve and enhance environmental values and instream uses of San Francisquito Creek. Maintain, restore, enhance the environment, and create recreational opportunities, where possible, in implementing the other purposes stated herein.~~

~~d.b. To coordinate emergency mitigation and response activities relating to San Francisquito Creek. Provide regional information related to flood preparedness and emergency response agencies and others to enhance their ability to communicate about and respond to flood risks.~~

~~e. To make recommendations to Member Entities for funding and alternatives for long term flood control for Member Entity consideration. Secure and administer funding for the benefit of the Authority's operations, capital projects, and related work.~~

## ~~3. PARTIES TO AGREEMENT.~~

~~c. Each Member Entity certifies that it intends to and does contract with every other Member Entity which is a signatory to this Agreement. Each Member Entity also certifies that the deletion~~

### 3. Parties to Agreement

Withdrawal or expulsion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining. Pursuant to Assembly Bill 825 (Chapter 292, Statutes of 2019), which amended the San Mateo County Flood Control District Act to provide for the San Mateo County Flood and Sea Level Rise Resiliency District, the Member Entities agree that the San Mateo County Flood and Sea Level Rise Resiliency District (OneShoreline) is the entity formerly known as the San Mateo County Flood Control District, and as such is subject to the terms and conditions of this Agreement.

## ~~4. TERM OF AGREEMENT.~~

### 4. Term of Agreement

This Agreement ~~became effective as of May 18, 1999 and~~ continues in full force until terminated in accordance with ~~Paragraph 18~~paragraph 17. (~~Termination and Distribution~~).

## ~~5. POWERS OF THE AUTHORITY.~~

### 5. Powers of the Authority

The Authority shall have all powers common to the Member Entities, and such additional powers granted to it by law, necessary to fulfill the purposes of this Agreement. The Authority, through its Board of Directors, is authorized, in its own name and subject to the limitations set forth below, to do all acts necessary to fulfill the purposes of this Agreement referred to in ~~Paragraph~~paragraph 2. (~~Purposes~~) including, but not limited to, each of the following:

- a. Make and enter into contracts;
- b. Incur debts, liabilities, and obligations, provided that no debt, liability, or obligation of the Authority shall be a debt, liability, or obligation of a Member Entity except as separately agreed to by a Member Entity;
- c. Receive contributions and donations of property, funds, services, and other forms of assistance from any source;
  - a. Acquire, hold, and dispose of real property, including, without limitation, the power to convey real property to a Member Entity, as deemed appropriate by the Authority's Board of Directors, and as accepted by the Member Entity, provided, however, that the Authority shall not exercise the power of eminent domain in the jurisdiction of a Member Entity unless the Member Entity adopts a resolution consenting to the Authority's exercise of eminent domain within its jurisdiction.
  - ~~b.~~ Sue and be sued in its own name;
  - ~~c.~~ Contract with independent consultants and ~~or~~ contractors;
  - ~~f.~~ Receive, collect, and disburse monies;
  - ~~g.d.~~ Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;
  - ~~e.~~ Hire staff in conformance with an approved operating budget;
  - ~~h.f.~~ Assign, delegate, or contract with a Member Entity or third party to perform any of the Authority's duties ~~of the Board~~ including, but not limited to, acting as administrator for the Authority; and

~~i. Exercise all other powers and carry out other duties as necessary and proper to carry out/fulfill the provisions of this Agreement.~~

~~These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.~~

~~6. MEMBER ENTITY APPROVALS AND RESPONSIBILITIES: Member Entity Approvals and Responsibilities~~

~~Each Member Entity has the approval authority, obligations, and responsibilities set forth in this Agreement. No action of the Authority shall be effective or binding unless and until such action has been approved in accordance with Subparagraph “e.” (Action of the Board) of Paragraph 10. (Board Members) by the~~The Member Entities retain the following powers:

- ~~g. The designation of each Member Entity’s Director and alternate as specified in paragraph 9. Board of Directors consistent with a budget;~~
- ~~h. Approval of an amendment to this Agreement as specified in paragraph 19. Amendments;~~
- ~~i. Approval of the Member Entity’s funding or other contribution for a capital project as specified in paragraph 7. Capital Project Participation; and~~
- ~~j. Approval of the Member Entity’s contribution to the annual budget of the Authority as specified in paragraph 12. Operating Budget.~~

~~6. Capital Project Participation~~

~~The Authority may approve a contract for a capital project or any discrete phase of a capital project in accordance with the following conditions:~~

- ~~a. The Authority’s Board of Directors has determined that the Authority will have the funds necessary to pay for that capital project or that discrete phase of the project being approved; and~~
- ~~Any funding or other contribution from a Member Entity to that capital project or to that discrete phase of the capital project has been approved by independent action of each/the Member Entity’s governing body.~~

~~7. PROJECT PARTICIPATION APPROVAL AUTHORITY.~~

- ~~b. or designee. Each Member Entities/Entity shall have the right to determine independently whether to participate in any capital improvement project. No capital improvement project shall be approved by the Authority unless and until Member Entities sufficient to fund the project fully have approved the project by independent action of each such funding Member Entity’s governing body.~~

~~8.7. MEMBERSHIP: Membership~~

~~New Member Entities may be added to the Authority by amending this Agreement, as described in Paragraph 21/paragraph 19. (Amendments), and Member Entities may withdraw or be expelled, as described in Paragraph 16/paragraph 15. (Withdrawal) and Paragraph 17/paragraph 16. (Expulsion).~~

~~9.8. BOARD OF DIRECTORS: Board of Directors~~

~~a. Directors. There shall be a Board of Directors (the “Board”) to govern the~~  
~~a. affairs of the Authority. The Board of Directors shall be comprised of one director, and one alternate director, from/Director designated by each Member Entity. Each director has/Director shall have one vote. An alternate director may cast a vote as a member of/on the Board of Directors only in the absence of the director from that same Member Entity. Each director and/Director shall have an alternate director shall be a member of the governing body of the Member Entity and shall be designated by its/the governing body; provided, however, that no of each Member Entity.~~

No two ~~directors~~Directors and no two ~~alternate directors~~Alternate Directors shall be from the same governing body of any Member Entity.

c. ~~\_\_\_\_\_ Alternates.~~ All references in this Agreement to a Director refer to and include the Director's alternate, when acting in place of a Director.

~~b.d.~~ \_\_\_\_\_ Compensation. Directors ~~and alternate directors~~ are not entitled to compensation by the Authority. The Board of Directors may authorize reimbursement of expenses incurred by Directors in connection with serving as a Director.  
~~by directors or alternate directors.~~

e. ~~\_\_\_\_\_ Term.~~ The term of office of a Director shall terminate when such person ceases to be a member of the governing body of the Member Entity or the Member Entity designates another Director and/or alternate to serve.

~~e.f.~~ \_\_\_\_\_ Powers. The powers of the Board of Directors are each of the powers of the Authority

not specifically reserved to the Member Entities by this Agreement. ~~The Member Entities retain~~No Action of the Authority shall be effective or binding unless and until such action has been authorized by the Board of Directors and either 1) is consistent with the budget approved by the Board of Directors pursuant to paragraph 12. Operating Budget, or 2) complies with paragraph 7. Capital Project Participation.

~~the following powers:~~

~~(1) — The designation of the Board as specified in Subparagraph "a." of Paragraph 9. (Board of Directors);~~

~~(2) — Approval of an amendment to this Agreement as specified in Paragraph 21. (Amendments);~~

(3) Approval of actions pursuant to Paragraph 6. (Member Entity Approvals and Responsibilities);

(4) Approval of project participation as specified in paragraph 7. (Project Participation Approval Authority); and

(5) Approval of the annual budget of the Authority as specified in Paragraph 13. (Budget).

#### 10. BOARD MEMBERS.

a.g. Meetings. The Board of Directors shall hold at least one regular meeting each year, at which time the Board of Directors shall elect its officers as appropriate to comply with Paragraph 11 pursuant to paragraph 10. (Officers). The Board of Directors shall fix the date, hour, and place at which each regular meeting is to be held. To the extent practicable, each Board of Directors meeting shall be held in Northern Santa Clara County or Southern San Mateo County. The Chair presides at all meetings. A special meeting may be called upon written request by the Chair or at least two directors Directors.

b.h. Brown Act. Each regular, adjourned regular, or special meeting of the Board of Directors shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Sections 54950, et seq., of the Government Code §54950, et seq.).

e.i. Notices, Agendas, Minutes. The Board of Directors shall appoint or hire a Clerk of the Board of Directors who shall draft be responsible for preparing minutes of each regular and special meeting of the Board, which shall be considered for approval by the Board at a subsequent regular meeting of Directors, and issuing notices and agendas in accordance with the law.

d.j. Quorum. No business may be transacted by the Board of Directors without a quorum of members of the Board of Directors being present except that less than a quorum may adjourn from time to time. A quorum consists of a majority of the members of the Board of Directors.

e. Action of the Board of Directors. Except as otherwise specified in this Agreement, or required by law, any action of the Board of Directors shall require a vote of a majority of the Board.

#### k. 11. OFFICERS Directors.

##### 7. Officers-

The officers of the Authority are the Chair, and Vice-Chair, and Secretary.

##### a. Election/Term/Duties.

b. The officers shall be elected or appointed by the Board of Directors at its first meeting of the calendar year; unless that is delayed by an action of the Board of Directors.

c. The term of office for Chair, and Vice-Chair, and Secretary is one year shall be determined by a vote of the Board of Directors. The officers shall assume the duties of their offices upon being elected or appointed, as appropriate.

If any of the Chair, or Vice-Chair, or Secretary ceases to be a member of the Board of Directors, the Board of Directors shall elect or appoint a new officer at the next regular meeting of the Board of Directors held after the vacancy occurs.

b. Compensation. Officers are not entitled to compensation by the Authority. The Board may authorize reimbursement of expenses incurred by officers.

e. Appointment/Contract. The Board may appoint such officers and may

~~hire or contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.~~

~~12. FISCAL YEAR. The first fiscal year of the Authority is July 1, 1999 through~~

~~d. June 30, 2000.~~

~~8. Fiscal Year~~

Each ~~subsequent~~ fiscal year of the Authority shall begin on July 1<sup>st</sup> of a calendar year and end on June 30<sup>th</sup> of the next following calendar year.

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9. Operating Budget

~~a. BUDGET.~~ The Board of Directors shall adopt an annual operating budget, which shall be separate from the budget for any capital project of the Authority's capital projects budget. The operating budget shall include the proposed contribution from each Member Entity ~~for the fiscal year~~ and other sources of income for the fiscal year.

~~b.~~ The operating budget shall not be effective unless and until the governing body of each Member Entity ~~has approved~~approves that Member Entity's contribution to the operating budget.

~~c.~~ A Member Entity ~~contributions's contribution~~ shall become ~~immediately~~ due and payable to the Authority upon adoption of the annual operating budget, ~~unless expressly provided otherwise in by the Board of Directors and~~ approval of the Member Entity's contribution to the budget by that Member Entity's governing body.

10. Annual Audit and Audit Reports

~~14. ANNUAL AUDIT AND AUDIT REPORTS.~~ The Board of Directors shall cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions, and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be filed no later than as required by State law. The Authority shall pay the cost of the financial audit from its annual operating budget in the same manner as other administrative costs.

~~15. ESTABLISHMENT AND ADMINISTRATION OF FUNDS.~~

11. Establishment and Administration of Funds

a. Accountability. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the establishment and administration of funds, ~~particularly Section 6505 of the California in~~ particular. Government Code §6505. The funds shall be accounted for on a full accrual basis.

b. Investment/Disbursement. The Authority shall receive and disburse funds only in accordance with policies and procedures established by the Board of Directors and in conformity with applicable law.

c. Insurance/~~Bond~~Bonds. The Authority shall procure, carry and maintain, in full force and effect, at all times during the term of this Agreement, such insurance and bonds to protect the Authority and ~~its members of the~~ Board of Directors, officers, employees, agents, and Member Entities, as deemed appropriate by the Board of Directors.

d. Depository and Auditor Controller. The Board of Directors shall designate one of its officers, employees or a third party to perform all acts required by Government Code Sections §6505 (regarding an annual audit), §6505.1 (regarding charge of and access to property), §6505.5 (regarding the depository and custodian of money), and §6505.6 (regarding independent audit where an officer or employee acts as treasurer, auditor, or both), as such laws are amended from time to time.

14

12. Withdrawal

~~a. WITHDRAWAL.~~ Member Entities may withdraw from the Authority for



subsequent fiscal years by providing written notice to the Authority and each Member Entity on or before May 1 of any fiscal year. Withdrawal shall be effective on July 1 of the next fiscal year. This shall be the exclusive means by which a Member Entity may withdraw from the Authority.

      b.      Any Member Entity that withdraws shall remain liable for any budget contributions or capital ~~improvement~~ project participation approved before withdrawal.

      c.      Any Member Entity that withdraws shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that ~~party~~Member Entity's performance or failure to perform the obligations assumed before the Member Entity withdraws from this Agreement. Any Member Entity that withdraws shall remain subject to the provisions of ~~Paragraph 23. (Liability of the Authority; Release and Indemnity)~~ paragraph 21. Indemnification  
      with

respect to any event or occurrence taking place before the Member Entity withdraws.

17

### 13. Expulsion

a. ~~EXPULSION.~~ The Authority may expel a Member Entity from the Authority by a four-fifths (4/5) vote of the Authority Board of Directors for a breach of this Agreement determined by the Board of Directors to be a material breach.

b. \_\_\_\_\_ Any Member Entity that has been expelled pursuant to this paragraph shall have no further liability or obligation pursuant to this Agreement after the effective date of such expulsion; except such Member Entity shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity was expelled, including any budget contributions or capital improvement project participation approved before expulsion.

c. \_\_\_\_\_ Any Member Entity that has been expelled shall remain subject to the provisions of Paragraph 23. (Liability of the Authority; Release and Indemnity) paragraph 21. Indemnification with respect to any event or occurrence taking place before the Member Entity was expelled.

### ~~18. TERMINATION AND DISTRIBUTION.~~

#### 14. Termination and Distribution

a. Termination. This Agreement shall continue until terminated. This Agreement may be terminated by the written consent of four-fifths (4/5) of the Member Entities; provided, however, this. The Agreement and the Authority shall continue to exist after termination for the purpose of may only be terminated after disposing of all claims, distribution of assets, and performance of all other functions necessary to conclude the obligation obligations and affairs of the Authority.

b. Surplus. ~~In the event that the Authority is terminated, any surplus money on deposit in any fund or account of the Authority shall be returned in proportion to the contributions made as required by Section 6512 of the California Government Code~~ Concluding Affairs.

The Board of Directors is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority, including for the disposition, division, or distribution of any property acquired as a result of the joint exercise of powers.

19. NOTICES. ~~Notices to each Member Entity under this Agreement are sufficient if mailed to its respective address on file with the Authority.~~

#### ~~b. 20. PROHIBITION AGAINST ASSIGNMENT.~~

a. \_\_\_\_\_ Surplus. In the event that the Authority is terminated, any surplus money on deposit in any fund or account of the Authority shall be returned to Member Entities in proportion to the contributions made to that fund or account, as required by Government Code §6512.

b. \_\_\_\_\_ Property. All real property and any improvements thereon, that were owned by a Member Entity and contributed to the Authority shall be returned to the Member Entity, upon its approval, that contributed such property.

c. \_\_\_\_\_ Member Entity Obligations. In no event shall any funds or assets be distributed, divided or returned to a Member Entity until such Member Entity has either paid their share of all outstanding debts and obligations that were incurred while they were a Member Entity, or executed a contract with the Authority to pay for all outstanding debts and obligations that were incurred while they were a Member Entity.

15. Prohibition Against Assignment

No Member Entity may assign a right, claim, or interest it may have under this Agreement, and any such assignment shall be void. No creditor, assignee, or third-party beneficiary of a Member Entity has a right, claim, or title to any part, share, interest, fund, or asset of the Authority.

16. Amendments

~~21. AMENDMENTS.~~ This Agreement may only be amended by approval by the governing body for each and every Member Entity. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date ~~when the Member Entity considers it on which it will be considered.~~ An amendment is ~~to be~~ effective ~~immediately unless otherwise designated upon full execution by all Member Entities.~~

~~22. SEVERABILITY. If a portion, term, condition, or~~

17. Severability

~~If a court of competent jurisdiction holds any provision of this Agreement is determined by a court to be illegal or in conflict with the law of the State of California, or is otherwise rendered, unenforceable or ineffectual, or invalid in whole or in part for any reason, the validity and enforceability of the remaining portions, terms, conditions, and provisions is, or portions of them, will not be affected.~~

23. ~~LIABILITY OF THE AUTHORITY; RELEASE AND INDEMNITY, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.~~

18. Indemnification

a. ~~Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, any Member Entity, any member of the Board of Directors, and each officer, employee and agent of the Authority or Member Entities, for their actions taken within the scope of their duties while acting on behalf of the Authority. The parties to this Agreement release each other and agree to hold each other harmless, as well as their officers and employees, for any loss or liability arising from their respective activities pursuant to this Agreement. Except as otherwise provided herein, each party agrees to indemnify, defend~~

b. ~~In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Member Entities pursuant to Government Code Section 895.6, the Member Entities agree that all losses or liabilities incurred by a Member Entity shall not be shared pro rata but, instead, the Member Entities agree that, pursuant to Government Code Section 895.4, each Member Entity hereto shall fully indemnify and hold harmless each of the other parties Member Entities, their officers, agents board members, and employees, and agents, harmless from any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed under claim, expense or cost, damage or liability imposed for injury (as defined in Government Code 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Member Entity, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Member Entity pursuant to this Agreement. Each No Member Entity agrees that legal counsel for any Member Entity may be designated by the Board to represent the Authority by performing legal services, including litigation, and that any potential conflict of interest arising from such representation shall be deemed waived, nor any officer, board member, employees, or agent thereof shall be responsible for any damage or liability occurring by reason of the Authority and negligent acts or omissions or willful misconduct of the other Member Entity hereto, unless an actual adverse relationship exists between the Member Entity and the Authority with respect to the particular matter. The designation of legal counsel from a Member Entity shall be with the approval of that Member Entity 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 Member Entity pursuant to this Agreement. The rights, duties, and obligations of the Member Entities as set forth above in this paragraph 21. Indemnification, survive completion, termination, expiration, and suspension of this Agreement.~~

19. Choice of Law and Venue

24. ~~GOVERNING LAW. This~~ The Parties agree that this Agreement shall be to be governed ~~by and~~, construed, and enforced in accordance with the laws of the State of California.

25. ~~COUNTERPART~~ The Parties also agree that the venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Santa Clara County or San Mateo County in the State of California. The Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

20. Counterparts

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

21. Agreement Complete

26. ~~AGREEMENT COMPLETE.~~ The foregoing constitutes the full and complete Agreement of the Member Entities. There are no oral understandings or agreements not set forth in writing herein.

22. No Third-Party Beneficiaries

27. ~~NO THIRD-PARTY BENEFICIARIES.~~ Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity, other than the ~~parties~~Parties hereto,

any legal or equitable right, remedy, or claim under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

23. Nonwaiver of Rights

The failure of either Party to this Agreement to object to or to take affirmative action with respect to any conduct of the other Party that is in violation of the terms of this Agreement will not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.

24. Agreement Execution

Unless otherwise prohibited by law or policy of any Member Entity, the Member Entities agree that an electronic copy of a signed agreement, or an electronically signed agreement, has the same force and legal effect as an agreement executed with an original ink signature. The term “electronic copy of a signed agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed agreement in a portable document format. The term “electronically signed agreement” means an agreement that is executed by applying an electronic signature using technology in compliance with the Electronic Signature Act (California Civil Code §1633).

25. Equal Opportunity

a. Equal Opportunity Employer

Each of the Member Entities is an equal opportunity employer and requires their contractors to have and adhere to a policy of equal opportunity and non-discrimination, including that such contractors will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic

information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

b. Compliance with Applicable Equal Opportunity Laws

All equal opportunity and non-discrimination policies of Member Entity contractors must be in conformance with applicable state and federal guidelines including the Federal Equal Opportunity Clause, 41 Code of Federal Regulations, Part 60-1, §60-1.4; Title VII of the Civil Rights Act of 1964 as amended; the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (§503 and §504); the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.); the California Fair Employment and Housing Act (Government Code §12900 et. seq.); and California Labor Code §1101 and §1102.

c. Investigation of Claims

Member Entity contractors must designate a specific position within its organization to be responsible for investigating allegations of non-compliance with the anti-discrimination and anti-harassment provisions of this Section 28. Contractors must conduct a fair, prompt, and thorough investigation of all allegations directed to the contractor by any Member Entity. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, the contractor must take prompt, effective action against the offender.

26. Notices

Unless otherwise specified in this Agreement, all requests for written approval or legal notices must be sent to the representatives' addresses on file with the Authority. All notices are deemed to have been given when made in writing and when delivered or mailed to the representatives at their respective addresses.

IN WITNESS WHEREOF, the ~~parties~~Member Entities hereto have executed this Agreement on the dates

as set forth~~for the~~ below.

~~{(SIGNATURES TO FOLLOW ON SEPARATE PAGES)}~~

~~04/02/2019~~

~~DATED: , 2020 CITY OF MENLO PARK~~

~~By: \_\_\_\_\_~~

~~Cecilia Taylor, Mayor~~

~~ATTEST:~~

~~By: \_\_\_\_\_~~

~~Judi Herren, City Clerk~~

~~APPROVE AS TO FORM:~~

~~Cara E. Silver~~

~~Interim City Attorney~~

04/02/20-10

DATED: \_\_\_\_\_, 2020 CITY OF PALO ALTO

By: \_\_\_\_\_

Adrian Fine, Mayor

ATTEST:

By: \_\_\_\_\_

Beth Minor, City Clerk

~~APPROVE AS TO FORM:~~

~~Cassie Coleman~~

~~Assistant City Attorney~~

04/02/20-11

DATED: \_\_\_\_\_, 2020 CITY OF EAST PALO ALTO

By: \_\_\_\_\_

Regina Wallace Jones, Mayor

ATTEST:

By: \_\_\_\_\_

Walfred Solorzano, City Clerk

~~APPROVE AS TO FORM:~~

~~Rafael Alvarado~~

~~City Attorney~~

04/02/20-12

DATED: \_\_\_\_\_, 2020 SANTA CLARA VALLEY WATER DISTRICT

By: \_\_\_\_\_

Nai Hsueh, Chair

ATTEST:

By: \_\_\_\_\_

Michele L. King, CMC, Board Clerk

~~APPROVE AS TO FORM:~~

~~District Counsel By~~

~~Leslie Orta~~

~~Senior Assistant District Counsel~~

04/02/20-13 (REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**DATED:** \_\_\_\_\_, 2023

**CITY OF MENLO PARK**

**By:** \_\_\_\_\_

Name

Mayor

**ATTEST:**

**By:** \_\_\_\_\_

Name

City Clerk

**APPROVE AS TO FORM:** \_\_\_\_\_

City Attorney

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DATED: \_\_\_\_\_, 2023

CITY OF PALO ALTO

By: \_\_\_\_\_

Name

Mayor

ATTEST:

By: \_\_\_\_\_

Name

City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
City Attorney

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DATED: \_\_\_\_\_, 2023

CITY OF EAST PALO ALTO

By: \_\_\_\_\_

Name

Mayor

ATTEST:

By: \_\_\_\_\_

Name

City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
City Attorney

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DATED: \_\_\_\_\_, 2023

SANTA CLARA VALLEY WATER DISTRICT

By: \_\_\_\_\_  
John L. Varela  
Chair, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Michele L. King, CMC  
Clerk, Board of Directors

APPROVE AS TO FORM:

\_\_\_\_\_  
District Counsel  
J. Carlos Orellana

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DATED: \_\_\_\_\_, 2023

SAN MATEO COUNTY FLOOD  
AND  
SEA LEVEL RISE RESILIENCY  
DISTRICT

By: \_\_\_\_\_  
Name  
Chair, Board of Directors

ATTEST:  
By: \_\_\_\_\_  
Name  
Clerk, Board of Directors

APPROVE AS TO FORM: \_\_\_\_\_  
Brian Kulich  
Lead Deputy County Counsel  
General Counsel

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## **Agenda Item 6.A. – March 2023 Updates to Board Handbook**

### Background

In 2020 staff and legal counsel compiled helpful information for the members of the SFCJPA Board of Directors regarding Board roles, and context of the SFCJPA organization. This is a living document and is updated from time-to-time. The current updates reflect new additions to the SFCJPA board of directors and recent board committee assignments, among a few other details.

### Discussion

We hope the members of the board find this document a useful reference resource. The board may, at any time, provide suggestions to improve the utility of this document.

### Recommendation

Please keep this document for your reference and make any suggestions for future improvements.



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

**SFCJPA Board Handbook**  
**March 2023**

**Version history**

<b>Date of Action</b>	<b>Action</b>	<b>Detail</b>
November 18, 2021	Initial version	
December 15, 2022	Update	Detail added to Ex. Dir. Review process in Section 1.5 Clarification to COVID-related public health precautions regarding meetings in Section 3.8
March 17, 2023	Update	Updates to Board and Staff contact information. Removal of 3-year rolling workplan (to be provided as a separate information item to the board). Addition of reference to NetFile tool for Form 700 filing. Addition of ACWA-JPIA Committee participation description and background. Deletion of references to the now-defunct/inoperative google-map interface for the flood early warning system.

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## **Introduction**

The San Francisquito Creek Joint Powers Authority (SFCJPA) works with its members and watershed partners to address the interrelated issues of flood protection, ecosystem restoration and creation of recreational opportunities along the creek and in the watershed.

Our overarching goal, working with our member agencies and partners, is to implement a suite of interrelated actions, each with independent utility but together comprising a comprehensive approach with multiple benefits to all inhabitants of the watershed. The SFCJPA's action plan to achieve our vision and overarching goal is to implement projects that are components of the SFCJPA's plan to cost effectively provide protection to people and infrastructure, while improving habitat and recreational opportunities.

### **Handbook Purpose and Objectives**

This Board Handbook is intended to provide a summary of requirements for elected officials summarizing and supplementing the more detailed compliance information Board members receive from their agencies. This handbook also provides details about specific San Francisquito Creek Joint Powers Authority projects, functions, policies, and procedures relevant to Board members and their duties. We hope it provides a brief and useful orientation for new board members and a handy reference for existing board members.



## **1.0 Board Member Roles and Responsibilities**

### **1.1 Board participation**

Board members and alternates are appointed by their respective Boards or Councils. Member agencies are expected to have representation at all regular and special Board meetings. In the event a Board member is not able to attend a meeting, they should coordinate with their appointed Board Alternate to ensure the SFCJPA Board meeting has a quorum.

Board alternates are appointed by their respective Boards or Councils. Board alternates should familiarize themselves with the SFCJPA's projects, board agendas and materials so that they are ready to participate when necessary.

### **1.2 Board roles**

**Chair** – The chair of the board is selected at the first meeting of the calendar year. The previous vice chair is often appointed to fill the Board Chair role. The Board Chair serves for two years. The board chair presides over each Board meeting, and coordinates agenda items and their order with the Executive Director. The Board chair also represents the SFCJPA in events, workshops, and public meetings, and at meetings with agency leaders as needed, with staff's support.

**Vice Chair** – The Vice Chair of the Board is selected at the first meeting of the calendar year. The Vice Chair stands in for the Chair of the Board if they are unavailable.

**Committee members** –

There are two standing committees of the SFCJPA Board: The Finance Committee and the Personnel Committee. As standing committees, all meetings of these standing committees must follow all meeting notice requirements of the Brown Act. The two members of each committee are selected at the first meeting of the calendar year. There is one external committee, the ACWA-JPIA Committee, where one board member and one staff member are selected to represent the SFCJPA.

Ad Hoc committees may be formed from time-to-time. The Board Chair appoints the members of the ad hoc committee who perform their function, report their findings or recommendations to the Board, whereupon the ad hoc committee is dissolved.

### **1.3 Oversight**

The Board of Directors employs and oversees the Executive Director, and legal counsel. The Board shall provide the Executive Director with an annual performance evaluation. The Board may choose to evaluate legal counsel.

### **1.4 Community engagement**

The members of the Board are encouraged to meet with their constituents in their capacity as SFCJPA Board members, to hear community input and answer questions. SFCJPA staff are eager to support Board members in community engagement opportunities.

### **1.5 Executive Director's Annual Performance Review**

In March:

The Executive Director will provide all board members with a self-evaluation.

The Personnel Committee may choose to send evaluation surveys to SFCJPA staff for upward evaluations, and to external colleagues (for “360” evaluations). The Personnel Committee may choose to send internal and external evaluation surveys annually, or less often as they choose.

The Personnel Committee may choose to include survey questions about the organization’s overall performance if this feedback is considered helpful.

In April:

All evaluations (internal and external) to be received by a person designated by the Personnel Committee two weeks before the May Board meeting.


The Personnel Committee’s designee shall compile and summarize the results

In May:


The May Board meeting shall have a closed session where the review information is shared with the full board. The Board shall invite the E.D. into the closed session to discuss their findings and recommendations. The E.D. shall have the opportunity to discuss and respond to the findings and submit responses to the board in writing within one week following the Board’s review.

The Board shall also have a closed session to discuss compensation and other contract details. The Board may designate a contract negotiator or negotiators, such as two members of the Board, to negotiate with the E.D regarding the contract terms. The Board shall meet in closed session to provide direction on compensation issues. The E.D. may not be present in such closed session.


**March:** Exec Dir provides self-evaluation to Board. Board Personnel Committee may choose to distribute a prepared survey via designee (legal counsel, for example) for external partners and staff evaluations of E.D.



**April:** Surveys (if any) returned two weeks before the May Board meeting, compiled by designee of the board.



**May:** Board shall have a closed session where -  
a) any personnel committee or survey input is shared with the full board and the E.D. and  
b) where the Board, *with the E.D. absent*, shall discuss and provide direction regarding executive compensation.



**June:** Any changes to E.D. compensation are reflected in the proposed budget for the following fiscal year.

## 2.0 Brown Act Compliance

Although all members of the SFCJPA Board of Directors receive Brown Act Compliance instruction from their respective agencies, it may be helpful to summarize Brown Act compliance requirements here as well.

### 2.1 Open Meetings

The central provision of the Brown Act requires that all “meetings” of a legislative body be open and public. The Brown Act defines the term “meeting” very broadly to encompass almost every gathering of the majority of a legislative body’s members:

Any congregation of a majority of the members of a legislative body at the same time and location . . . to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

The Brown Act does not prohibit individual conversations between two Board members, or conversations between less than a majority of the members of the Board of Directors.

**Serial Meetings:** Serial meetings are prohibited and can occur even though a majority of the Board of Directors never gather in a room at the same time. A serial meeting is a series of individual meetings or communications, through which ideas are exchanged, or decisions are made, among a majority of the Board. A serial meeting typically occurs in one of two ways. The first is when one person separately contacts a majority of the Board Members and shares ideas among them (i.e., “I’ve talked to members A and B and they will vote ‘yes.’ Will you?”). The second is when Board member A calls Board member B, who then calls Board member C.

Board members are not prohibited from communicating with staff and other Board members for the purpose of answering questions or providing information.

Observing the following guidelines can avoid inadvertent violation of the serial meeting rule.

**Contacts with Staff:** Staff briefings of individual Board members for the purpose of answering questions or providing information regarding an item of business do not constitute a serial meeting under the Brown Act as long as a staff person does not communicate the comments or positions of a member of the Board. To avoid having a staff briefing become a serial meeting:

- Staff briefings of members of the Board should be “unidirectional” when done on an individual basis for a majority of the legislative body. For example, the SFCJPA Executive Director has “one-on-ones” with each Board member. This means that information should flow from staff to the member, and the member’s participation should be limited to asking questions and acquiring information.
- A Board member should not ask staff to describe the views of any other members of the legislative body, and staff should not volunteer those views if known.
- Staff may present their views to a Board member during an individual contact, but staff should not ask for that member’s views unless it is absolutely clear that staff is not discussing the matter with a majority of the legislative body.

**Contacts with Constituents, Developers and Lobbyists:** A constituent can inadvertently become an intermediary among a majority of Board members creating a serial meeting. To avoid violations arising from contacts with constituents, developers and lobbyists, the Board member should:

- State the ground rules “up front.” Ask if the person has talked, or intends to talk, with other members of the Board about the same subject. Make it clear that the person should not disclose the views of other legislative body member(s) during the conversation.
- Explain to the person that you will not make a final decision on a matter prior to the Board meeting in which the matter is heard
- Do more listening and asking questions than expressing opinions.

Contacts with Fellow Members of the Same Legislative Body: Direct contacts concerning local agency business with fellow members of the Board – whether through face-to-face or telephonic conversations, notes, letters, online exchanges, e-mail with or to staff members – are the most obvious means by which a serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of local agency business with another member of that legislative body outside of a meeting; as long as the communication does not involve a majority of the legislative body, no “meeting” has occurred.

These suggested rules of conduct may seem restrictive and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act’s goal of achieving open government. If you have questions about compliance with the Brown Act, you should seek advice from legal counsel.

## **2.2 Types of Board Meetings**

Regular Meetings: All regular business of the Board should be conducted at the Board’s regular, monthly meetings. Once a regular meeting is adjourned, the Board may not meet again until the next regular meeting, unless the Board adjourns to a different time or unless a special meeting is called. Field trips and “study sessions” occurring on a date other than a regular meeting date are conducted as adjourned meetings or special meetings.

Adjourned Meetings: At the conclusion of a regular meeting, the Chair may adjourn the meeting to a specific time, place, and date. This allows for an extension of the regular meeting. If a regular meeting of the Board is adjourned to another time, the Clerk of the Board shall post a notice of the adjourned meeting.

Special Meetings: Special meetings may be called by the Chair or a majority of the Board under the following guidelines:

- Written notice must be delivered personally or by any other means to each Board member. Notices must also be posted, at least 24 hours prior to the meeting, at the designated posting place(s).
- The notice must contain the subjects of the meeting and only those subjects may be considered at the special meeting.

## **2.3 Exceptions to Meeting Requirements**

There are six types of gatherings that are not subject to the Brown Act. We commonly refer to these exceptions as: (1) the individual contact exception; (2) the seminar or conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of the members of a legislative body falls within one of these exceptions, a majority of members gathering in the same room to listen to or be part of a discussion of local agency business would constitute a meeting within the meaning of

the Brown Act. If board members have any questions about these exceptions or how they may apply to a specific situation, please contact legal counsel.

### 3.0 Board and Committee Meeting Procedures

#### 3.1 Regular meetings of the Board

All regular Board meeting agendas and supporting materials must be posted no less than 72 hours prior to a regularly scheduled meeting of the Board. According to the Board’s usual meeting schedule this means that materials must be posted on the Monday afternoon prior to the Thursday afternoon meeting. If timing allows, SFCJPA staff try to post Board meeting agendas and materials the preceding Friday.

Board meetings are convened by the Board Chair, or the Vice Chair if the Chair is absent. A sample draft of an SFCJPA Board meeting agenda is below:

**San Francisquito Creek Joint Powers Authority**

**Notice of Regular Meeting of the Board of Directors**  
Thursday, xxxxxxxx.xx, xxxxx  
3:30 P.M.

Due to the risk of COVID-19 transmission, this meeting will be held remotely. Members of the public may observe and offer comment at this meeting by using the chat function and typing your question or comment, by selecting the raise your hand function or if you are joining by phone unmuting yourself and letting Clerk of the Board or Board Chair know you wish to speak. If you require an accommodation pursuant to the Americans with Disability Act, please contact the Clerk of the Board at the phone number or email listed at the bottom of this Agenda by 10:00 am on the day of the meeting.

Join Zoom Meeting  
Zoom link inserted here

Meeting ID: xxx xxxx xxxx Passcode: xxxxxx  
(xxx) xxx-xxxx-xxxxxxxxxxx#xxxxxx#

**Agenda**

1. CALL TO ORDER AND ROLL CALL
2. APPROVAL OF AGENDA: Changes or additions to the agenda.
3. APPROVAL OF MEETING MINUTES: xxxxx.xx, xxxxx Regular Meeting
4. PUBLIC COMMENT: Individuals may speak on a non-agendized topic for up to three minutes.

REGULAR BUSINESS

\*Members of the Public may speak on any agenda item for up to three minutes\*

5. xxxxxxxxxxxx
6. INFORMATION ITEMS
  - A. Executive Director's Report
7. CONSENT AGENDA
  - A. xxxxxxxx

(650) 457- 0943 \* jpa@sfcjpa.org \* 2100 Goox Road, Suite 210\* Palo Alto, CA 94303  
SFCJPA.ORG

**San Francisquito Creek Joint Powers Authority**

8. ACTION ITEMS
  - A. xxxxxxxx xxxxxxxxxxxx xxxxx
  - B. xxxxxxxx xxxxxxxxxxxx xxxxxxx
9. BOARD MEMBER COMMENTS, INFORMATION ITEMS, REQUESTS and ANNOUNCEMENTS (Information only)
10. ADJOURNMENT

PLEASE NOTE: Board meeting Agenda and supporting documents related to items on the Agenda can be viewed online by 3:30 p.m. by Monday xxxxx.xx, xxxxx at sfcjpa.org – click on the "Meetings" tab near the top.

(650) 457- 0943 \* jpa@sfcjpa.org \* 2100 Goox Road, Suite 210\* Palo Alto, CA 94303  
SFCJPA.ORG

The regular agenda order begins with a roll call, then action to accept or change the agenda, followed by public comment on any topics in the SFCJPA’s purview that are not on the meeting’s agenda. It is the Chair’s discretion as to how long members of the public may speak; a three-minute time limit is typical.

As shown in the sample agenda the remainder of the agenda may include the Executive Director’s report and other information items, study session or discussion/non-action items, review and approval of meeting minutes, consent items, action items, Board member announcements and adjournment.

Board meetings may include a closed session where the Board adjourns from regular open session to closed session, then reconvenes in open session to report on any reportable actions taken in closed session.

### **3.2 Special meetings of the Board**

Special meetings of the Board may be convened and require a 24-hour notice. Special meetings are convened to address matters that cannot wait until the next scheduled regular meeting of the Board. Examples include budget discussions and consultant contract approval.

### **3.3 Establishing Committees of the Board**

The Board may establish committees to provide analysis and recommendations to the full Board. Committees may either be Standing Committees or Ad Hoc committees.

Standing committees are subject to the Brown Act. The Brown Act describes a standing committee as one which has "continuing subject matter jurisdiction." This means that a permanent committee that is designed to handle an issue or issues on a continual basis will be a standing committee and is subject to the Act's notice and posting requirements. Membership of Standing committees is typically less than a quorum of the Board. Non-committee members of the Board may attend committee meetings but cannot engage in discussion.

Standing committees don't need to establish a "regular meeting time and place", but they must meet in public and post notices of their meetings.

Ad hoc or "temporary" committees are treated differently under the Brown Act. The Chair of the Board establishes an ad hoc committee by appointing the committee as part of an agenda item at a publicly noticed Board meeting.

Ad hoc committees are not subject to the notice and posting requirements of the Brown Act so long as the committee:

- is only comprised of agency Board members,
- Is less than a quorum of the Board,
- has a defined purpose and a time frame to accomplish that purpose; and
- is advisory, i.e., the committee has not been delegated any decision-making power and will be returning to the full Board with its recommendation(s).

Once that Ad Hoc committee has completed its work, the committee is then disbanded.

### **3.4 The SFCJPA's Committees of the Board**

There are two standing committees of the SFCJPA Board.

The Personnel Committee – This committee is typically comprised of the Board Chair and one other member of the board. The purpose of this committee is to conduct the annual evaluation of the Executive Director and to make any recommendations for Executive compensation. The annual performance review is to be conducted in the beginning of March and concluded in April to ensure that any recommendations for changes in compensation can be included in the annual budget process.

In the event of the need to fill the role of Executive Director, the personnel committee may also be engaged in Executive search and candidate evaluation tasks.

The Finance Committee – This committee is convened to review and provide feedback on the SFCJPA's annual proposed operational budget, annual audit, Finance Policy and Procedure updates and SFCJPA



banking and investments. The committee typically convenes in the first quarter of the calendar year and occasionally in the fall depending on the financial needs of the agency.

Proposed: Account signatories will include one member from the Finance Committee and the Board Chair.

ACWA-JPIA Committee – One member of the board and one staff member are selected to represent the SFCJPA to the ACWA-JPIA committee. There is typically one meeting per year.

The Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA, aka JPIA) was formed to provide liability coverages tailored to the unique needs of California water agencies. Because risk sharing among water agencies was so successful in its first few years, a Property Program was added in January of 1983 and a Workers' Compensation Program was added in July of 1984. In July 2012, the Employee Benefits Program was added. Each water agency that joins the JPIA must also be a member of ACWA, be a public entity, and be directly involved with water. Each member names one of its directors to sit on the JPIA's Board of Directors. In addition, the water agency's board members and staff become eligible to participate on the JPIA's various Committees of the Programs for which they are members.

Ad Hoc Committees – According to the Brown Act, Ad Hoc committee members are appointed by the Chair. Ad hoc committees are convened to serve a specific purpose for a limited time.

### **3.5 Board meeting dates and times, Annual Calendar**

The SFCJPA holds its regularly scheduled Board meetings on the fourth Thursday of each month at 3:30 P.M., except for the months of November and December in which the meetings will be held on the third Thursday to accommodate the winter holidays.

The Board typically chooses to select a month in the summer (often July or August) for a recess, where no regular meeting of the Board occurs.

The annual calendar is typically set at the November or December Board meeting for the upcoming year.

### **3.6 Board and Committee Meeting Minutes**

On October 22, 2020, by Resolution #20-10-22 C, the SFCJPA Board adopted a policy of summary minutes. This style of meeting minutes provides basic information about actions taken and the essentials of public input and Board discussion but is not verbatim nor detailed. Typically, meeting minutes for the previous regular meeting and any special meetings are included in the next monthly Board packet.

### **3.7 Meeting venues**

Regular in-person meetings are rotated between the City Halls of Palo Alto, East Palo Alto and Menlo Park. Following the governor's declaration of the end of the COVID-19 Public Health Emergency, effective February 28, 2023, SFCJPA board meetings will be held in-person and where technologically feasible, will provide a 'hybrid' option for members of the public to attend via video conference.

### **3.8 COVID-19 and Public Health and Safety Protocols**

For the duration of the COVID-19 pandemic and any associated Governor's declared emergency, the SFCJPA is adhering to social distancing and remote meeting protocols by holding web-based video-conference meetings. The SFCJPA conformed to the requirements of AB361 regarding a finding of public health

requirements when determining its meeting format and location. In the future, should a public health emergency arise, the SFCJPA will follow recommended public health and safety protocols.

## **4.0 Conflict of Interest**

### **4.1 Form 700**

The Political Reform Act requires public officials to disclose assets and income that may be materially affected by their official actions by filing a “Statement of Economic Interests” (also known as a “Form 700”). All Board members and alternates must file a Form 700 with the SFCJPA. Forms should be mailed to the SFCJPA office attention Clerk of the Board or sent electronically to the Clerk of the Board to [mhparker@sfcjpa.org](mailto:mhparker@sfcjpa.org). Please visit the FPPC website for filing information. The SFCJPA is in process to set up “NetFile”, an online Form 700 filing tool, to simplify and streamline Form 700 reporting. Board members will be alerted to the activation of this tool for their use.

<https://www.fppc.ca.gov/Form700.html>

**Board members must send their Form 700 to the SFCJPA Clerk of the Board no later than April 1 of each year or as posted by the FPPC.**

If a public official fails to timely file his or her Form 700, the case will be referred to the FPPC Enforcement Division, and a penalty of up to \$5,000 may be imposed. File on time!

### **4.2 Conflicts under the Political Reform Act**

In addition to the disclosure requirements, the Political Reform Act requires public officials to disqualify themselves from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. An official has a disqualifying financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, directly on the official or a member of the official’s immediate family, or on certain listed financial interests. The listed financial interests are:

- Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more.
- Any real property in which the public official has a direct or indirect interest worth \$2,000 or more.
- Any source of income, including commission income or incentive income, aggregating to at least \$500 within 12 months prior to the time when the decision is made. The \$500 must be provided or promised to, or received by, the official during the 12 months before the decision.
- Any business entity (excluding nonprofit corporations) in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$520 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

### **4.3 Conflicts under California Government Code Section 1090**

Government Code Section 1090 prohibits an officer, employee, or agency from participating in making government contracts in which the official or employee within the agency has a financial interest. Section 1090 applies to virtually all state and local officers, employees, and multimember bodies, whether elected or appointed, at both the state and local level.

“Making” a contract includes final approval of the agreement, as well as involvement in preliminary discussion, planning, negotiation, and solicitation of bids.

A broad range of agreements are considered a contract under Section 1090. Generally, there is a contract when an offer is made and accepted and there is something of value bargained for and exchanged by each party. This includes written contracts, purchase of goods or services, employment agreements, leases, development agreements, etc.

An official can have a “financial interest” in a contract in a variety of ways and it is not limited by the amount of the interest or how closely connected the official’s interest is to the contract.

Several exceptions to Section 1090’s general prohibition also exist and, when applicable, officials may be considered to have no financial interest or a “remote” financial interest, so that a contract, or the official’s participation in the contracting process, is not prohibited under Section 1090.

Violations of Section 1090 can result in the voiding of contracts, criminal, civil, and administrative penalties, as well as a ban on holding public office.

The FPPC issues advice letters and opinions to persons subject to Section 1090 and enforces the provisions of Section 1090 through administrative and civil actions. More information about the advice letter process is available at the FPPC’s Formal Advice webpage. To file a complaint alleging a violation of Section 1090, go to the FPPC’s File a Complaint webpage.

## **5. Agency Budget and Finances**

### **5.1 Budget Process and Schedule**

The SFCJPA agency operational budget covers shared costs of running the organization – including staff compensation, employee benefits, office costs, legal, consulting support (examples include IT, Flood Warning system maintenance, and other small shared-expense costs). The funding for the organization is comprised of member agency contributions which form equal shares of the operating budget. Occasionally, grants may modestly augment the budget.

The annual budget is drafted by the SFCJPA’s Finance Manager in consultation with SFCJPA staff. The Budget process begins in February and ends when the budget is approved by the SFCJPA Board, which typically occurs in April or May at the latest. The draft budget is presented to the Finance Committee prior to Board presentation in February.

### **5.2 Banking and Investments**

The SFCJPA has two operational banking accounts, three project accounts and one reserves account. The SFCJPA operational and project accounts are held at First Republic Bank. The SFCJPA reserves funds are held in a LAIF account. Suggestions of when and where to invest SFCJPA funds are first presented to the Finance Committee then to the Board for final approval or determination.

## **6. Agency Agreements**

### **6.1 Member's Agreement**

The Founding Members' Agreement between the five SFCJPA members, created in 1999 after the serious flood event of 1998, established the Joint Powers Authority. This document remained unchanged until 2019, when the creation of the San Mateo County Flood and Sea Level Rise Resiliency District replaced the County of San Mateo itself as the SFCJPA member, necessitating an update to the agreement language. At that time, a few additional updates to the agreement language were made.

The SFCJPA Members' Agreement, current as of November 18, 2021, is attached for reference as Appendix A.

### **6.2 Agency Agreements**

The SFCJPA is a signatory to several different inter-agency agreements to facilitate the execution of the SFCJPA's mission and objectives. These agreements define our shared understandings and agreements regarding roles, responsibilities, and obligations.

The following is a list of the current agreements to which the SFCJPA is a party. These documents are provided in full in Appendix B.

1. Between Valley Water and the SFCJPA for funding the initial study and Environmental Impact report for flood protection, etc. from Highway 101 to El Camion Real. (Expires 12/31/21. Extension in process)
2. Between Valley Water and the SFCJPA, Cost share agreement for West Bayshore Inlet.
3. Between Stanford University and the SFCJPA for access to Stanford lands to conduct off-stream detention investigations.
4. Extension of the access agreement between Stanford and the SFCJPA.
5. Between the US Army Corps of Engineers and the SFCJPA for the CAP 205 Study.
6. Between the City of Menlo Park, the SFCJPA, Meta (formerly known as Facebook) and PG&E for implementation of the FEMA BRIC grant (draft agreement).

## 7. Winter Emergency Preparedness

### 7.1 The SFCJPA Flood Early Warning System

The SFCJPA's Flood Early Warning System was implemented in 2015 to fill multiple needs:

- Real-time monitoring of rainfall in the upper watershed,
- Real-time monitoring of stream flow conditions in the San Francisquito Creek and its major tributaries,
- Coordinated communication of streamflow information to emergency management and response personnel,
- Rainfall and streamflow conditions for use by subject-matter experts and interested members of the community,

The Flood Early Warning System can be accessed on the SFCJPA's website at this link: [San Francisquito Flood Early Warning System \(sfcjpa.org\)](http://sfcjpa.org).

Until 2021, the SFCJPA operated an automated alert system. However, the technology operating this became obsolete, and other organizations associated with San Mateo and Santa Clara Counties operated much more sophisticated alert systems. The SFCJPA decommissioned its call and text alert system and pointed community members toward the new, comprehensive alert systems in both counties.

Similarly, the Flood Early Warning System map function is obsolete and will be re-evaluated and re-designed or will be permanently decommissioned. At this time, the function is off-line.

### 7.2 Multi-Agency Coordination (MAC)

The purpose of the San Francisquito Creek (SFC) Multi-Agency Coordination (MAC) Operational Plan is to establish a MAC Group to facilitate:

1. Pre-incident planning prior to a storm/flood event,
2. Coordination of the stakeholders' interagency response and recovery operations, and
3. Collaboration on public messaging.

The Plan is maintained by the Palo Alto Office of Emergency Services (OES), who's chief serves as the chair of the SFC MAC. Prior to every winter season, OES will review this Plan with the Stakeholders and others, as needed. The current SFC MAC Operations Plan can be found here: [Microsoft Word - SFC MAC Op Plan Severe Storms and Flood \(cityofpaloalto.org\)](http://cityofpaloalto.org)

There are annual Plan reviews and coordinating meetings of the participants in the MAC, representing the SFCJPA, city, county, and Valley Water emergency preparedness and response professionals, public safety professionals, public works representatives and other key stakeholders.

## 8. Contact information: Board and Staff

### SFCJPA Board and Alternates:

City of East Palo Alto	Board Member	Alternate Board Member
	Ruben Abrica, Vice Mayor	Lisa Yarbrough Gauthier
	2415 University Ave.	2415 University Ave.
	East Palo Alto, CA 94303	East Palo Alto, CA 94303
	650/853-3100	650/853-3100
	<a href="mailto:rabrica@cityofepa.org">rabrica@cityofepa.org</a>	<a href="mailto:lgauthier@cityofepa.org">lgauthier@cityofepa.org</a>
City of Menlo Park	Drew Combs, Mayor	Cecilia Taylor
	701 Laurel Street	701 Laurel Street
	Menlo Park, CA 94025	Menlo Park, CA 94025
	650/330-6610	650/330-6610
	<a href="mailto:dcombs@menlopark.org">dcombs@menlopark.org</a>	<a href="mailto:cttaylor@menlopark.org">cttaylor@menlopark.org</a>
City of Palo Alto	Greer Stone, Vice Mayor	Lydia Kuo, Mayor
	250 Hamilton Ave	250 Hamilton Ave
	Palo Alto, CA 94303	Palo Alto, CA 94303
	650/892-0925	650/329-2480
	<a href="mailto:Greer.Stone@CityofPaloAlto.org">Greer.Stone@CityofPaloAlto.org</a>	<a href="mailto:alison.cormack@cityofpaloalto.org">alison.cormack@cityofpaloalto.org</a>
OneShoreline	Dave Pine, County Supervisor	Ray Mueller, County Supervisor
	555 County Center	555 County Center
	Redwood City, CA	Redwood City, CA
	650 363-4571	
	<a href="mailto:dpine@smcgov.org">dpine@smcgov.org</a>	<a href="mailto:rmueller@smcgov.org">rmueller@smcgov.org</a>
Santa Clara Valley Water District (Valley Water)	Rebecca Eisenberg, Director	Nai Hsueh, Board Chair
	5750 Almaden Expressway	5750 Almaden Expressway
	San Jose, CA 95118	San Jose, CA 95118
	408 265-2600	408 265-2600
	<a href="mailto:REisenberg@valleywater.org">REisenberg@valleywater.org</a>	<a href="mailto:NHsueh@valleywater.org">NHsueh@valleywater.org</a>

### SFCJPA Offices

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### Staff

Margaret Bruce, Executive Director	Cell: 408-605-2761	Email: <a href="mailto:mbruce@sfcjpa.org">mbruce@sfcjpa.org</a>
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Miyko Harris-Parker, Finance Manager and Clerk-of-the-Board	Office: (650) 643-	Email: mharker@sfcjpa.org

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## **APENDICIES**

## APENDIX A

### SFCJPA MEMBERS' AGREEMENT (First Amended and Restated Agreement, 2019)

#### SAN FRANCISQUITO CREEK JOINT POWERS AGREEMENT

This Amended and Restated Agreement (“Agreement”) is made by and among the City of Menlo Park, the City of Palo Alto, the City of East Palo Alto, the Santa Clara Valley Water District, and the San Mateo County Flood and Sea Level Rise Resiliency District (“Member Entities”), all of which are public entities organized and operating under the laws of the State of California and each of which is a public agency as defined in California Government Code section 6500.

#### RECITALS

A. The Joint Exercise of Powers Act, being Government Code sections 6500 et seq. (the “JPA Law”), permits two or more local public entities by agreement to jointly exercise any power common to them.

B. Following years of effort to address environmental and flooding concerns related to the watershed and floodplain of San Francisquito Creek (encompassing approximately 50 square miles from the Santa Cruz Mountains to San Francisco Bay), and soon after the flood of record in 1998 damaged approximately 1,700 properties, the Member Entities established the San Francisquito Creek Joint Powers Authority pursuant to that certain “Joint Exercise Agreement Creating the San Francisquito Creek Joint Powers Authority,” dated as of May 18, 1999, to collectively contribute resources and implement policies and projects of mutual interest relating to the primary natural features that unite them, including the San Francisquito Creek (“Creek”).

C. The governing body of each Member Entity has determined that it is in the Member Entity’s best interest and in the public interest that this Amended and Restated Agreement be executed to make minor procedural updates, including the change on January 1, 2020 of the San Mateo County Flood Control District to the San Mateo County Flood and Sea Level Rise Resiliency District.

NOW, THEREFORE, the Member Entities, by, between and among themselves, in consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

#### 1. CREATION OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY.

Pursuant to the JPA Law, the Member Entities create a public agency, separate and apart from the Member Entities to be known as the San Francisquito Creek Joint Powers Authority (the “Authority”). Pursuant to Government Code section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this Agreement. A Member Entity may separately contract for or assume responsibility for

specific debts, liabilities, or obligations of the Authority. For purposes of, and to the extent required by, Government Code section 6509, in exercising its powers, the Authority shall be subject to the restrictions upon the manner of exercising the powers of the City of Menlo Park, except as otherwise authorized or permitted by the JPA Law.

2. PURPOSES. This Agreement is entered into by Member Entities under the JPA Law for the following purposes:

- a. To facilitate and perform bank stabilization, channel clearing and other Creek maintenance.
- b. To plan flood control measures for the San Francisquito Creek watershed.
- c. To take actions necessary to preserve and enhance environmental values and instream uses of San Francisquito Creek.
- d. To coordinate emergency mitigation and response activities relating to San Francisquito Creek.
- e. To make recommendations to Member Entities for funding and alternatives for long term flood control for Member Entity consideration.

3. PARTIES TO AGREEMENT.

Each Member Entity certifies that it intends to and does contract with every other Member Entity which is a signatory to this Agreement. Each Member Entity also certifies that the deletion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining. Pursuant to Assembly Bill 825 (Chapter 292, Statutes of 2019), which amended the San Mateo County Flood Control District Act to provide for the San Mateo County Flood and Sea Level Rise Resiliency District, the Member Entities agree that the San Mateo County Flood and Sea Level Rise Resiliency District is the entity formerly known as the San Mateo County Flood Control District, and as such is subject to the terms and conditions of this Agreement.

4. TERM OF AGREEMENT.

This Agreement became effective as of May 18, 1999 and continues in full force until terminated in accordance with Paragraph 18. (Termination and Distribution).

5. POWERS OF THE AUTHORITY.

The Authority through its Board of Directors is authorized, in its own name and subject to the limitations set forth below, to do all acts necessary to fulfill the purposes of this Agreement referred to in Paragraph 2. (Purposes) including, but not limited to, each of the following:

- a. Make and enter into contracts;
- b. Incur debts, liabilities, and obligations, provided that no debt, liability, or obligation of the Authority shall be a debt, liability, or obligation of a Member Entity except as separately agreed to by a Member Entity;
- c. Receive contributions and donations of property, funds, services, and other forms of assistance from any source;
- d. Sue and be sued in its own name;
- e. Contract with independent consultants and/or contractors;
- f. Receive, collect, and disburse monies;
- g. Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;

- h. Assign, delegate, or contract with a Member Entity or third party to perform any of the duties of the Board including, but not limited to, acting as administrator for the Authority; and
- i. Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

#### 6. MEMBER ENTITY APPROVALS AND RESPONSIBILITIES.

Each Member Entity has the approval authority, obligations and responsibilities set forth in this Agreement. No action of the Authority shall be effective or binding unless and until such action has been approved in accordance with Subparagraph “e.” (Action of the Board) of Paragraph 10. (Board Members) by the Board of Directors consistent with a budget approved by independent action of each Member Entity’s governing body.

#### 7. PROJECT PARTICIPATION APPROVAL AUTHORITY.

Member Entities shall have the right to determine independently whether to participate in any capital improvement project. No capital improvement project shall be approved by the Authority unless and until Member Entities sufficient to fund the project fully have approved the project by independent action of each such funding Member Entity’s governing body.

#### 8. MEMBERSHIP.

New Member Entities may be added to the Authority by amending this Agreement, as described in Paragraph 21. (Amendments), and Member Entities may withdraw or be expelled, as described in Paragraph 16. (Withdrawal) and Paragraph 17. (Expulsion).

#### 9. BOARD OF DIRECTORS.

a. Directors. There shall be a Board of Directors (the “Board”) to govern the affairs of the Authority. The Board shall be comprised of one director, and one alternate director, from each Member Entity. Each director has one vote. An alternate director may cast a vote as a member of the Board of Directors only in the absence of the director from that same Member Entity. Each director and alternate director shall be a member of the governing body of the Member Entity and shall be designated by its governing body; provided, however, that no two directors and no two alternate directors shall be from the same governing body of any Member Entity.

b. Compensation. Directors and alternate directors are not entitled to compensation by the Authority. The Board may authorize reimbursement of expenses incurred by directors or alternate directors.

c. Powers. The powers of the Board are each of the powers of the Authority not specifically reserved to the Member Entities by this Agreement. The Member Entities retain the following powers:

(1) The designation of the Board as specified in Subparagraph “a.” of Paragraph 9. (Board of Directors);

(2) Approval of an amendment to this Agreement as specified in Paragraph 21. (Amendments);

(3) Approval of actions pursuant to Paragraph 6. (Member Entity Approvals and Responsibilities);

(4) Approval of project participation as specified in paragraph 7. (Project Participation Approval Authority); and

(5) Approval of the annual budget of the Authority as specified in Paragraph 13. (Budget).

#### 10. BOARD MEMBERS.

a. Meetings. The Board shall hold at least one regular meeting each year, at which time the Board shall elect its officers as appropriate to comply with Paragraph 11. (Officers). The Board shall fix the date, hour, and place at which each regular meeting is to be held. To the extent practicable, each Board meeting shall be held in Northern Santa Clara County or Southern San Mateo County. The Chair presides at all meetings. A special meeting may be called upon written request by the Chair or at least two directors.

b. Brown Act. Each regular, adjourned regular, or special meeting of the Board shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Sections 54950, et seq., of the Government Code).

c. Minutes. The Clerk of the Board shall draft minutes of each regular and special meeting of the Board, which shall be considered for approval by the Board at a subsequent regular meeting.

d. Quorum. No business may be transacted by the Board without a quorum of members of the Board being present except that less than a quorum may adjourn from time to time. A quorum consists of a majority of the members of the Board.

e. Action of the Board. Except as otherwise specified in this Agreement, any action of the Board shall require a vote of a majority of the Board.

#### 11. OFFICERS.

a. Officers. The officers of the Authority are the Chair, Vice-Chair, and Secretary.

b. Election/Term/Duties. The officers shall be elected or appointed by the Board at its first meeting of the calendar year unless that is delayed by an action of the Board. The term of office for Chair, Vice-Chair, and Secretary is one year. The officers shall assume the duties of their offices upon being elected or appointed, as appropriate. If any of the Chair, Vice-Chair, or Secretary ceases to be a member of the Board, the Board shall elect or appoint a new officer at the next regular meeting of the Board held after the vacancy occurs.

c. Compensation. Officers are not entitled to compensation by the Authority. The Board may authorize reimbursement of expenses incurred by officers.

d. Appointment/Contract. The Board may appoint such officers and may hire or contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.

12. FISCAL YEAR. The first fiscal year of the Authority is July 1, 1999 through June 30, 2000. Each subsequent fiscal year of the Authority shall begin on July 1<sup>st</sup> and end on June 30<sup>th</sup>.

13. BUDGET. The Board shall adopt an annual operating budget, which shall be separate from the Authority's capital projects budget. The operating budget shall include the proposed contribution from each Member Entity for the fiscal year and other sources of income. The operating budget shall not be effective unless and until the governing body of each Member Entity has approved that Member Entity's contribution to the budget. Member Entity contributions shall become immediately due and payable to the Authority upon adoption of the budget, unless expressly provided otherwise in the budget.

14. ANNUAL AUDIT AND AUDIT REPORTS. The Board shall cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions, and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be filed no later than as required by State law. The Authority shall pay the cost of the financial audit from its annual operating budget in the same manner as other administrative costs.

15. ESTABLISHMENT AND ADMINISTRATION OF FUNDS.

a. Accountability. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code. The funds shall be accounted for on a full accrual basis.

b. Investment/Disbursement. The Authority shall receive and disburse funds only in accordance with policies and procedures established by the Board and in conformity with applicable law.

c. Insurance/Bond. The Authority shall procure, carry and maintain, in full force and effect, at all times during the term of this Agreement, such insurance and bonds to protect the Authority and its members of the Board, officers, employees, agents and Member Entities, as deemed appropriate by the Board.

d. Depository and Auditor Controller. The Board shall designate one of its officers, employees or a third party to perform all acts required by Government Code Sections 6505 (regarding an annual audit), 6505.1 (regarding charge of and access to property), 6505.5 (regarding the depository and custodian of money), and 6505.6 (regarding independent audit where an officer or employee acts as treasurer, auditor or both), as such laws are amended from time to time.

16. WITHDRAWAL. Member Entities may withdraw from the Authority for subsequent fiscal years by providing written notice to the Authority and each Member Entity on or before May 1 of any fiscal year. Withdrawal shall be effective on July 1 of the next fiscal year. This shall be the exclusive means by which a Member Entity may withdraw from the Authority. Any Member Entity that withdraws shall remain liable for any budget contributions or capital improvement project participation approved before withdrawal. Any Member Entity that withdraws shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity withdraws from this Agreement. Any Member Entity that withdraws shall remain subject to the provisions of Paragraph 23. (Liability of the Authority; Release and Indemnity) with respect to any event or occurrence taking place before the Member Entity withdraws.

17. **EXPULSION.** The Authority may expel a Member Entity from the Authority by a four-fifths (4/5) vote of the Board for a breach of this Agreement determined by the Board to be a material breach. Any Member Entity that has been expelled pursuant to this paragraph shall have no further liability or obligation pursuant to this Agreement after the effective date of such expulsion; except such Member Entity shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity was expelled, including any budget contributions or capital improvement project participation approved before expulsion. Any Member Entity that has been expelled shall remain subject to the provisions of Paragraph 23. (Liability of the Authority; Release and Indemnity) with respect to any event or occurrence taking place before the Member Entity was expelled.

18. **TERMINATION AND DISTRIBUTION.**

a. **Termination.** This Agreement shall continue until terminated. This Agreement may be terminated by the written consent of four-fifths (4/5) of the Member Entities; provided, however, this Agreement and the Authority shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligation and affairs of the Authority.

b. **Surplus.** In the event that the Authority is terminated, any surplus money on deposit in any fund or account of the Authority shall be returned in proportion to the contributions made as required by Section 6512 of the California Government Code. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority, including for the disposition, division, or distribution of any property acquired as a result of the joint exercise of powers.

19. **NOTICES.** Notices to each Member Entity under this Agreement are sufficient if mailed to its respective address on file with the Authority.

20. **PROHIBITION AGAINST ASSIGNMENT.** No Member Entity may assign a right, claim, or interest it may have under this Agreement, and any such assignment shall be void. No creditor, assignee, or third-party beneficiary of a Member Entity has a right, claim, or title to any part, share, interest, fund, or asset of the Authority.

21. **AMENDMENTS.** This Agreement may be amended by approval by the governing body for each and every Member Entity. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date when the Member Entity considers it. An amendment is to be effective immediately unless otherwise designated.

22. **SEVERABILITY.** If a portion, term, condition, or provision of this Agreement is determined by a court to be illegal or in conflict with the law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

23. **LIABILITY OF THE AUTHORITY; RELEASE AND INDEMNITY.** Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, any Member



Entity, any member of the Board, and each officer, employee and agent of the Authority for their actions taken within the scope of their duties while acting on behalf of the Authority. The parties to this Agreement release each other and agree to hold each other harmless, as well as their officers and employees, for any loss or liability arising from their respective activities pursuant to this Agreement. Except as otherwise provided herein, each party agrees to indemnify, defend and hold harmless the other parties, their officers, agents, and employees from any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed under this Agreement. Each Member Entity agrees that legal counsel for any Member Entity may be designated by the Board to represent the Authority by performing legal services, including litigation, and that any potential conflict of interest arising from such representation shall be deemed waived by the Authority and Member Entity, unless an actual adverse relationship exists between the Member Entity and the Authority with respect to the particular matter. The designation of legal counsel from a Member Entity shall be with the approval of that Member Entity.

24. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

25. COUNTERPART. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

26. AGREEMENT COMPLETE. The foregoing constitutes the full and complete Agreement of the Member Entities. There are no oral understandings or agreements not set forth in writing herein.

27. NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity, other than the parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

[SIGNATURES TO FOLLOW ON SEPARATE PAGES]

04/02/20 9

DATED: , 2020 CITY OF MENLO PARK

By: \_\_\_\_\_

Cecilia Taylor, Mayor

ATTEST:

By: \_\_\_\_\_

Judi Herren, City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
Cara E. Silver

Interim City Attorney

04/02/20 10

DATED: \_\_\_\_\_, 2020 CITY OF PALO ALTO

By: \_\_\_\_\_

Adrian Fine, Mayor

ATTEST:

By: \_\_\_\_\_

Beth Minor, City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
Cassie Coleman

Assistant City Attorney

04/02/20 11

DATED: \_\_\_\_\_, 2020 CITY OF EAST PALO ALTO

By: \_\_\_\_\_

Regina Wallace-Jones, Mayor

ATTEST:

By: \_\_\_\_\_

Walfred Solorzano, City Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
Rafael Alvarado

City Attorney

04/02/20 12

DATED: \_\_\_\_\_, 2020 SANTA CLARA VALLEY WATER

DISTRICT

By: \_\_\_\_\_

Nai Hsueh, Chair

ATTEST:

By: \_\_\_\_\_

Michele L. King, CMC, Board Clerk

APPROVE AS TO FORM:

\_\_\_\_\_  
District Counsel By

Leslie Orta

Senior Assistant District Counsel

04/02/20 13

## **APENDIX B**

### **CURRENT INTERAGENCY AGREEMENTS**

1. Between Valley Water and the SFCJPA for funding the initial study and Environmental Impact report for flood protection, etc. from Highway 101 to El Camion Real. (Expires 12/31/21. Extension in process)
2. Between Valley Water and the SFCJPA, Cost share agreement for West Bayshore Inlet.
3. Between Stanford University and the SFCJPA for access to Stanford lands to conduct off-stream detention investigations.
4. Extension of the access agreement between Stanford and the SFCJPA.
5. Between the US Army Corps of Engineers and the SFCJPA for the CAP 205 Study.
6. Between the City of Menlo Park, the SFCJPA, Meta (formerly known as Facebook) and PG&E for implementation of the FEMA BRIC grant (draft agreement).

**AMENDMENT NO. 1 TO AGREEMENT A3617S**

**BETWEEN THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY AND  
THE SANTA CLARA VALLEY WATER DISTRICT FOR FUNDING THE PREPARATION OF  
AN INITIAL STUDY AND ENVIRONMENTAL IMPACT REPORT FOR FLOOD PROTECTION,  
ECOSYSTEM RESTORATION, AND RECREATIONAL ENHANCEMENTS ON  
SAN FRANCISQUITO CREEK BETWEEN HIGHWAY 101 AND EL CAMINO REAL**

This Amendment No. 1 ("Amendment"), retroactively effective as of May 1, 2018, amends the terms and conditions of that certain Agreement ("Agreement"), dated October 18, 2012, by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY ("Authority"), a California joint powers authority, and the SANTA CLARA VALLEY WATER DISTRICT ("Water District"), a special district of the State of California, collectively, the Parties.

**RECITALS**

- A. Authority and Water District are implementing a comprehensive Flood Protection, Ecosystem Restoration, and Recreation Project (Project) on San Francisquito Creek (Creek).
- B. The flood protection features of Phase 1 of the Project, which include channel widening, floodwall installation, construction of improved levees, marsh habitat improvements, and trail access improvements along the Creek downstream of Highway 101, were completed on January 31, 2019 and Phase 1 of the Project was accepted as complete by Water District on May 14, 2019.
- C. On October 18, 2012, Authority and Water District entered into a funding agreement ("Agreement") for Authority to retain a Consultant that was hired at a later date, Consultant Jones & Stokes Inc. ("Consultant"), to prepare environmental documentation for channel widening (Inlet) along with other Project elements upstream of Highway 101, to be implemented as Phase 2 of the Project.
- D. The Authority is the local sponsor for a U.S. Army Corps of Engineers' (Corps) General Investigation (GI) Study for Phase 2 of the Project.
- E. The Corps' Draft Feasibility Report will not be completed within the Corps' October 15, 2019 extended deadline. As a result, continuing with the required GI Study would significantly impact the Project's timeline and funding. Therefore, in June 2019, the Authority decided to pursue an option for Corps funding that does not require Congressional authorization through the Corps' Continuing Authorities Program Section 205 (CAP 205) process. In 2019, the Authority and Corps plan to move forward with closing the GI Study and initiating the CAP 205 process.
- F. With funding from the original Agreement, Authority has secured the services of an environmental consultant and a draft Environmental Impact Report (EIR) for Phase 2 of the Project was prepared and released for public review. The public review was completed and on September 26, 2019, the Authority's Board certified the final EIR.
- G. The Authority, Water District, and Corps have identified Known Project Elements that, when implemented, would provide protection against approximately the 70-year flood

Authority and Water District  
Amendment No. 1 to Phase 2 EIR/Permits Funding Agreement  
Version 9, 11/18/2019  
MC14447

**Cost Share Agreement  
Between the San Francisquito Creek Joint Powers Authority and  
the Santa Clara Valley Water District  
For Funding Design Modifications to the West Bayshore Road Inlet Structure**

This agreement (Agreement) effective once fully executed (Effective Date), by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY (Authority), a California joint powers authority and the SANTA CLARA VALLEY WATER DISTRICT (Water District), a special district of the State of California, collectively referred to as Parties, or individually as Party.

**R E C I T A L S**

- A. San Francisquito Creek has a history of flooding the communities in and around East Palo Alto, Menlo Park and Palo Alto. The most damaging flood occurred in 1998.
- 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 (Water District), formed the San Francisquito Creek Joint Powers Authority (Authority) on May 18, 1999. These entities are full members of the Authority.
- C. Authority and Water District are implementing a comprehensive Flood Protection, Ecosystem Restoration, and Recreation Project (Project) on San Francisquito Creek (Creek).
- D. The flood protection features of Phase 1 of the Project, which includes channel widening, floodwall installation, construction of improved levees, marsh habitat improvements, and trail access improvements along the Creek downstream of Highway 101, were completed on January 31, 2019 and the entire Project was accepted as complete by the District on May 14, 2019.
- E. At the request of Authority, the California Department of Transportation (CalTrans) modified the U.S. Highway 101, East Bayshore Road and West Bayshore Road bridges over the Creek to accommodate stream flows consistent with the capacity of the improved creek channel downstream. A primary feature of this modification to allow for greater flow to pass underneath these structures was the addition of a fourth culvert.
- F. In order to allow upstream flows to enter the fourth culvert underneath the Caltrans structures, the Creek must be widened along the south bank to conform with both the Caltrans structures and the existing sacked-concrete wall and floodwall upstream.
- G. Authority and Water District have entered in to a funding agreement to complete environmental documentation for this channel widening (Inlet) along with other Project elements upstream of Highway 101, to be implemented as Phase 2 of the Project. Authority has secured the services of an environmental consultant and a Draft Environmental Impact Report has been prepared and released for public review.
- H. Water District has completed design plans for the Inlet and wishes to secure the services of a professional design engineer to modify those plans (Plan Modifications) for consistency with downstream improvements and to reduce construction costs.
- SFCJPA/SCVWD  
Cost Sharing Agreement Upstream Inlet  
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- I. Water District has determined that the design engineer consultant (Consultant) that prepared the plans and specifications for the Phase 1 improvements is best suited to conduct the desired design modifications for the channel widening.
- J. The Consultant contract for the design of Phase 1 was awarded by Authority (the Phase 1 Design Contract). The Phase 1 Design Contract has a provision that allows for amendments to be made to the Contract to add, subtract, or modify the scope of work to be performed by the Consultant.
- K. Water District wishes to provide funding to Authority to support an amendment to the Phase 1 Design Contract so that the Plan Modifications can be prepared by Consultant.

Water District and Authority have determined that the Consultant is uniquely qualified to provide the desired services at the lowest cost to Water District and Authority. NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions in the sections contained herein below, the Parties agree as follows:

**P R O V I S I O N S**

**1. Project Purpose and Work Products**

A. The purpose of this Agreement is to fund the Plan Modifications to be prepared by the Consultant. The Inlet will increase flow conveyance and provide flood protection to homes, businesses, and other facilities in East Palo Alto and Palo Alto. As a key component of Authority's and Water District's comprehensive Project for flood protection and other benefits along the Creek, construction of the Inlet will provide necessary flow capacity such that other conveyance improvements can be made upstream.

B. The final work products to be funded in accordance with the terms and conditions of this Agreement shall be Final Design, Specifications, and Cost Estimate for the Inlet.

**2. Responsibilities of the Parties**

A. Authority shall prepare and execute an amendment (Amendment) to the Phase 1 Design Contract to add the Plan Modifications to the Scope of Work. The Amendment shall also provide that the Consultant will be the engineer-of-record for such design deliverables and the Phase 1 Design Contract shall remain in effect until the Inlet is accepted by the Water District as complete, unless it is terminated earlier pursuant to its terms.

B. Upon the Authority's approval of the Amendment, the Water District shall make available an amount not to exceed \$150,000 to pay to the Authority for the costs of the Plan Modifications.

C. Water District shall provide technical assistance to Authority during the term of this Agreement for review of the Plan Modifications work as it progresses and approval upon completion.

**3. Payments and invoices**

A. After review and approval by the Executive Director, or the Executive Director's designee, Authority shall submit invoices to the Water District for its review and payment to Authority.

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B. Invoices from the Authority to the Water District will include:

1. Copies of Consultant invoices, which have been reviewed and approved by the Authority;
2. Detail of the Consultant's services performed and products delivered during the invoice period;
3. Itemized cost schedule and update of the current and total expenditures on each Contract task.

C. The Water District shall pay all invoices from the Authority, which it has approved, within 20 calendar days after receipt from the Authority.

**4. Payment to Consultant**

Authority shall be responsible for review and payment of all requests for payment submitted by the Consultant. Consultant's invoices and work products are subject to review and approval by Water District prior to Water District issuing payment to Authority for Consultant's services.

**5. Management of the Project**

A. Authority shall manage the Consultant Phase 1 Design Contract and Consultant's performance in preparing the required work products. Such management shall include consultation with the Authority member agencies as deemed appropriate by the Executive Director.

B. Water District and other Authority member agencies shall provide technical support to the Authority regarding the Consultant's work and participate in Project team meetings with

Consultant as required.

C. The Authority shall not approve the Final Design, Specifications, and Cost Estimate for the Inlet unless and until approved by the Water District.

#### 6. Mutual Hold Harmless and Indemnification Obligations

A. In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, the Parties agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold the other party, 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 solely 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 other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other Party under this Agreement. The obligations set forth in this paragraph will survive termination and expiration of this Agreement.

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B. In the event of concurrent intentional or unintentional misconduct, negligent acts or omissions by any one of the Parties (or each of their respective officers, directors and/or employees), then the liability for any and all claims for injuries or damages to persons and/or property which arise out of each and any of their performance of the terms and conditions of this Agreement shall be apportioned according to the California law of comparative negligence.

The Parties hereto are not jointly and severally liable on any liability, claim, or lawsuit.

C. The duties and obligations of this Section shall survive and continue in full force and effect after the termination, expiration, suspension, and completion of this Agreement.

#### 7. Insurance

Authority will require its Consultant to secure and maintain in full force and effect all times during the term of the Phase 1 Design Contract, and during an appropriate period of extension, general liability and property damage insurance, business automobile insurance, Professional/Errors and Omissions Liability, and such other insurance as the Parties deem appropriate, in forms and limits of liability acceptable to both Parties, naming the District and the Authority, and their respective directors, officials, officers, employees and agents as additional insureds from and against all damages and claims, loss, liability, cost or expense relating to, arising out of, or pertaining to, the Consultant's actual or alleged negligent, reckless, or willful conduct.

#### 8. Retention of Records, Right to Monitor and Audit

Unless a longer period of time is required by law or federal or state grant funding agreements, Authority and Water District shall maintain all records for five (5) years after the Project is terminated or completed. The records shall be subject to the examination and audit of all Authority member agencies.

#### 9. Termination of Agreement

A. The term of this Agreement will expire once the Inlet is accepted by the Water District as complete, unless terminated earlier pursuant to this Section 8.

B. If either Party fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, the other Party may terminate this Agreement immediately upon written notice. This notice of termination, however, may be given only after the defaulting Party has been provided written notice of its failure to perform and has been given thirty (30) days to cure the nonperformance to the satisfaction of the other Party.

C. Chief Executive Officer of the Water District and Executive Director of the Authority are empowered to terminate this Agreement on behalf of their respective agencies.

D. In the event of termination, each Party shall deliver to the other Party, upon request, copies of reports, documents, and other work performed by either Party or consultant to either Party under this Agreement. The cost of work performed under this Agreement to the date of termination shall be due and payable in accordance with the provisions of this Agreement.

#### 10. Refund of Undisbursed Funds

Undisbursed funds shall be returned to the Water District within ninety (90) days of the completion of the Scope of Work or from the termination of this Agreement.

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#### 11. Notices

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

Authority: San Francisco Creek Joint Powers Authority

615-B Menlo Avenue

Menlo Park, California 94025

Attention: Len Materman, Executive Director

Email address: len@sfcjpa.org

Water District: Santa Clara Valley Water District

5750 Almaden Expressway

San Jose, California 95118-3614

Attention: Melanie Richardson, Deputy Operating Officer

Email address: mrichardson@valleywater.org

B. 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 reply if by email, 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.

#### 12. Severability

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

#### 13. 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.

#### 14. Venue

In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of 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.

#### 15. Assignability and Subcontracting

Parties shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required under this Agreement without the



prior written consent of the other Party.

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#### 16. Ownership of Materials

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

#### 17. Entire Agreement

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

#### 18. Further Actions

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

#### 19. 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.

#### 20. Waiver

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

#### 21. 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.

#### 22. Equal Opportunity Employer

A. The Santa Clara Valley Water District is an equal opportunity employer and requires the parties it contracts with to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, the Authority will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

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#### B. Compliance with Applicable Equal Opportunity Laws.

The Authority's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); the Age

Discrimination Act of 1975 (42 U.S.C. sec. 6101 et seq.); the California Fair Employment and Housing Act (Government Code Section 12900 et. seq.); and California Labor Code Sections 1101 and 1102.

C. Investigation of Claims.

The Authority must designate a specific position within its organization to be responsible for assuring nondiscrimination and non-harassment as provided in this Agreement. The Authority must investigate all complaints directed to it by District. District will refer complaints in writing and the Authority will advise District in writing when such investigations are concluded. The scope of such investigations must include all appropriate officers, employees, and agents of the Authority as well as all consultants, subcontractors, Subconsultants, and material suppliers of the Authority. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, the Authority must take prompt, effective disciplinary action against the offender.

IN WITNESS WHEREOF, Authority and Water District have executed this Agreement as of the date indicated on the following signature pages.

Separate Signature pages were implemented individually for each Party as follows.

(remainder of page intentionally left blank)

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Cost Sharing Agreement Upstream Inlet

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**Cost Share Agreement**

**Between the San Francisquito Creek Joint Powers Authority and the Santa Clara Valley Water District**

**For Funding Design Modifications to the West Bayshore Road Inlet Structure**

IN WITNESS WHEREOF, Authority has executed this Agreement as of the date and year indicated above.

Each Party has executed a separate signature page.

APPROVED AS TO FORM: **SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, a California joint powers authority**

By: \_\_\_\_\_

Assistant General Counsel Len Materman

Trisha Ortiz Executive Director

Date: July 2, 2019

SFCJPA/SCVWD

Cost Sharing Agreement Upstream Inlet

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**Cost Share Agreement**

**Between the San Francisquito Creek Joint Powers Authority and the Santa Clara Valley Water District**

**For Funding the Design Modifications to the West Bayshore Road Inlet Structure**

IN WITNESS WHEREOF, Water District has executed this Agreement as of the date and year indicated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM: **SANTA CLARA VALLEY WATER DISTRICT**

By: \_\_\_\_\_

Water District Counsel Name

Name Title

Title

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



## II. ACCESS AGREEMENT

This ACCESS AGREEMENT (this **“Agreement”**) is entered into as of October 29, 2020 (the **“Effective Date”**) by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (**“Owner”**) and SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY (**“Licensee”**),

and, in the following factual context:

**A.** Owner is the owner of that certain real property commonly known as Webb Ranch and the former Boething plant nursery, located in San Mateo County, California, and more particularly described on the attached Exhibit A (the **“Property”**).

**B.** Licensee has requested authorization to access portions of the Property to investigate the feasibility, constraints, and environmental impacts and benefits of potential upstream detention basins. A project to develop these basins was discussed at a program level in a Final Environmental Impact Report certified by Licensee on September 26, 2019 (the **“2019 EIR”**). For the basin locations upstream (west) of Highway 280 discussed in the 2019 EIR, Licensee is now considering preparation of a more detailed project-level environmental impact report (the **“Project-Level EIR”**).

**C.** Licensee desires to enter upon portions of the Property for the purpose of conducting investigations of the Property in connection with the potential Project-Level EIR, first with an on-site reconnaissance visit, for the limited purpose of meeting, gathering and assessment of information/data requested by Licensee and provided by Owner, and the scoping of additional activities (**“Part 1”**), second for the identification and definition of the area of potential effect (**“APE”**) and preliminary basin feasibility assessment of the detention basin alternatives (**“Part 2a”**), and lastly to conduct the environmental and resource studies necessary for a CEQA evaluation of the identified APE and to accomplish project planning and design so that the Project- Level EIR can be prepared (**“Part 2b”**), as more particularly described on the attached Exhibit B (the **“Scope of Work”**).

**D.** Owner is willing to provide Licensee with certain data and information and to allow Licensee a limited license to conduct such investigations, but only in accordance with the terms and conditions of this Agreement.

In this factual context, Owner and Licensee (each, a **“Party”** and collectively, the **“Parties”**), intending to be legally bound, agree as follows:

**1. Limited License.** Subject to the terms and conditions of this Agreement, Owner hereby grants to Licensee a limited and revocable license (the **“License”**) for Licensee and its employees, authorized agents, consultants, contractors, and representatives (with Licensee, the **“Licensee’s Representatives”**) to enter portions of the Property for the sole purpose of conducting the Part 1, Part 2a and Part 2b investigations as set forth on the Scope of Work and as modified in accordance with Section 3 (collectively, the **“Investigation”**). Owner has provided written notice of the Part 1 Investigation to the lessees, tenants and occupants (collectively, **“Tenants”**) of the Property and upon receipt will provide to Licensee copies of such notices counter-signed by the applicable Tenants. Owner hereby certifies that Owner has the right to access the Property, including the portions of the Property subject to leases or other occupancy agreements with the Tenants, and has obtained all necessary consents needed to grant this License based upon the scope provided by Licensee for the applicable part of the Investigation

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pursuant to the Scope of Work. All activities conducted by Licensee’s Representatives in connection with the Investigation shall be at Licensee’s sole cost and expense. This Agreement does not allow activities other than those described in the Scope of Work and Section 3.

**2. Term.** The term of the License and of this Agreement shall continue until eighteen (18) months after the Effective Date. Owner, at its sole option, may require Licensee to immediately terminate its access to the Property or may otherwise terminate this License upon written notice, if, in Licensor’s reasonable opinion, Licensee is (a) causing physical damage to the Property; (b) causing a safety hazard; (c) violating any applicable law; or (d) unreasonably interfering with other occupants of the Property and/or the Property’s neighbors. Licensee may immediately terminate this Agreement upon written notice to Owner in the event that Licensee deems, in the Licensee’s sole and absolute discretion, that the Owner has unreasonably interfered with or prevented Licensee from conducting the Investigation.

**3. Conduct of Investigation.** Subject to the terms and conditions of this Agreement, to conduct its Investigation, Licensee’s Representatives shall have the right of access to the Property as needed during the term of this Agreement during reasonable business hours and at such other times mutually agreed upon by the Parties and upon reasonable notice (at least five

(5) business days prior notice) to Owner, subject to seasonal restrictions related to flora, fauna and water resources. Such access shall be coordinated through Owner's authorized representative, Mimi Dunkle at (650) 724-4715 or [mimiledu@stanford.edu](mailto:mimiledu@stanford.edu), and Owner may require all such access to be supervised by Owner's authorized representative or designated environmental manager. Owner's authorized representative will coordinate all such access with any lessee, tenant or other occupant of the Property, taking into account the privacy and business operations of such Tenants. Owner and Licensee shall plan all visits to ensure Tenants will not have their normal activities disrupted. This right of entry shall be subject to the following conditions:

(a) The Investigation shall be conducted in compliance with each law, zoning restriction, ordinance, rule, regulation or requirement of any governmental or quasi-governmental agency with jurisdiction over the Property. Licensee shall make every reasonable effort to accommodate the requests of Owner regarding conduct of the Investigation so as to minimize interference with operations at the Property, and use of the Property by Owner's Tenants of the Property. The Investigation shall be conducted in a manner that (i) will not endanger the health, safety or welfare of Owner's employees, agents, invitees or others present on the Property and (ii) minimizes any impacts on the natural environment, native flora and fauna and archaeological resources.

(b) Prior to accessing the Property for the Part 1 Investigation, Licensee may request that Owner provide certain information/data in connection with the Investigation. Owner and Licensee shall meet and discuss what information/data is available from Owner to share with Licensee. Where information/data sharing is contingent upon Licensee having retained a qualified archaeological consultant, Licensee shall provide contact information of the qualified archaeologist. Licensee understands that Licensee or its archaeologist, as applicable, may be required to execute a confidentiality agreement to receive this information/data. Owner makes no representation or warranty relating to the accuracy or completeness of any information/data that Owner or its agents or representatives may provide to Licensee during Part 1, Part 2a or Part 2b. Licensee acknowledges and agrees that Licensee is responsible for verifying the accuracy of any such information/data and is not relying on the information/data in connection with its Investigation. Additionally, Owner makes no representation or warranty relating to any information/data regarding the Tenants that is delivered to Owner by the Tenants and provided to Licensee during Part 1, Part 2a or Part 2b.

(c) For the Part 1 Investigation, Licensee shall have a one-time right to enter each Part 1 Investigation Area as designated on Exhibit B-1 or pursuant to the Scope of Work to conduct the Part 1 activities set forth in the Scope of Work. Part 1 shall not include any invasive or ground-disturbing activities. Owner's staff may attend any on-site Part 1 Investigations, to facilitate and share additional information during the site visit.

(d) Part 2a shall not commence unless and until Licensee has completed its Part 1 Investigations and reviewed the data collected during Part 1. Prior to proceeding to Part 2a, Licensee shall develop and deliver to Owner concept level designs for potential detention basins, a revised map of potential detention basin project sites to be field investigated, and a proposed scope for Part 2a Investigations based on its Part 1 Investigations. Licensee and Owner shall meet and confer on Licensee's proposals for Part 2a as contemplated in the Scope of Work. Once Owner and Licensee have agreed upon Part 2a Investigation Areas (as defined in the Scope of Work) and the coordinated communication plan with the Tenants has been completed for Part 2a, Licensee may enter the Part 2a Investigation Areas subject to the Scope of Work. Owner's staff may attend any on-site Part 2a Investigations, to coordinate with the Tenants and to facilitate and share additional information during the site visit.

(e) Part 2b shall not commence unless and until Licensee has completed its Part 2b Investigations and reviewed the data collected during Part 2b. Prior to proceeding to Part 2b, Licensee shall develop and deliver to Owner the parameters of proposed environmental and resource studies necessary for a CEQA evaluation of the proposed APE, for preparation of the Project-Level EIR, and to accomplish project planning and design, and any additional proposed scope for Part 2b Investigations based on its Part 2a Investigations. Licensee and Owner shall meet and confer on Licensee's proposals for Part 2b as contemplated in the Scope of Work. Once Owner and Licensee have agreed upon Part 2b Investigation Areas (as defined in the Scope of Work) and the coordinated communication plan with the Tenants has been completed for Part 2b and Licensee has confirmed land and resource protections are in place, Licensee may enter the Part 2b Investigation Areas subject to the Scope of Work. Owner's staff may attend any on-site Part 2b Investigations, to coordinate with the Tenants and to facilitate and share additional information during the site visit.

(f) When applicable, Licensee shall provide any supplemental cultural resource and biological information appropriate to the revised layouts and scope. Licensee shall not proceed with additional Investigation without Owner's review of the proposed project-level site investigation for archaeological and biological resources. Upon Owner's reasonable written consent, Licensee may proceed with site visits in addition to the Scope of Work to conduct additional Investigation within an agreed-upon scope.

(g) Prior to entering the Property to perform its Investigation, Licensee shall provide to Owner a certificate of insurance showing that Licensee maintains in full force and effect a policy of comprehensive general liability insurance (i) covering the activities of the Licensee's Representatives in connection with the Investigation, (ii) in an amount of not less than One Million Dollars (\$1,000,000) for Part 1 and Three Million Dollars (\$3,000,000) for Part 2a and Part 2b combined single limit per occurrence from a carrier reasonably acceptable to Owner, (iii) naming Owner and its trustees, officers, and directors as additional insureds, and (iv) requiring at least thirty (30) days' written notice to Owner prior to cancellation or reduction in coverage, provided that Owner may reduce the amount of minimum

insurance coverage to not less than Two Million Dollars (\$2,000,000) based upon the scope of the activities that are proposed for Part 2a or Part 2b.

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(h) Any investigation involving soil borings, subsoil, soil vapor, ground water, soil load bearing tests or other tests involving physical invasion of the surface of the Property or physical sampling are to be made by Licensee only after consultation with Owner. Owner's environmental consultant may attend any test or investigation at the Property and shall be entitled, without cost, to duplicates of any samples taken by Licensee (or, if duplicates are not reasonably attainable, Licensee may elect to deliver the actual samples after testing) and to copies of all written reports and data prepared by or on behalf of Licensee. Any proposal for physical invasion of the Property must be delivered to Owner and its environmental consultant, together with a reasonably detailed investigation plan sufficient for Owner to determine the scope and logistics of the proposed investigation, at least three (3) business days before the desired test. Any invasive sampling or testing permitted by Owner shall be performed in compliance with all environmental laws and other requirements of governmental authorities. Depending on the nature of the invasive testing or sampling, Owner may require an increase in the amount of insurance specified in Section 3(c). If in the course of its investigation, Licensee discovers any environmental condition that Licensee or its consultants or contractors believes should be reported to any governmental agency, Licensee shall provide to Owner full information regarding the discovery and Owner shall assume any and all reporting obligations.

(i) Promptly after any physical inspection of the Property, Licensee, at Licensee's sole cost, shall restore the Property to the condition that existed immediately prior to such inspection, provided that in the event that Licensee fails to restore the Property within fourteen (14) days of a written demand for restoration from Owner, Owner may elect to restore the Property itself and to charge the cost thereof to Licensee. At Owner's request, Licensee shall deliver to Owner copies of all documents, reports, analyses, surveys, test results and other items prepared by or on behalf of Licensee during the Investigation.

(j) Nothing in the Agreement shall permit Licensee to construct any improvements on the Property.

**4. Conditions of Access.** In addition to the foregoing, access to the Property pursuant to this Agreement may be denied or terminated by Owner, if the following working conditions are not met:

(a) Licensee and Licensee's Representatives shall take all reasonable and necessary safety and security precautions in connection with the Investigation.



(b) In order to prevent the spread of Sudden Oak Death and other plant pathogens into the watershed, and to prevent the spread of *chytrid* fungus and non-native plants and animals. the following precautions must be followed:

(i) To avoid the introduction of Sudden Oak Death or other pathogens not currently in the watershed, clean all equipment, boots, tools and other supplies, with disinfectant and triple rinse before entry and exiting the creek.

(ii) Do not collect any plant material including leaves, flowers, acorns, twigs, wood and bark.

(iii) Avoid muddy areas when parking your vehicle. Spores may collect in mud on your tires and spread to other areas.

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(iv) To avoid spreading aquatic species that are potentially pathogenic or invasive, all equipment, boots and tools are to be triple rinsed before entry and exiting any creek or wetland.

(v) To avoid spreading terrestrial species that are potentially pathogenic or invasive, all equipment and clothing brought on site needs to be cleaned off prior to coming on the Property.

(c) Licensee shall engage a professional archaeologist, at Licensee's sole cost and expense, to perform a site visit and surface reconnaissance survey of the Property. Licensee shall submit documentation demonstrating that Licensee's archaeologist meets the Secretary of the Interior's Professional Qualification Standards. No subsurface investigation is allowed under this Agreement except as contemplated in the Scope of Work for Part 2a and/or Part 2b. Should subsurface investigation be necessary to assess potential impacts to archaeological resources a formal written proposal is required for review by Stanford University's Archaeologist and compliance with Section 3(d) of this Agreement. Owner, at its sole cost and expense, shall be entitled to have an on-site Owner- designated consultant during any Investigation, which consultant may be an independent contractor approved by the Campus University Archaeologist in the Land Use and Environmental Planning department or an

employee of Owner. When such consultant deems it necessary to investigate the possible presence of, or to protect, historic or archaeological artifacts, such consultant shall have the authority to temporarily halt the Investigation in the area subject to such reasonable investigation. Licensee and Licensee's Representatives shall comply, at the Licensee's sole cost and expense, with the consultant's requests, with Stanford University policy regarding archeological resources protection, and with state law regarding the protection, removal or reburial of human remains and archaeological artifacts. Any artifacts discovered on the Property shall belong to Owner. In the event that human remains or other archaeological materials are discovered, Licensee shall be responsible for actual costs directly related to Licensee's discovery, including the costs of mitigation and of standard archaeological staff. Owner and its consultant shall not be liable for any damages or other liability that may result from temporary cessation of excavation or construction, or other compliance with the provisions of these requirements.

(d) Owner, at its sole cost and expense, shall be entitled to have an on-site Owner-designated consultant during any Investigation, which consultant may be an independent contractor approved by the Associate Director for Conservation Planning in the Stanford University Land Use and Environmental Planning Office or an employee of Owner. When such consultant deems it necessary to investigate the possible presence of, or to protect the habitat, such consultant shall have the authority to temporarily halt the Investigation in the area subject to such reasonable investigation. Licensee and Licensee's Representatives shall comply, at Licensee's sole cost and expense, with the consultant's requests, and with Stanford University policy regarding biological protection. Owner and its consultant shall not be liable for any damages or other liability that may result from temporary cessation of excavation or construction, or other compliance with the provisions of these requirements. Licensee shall provide a specific daily field schedule for performing biological and habitat surveys, so that Owner can schedule biologists to participate in the field work. Any changes in time or date of field activities shall be transmitted to Owner at least three (3) business days prior to the change in schedule.

**5. Liens.** Licensee shall not permit any mechanics' or other liens to be filed against the Property as a result of Licensee's Investigation, and Licensee, at Licensee's sole cost, shall cause any liens so filed to be removed within five (5) business days after receipt of notice thereof, by bond or otherwise.

**6. Waiver of Claims; Release.** Licensee acknowledges and agrees that Owner and its Tenants shall not be liable to Licensee or Licensee's Representatives for any injury, loss, damage, liability, claim, cause of action or expense incurred or suffered by Licensee or Licensee's Representatives, or any of them, directly or indirectly arising out of or in any way relating to entry upon the Property and/or the performance of the Investigation by Licensee or Licensee's Representatives from any cause whatsoever. Owner hereby informs Licensee that detectable amounts of hazardous substances may be located on, beneath and/or in the vicinity of the Property (the "**Pre-Existing Condition**"). Licensee hereby

releases Owner and Owner's officers, directors, trustees, agents and employees from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Licensee or any of Licensee's Representatives may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with hazardous substances presently in, on or under, or now or hereafter emanating from or migrating onto the Property, including without limitation the Pre-Existing Condition. In connection with such release, Licensee hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

**7. Indemnity.** Licensee hereby agrees to indemnify, defend, and hold Owner and its trustees, officers, directors, faculty, employees, staff, students, lessees, tenants, occupants, consultants, agents, successors, and assigns harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees, reasonable costs of defense, and reasonable costs and expenses of all experts and consultants) (generally, "**Damages**"), arising directly, in whole or in part, out of Licensee's Investigation, including, but not limited to: (a) any injury to persons or property (including injury to Licensee's Representatives) arising or resulting from the Investigation; (b) any damage to the Property resulting from the Investigation, or from the entry of Licensee's Representatives onto the Property; (c) any liens filed against the Property in connection with the Investigation; and (d) any exacerbation of the Pre-Existing Condition due to the negligence or willful misconduct of Licensee and/or Licensee's Representatives; provided that Licensee's indemnity hereunder shall not include any Damages resulting from the mere discovery of any Pre-Existing Condition, except to the extent, and only to the extent, such Pre-Existing Condition is exacerbated by any negligence or willful misconduct of Licensee or a Licensee's Representative. For the purposes of this Agreement, "exacerbation" means any direct, material adverse impact on a Pre-Existing Condition. Exacerbation includes, without limitation, actions which speed, redirect or enhance the migration of groundwater contamination at the Property in a fashion that causes a material adverse impact (for example, by causing hazardous substances to migrate to deeper aquifers), actions which cause damage to or limit the effectiveness of any existing remediation systems or equipment, and actions which give rise to liability under applicable environmental laws.

**8. Survival.** Licensee's obligations under this Agreement shall survive the termination of this Agreement.

**9. Attorneys' Fees.** If either Party reasonably engages legal counsel with respect to a dispute regarding the proper interpretation or enforcement of this Agreement, the Party receiving substantially the result such Party sought or defended in any legal action or other proceeding (the "**Prevailing Party**"), whether by award, judgment, stipulation, settlement, workout, or otherwise and whether or not any such legal action or other proceeding may have been voluntarily dismissed, shall be entitled to recover from the adverse Party all reasonable fees and costs actually incurred by the Prevailing Party in connection with such legal services ("**Legal Fees**"). Legal Fees include, without limitation, (a) fees, costs, and expenses of any attorneys, paralegals, engineers, accountants, appraisers, consultants, brokers, and other professionals or experts retained or consulted by the Prevailing Party, and other costs and expenses of investigation or analysis incurred by the Prevailing Party, in support of the Prevailing Party's position, and (b) all such fees, costs, and expenses incurred in any aspect of the legal process, whether out-of- court negotiations, mediation, arbitration, commencement of suit, discovery, law and motion, trial, appellate proceedings, or any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11, or 13 of the Bankruptcy Code, 11 U.S.C. Section 101 et seq., or any successor statutes.

**10. Waiver or Amendment.** No amendment of or waiver of any obligation under this Agreement will be enforceable unless set forth in writing signed by the Party against which enforcement is sought.

**11. Notices.** All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) upon receipt when personally delivered to the recipient's address set forth below; (b) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; (c) one (1) business day after deposit with a recognized overnight courier or delivery service; or (d) when received by electronic mail; provided that the Party delivering notice electronically concurrently delivers the same notice by one of the methods set forth in clauses (a), (b) or (c) above.

The addresses for notice are:

To Licensee: San Francisquito Creek Joint Powers Authority  
2100 Geng Road, Suite 210  
Palo Alto, CA 94303  
Attn: Margaret Bruce, Executive  
Email: [mbruce@sfcjpa.org](mailto:mbruce@sfcjpa.org)

*with copy to:* Kevin Murray ([kmurray@sfcjpa.org](mailto:kmurray@sfcjpa.org))  
Tess Byler ([tbyler@sfcjpa.org](mailto:tbyler@sfcjpa.org))

*and copy to:* Richards Watson Gershon  
One Sansome Street, Suite 2850  
San Francisco, CA 94104  
Attention: Trisha Ortiz  
Email: [TOrtiz@rwglaw.com](mailto:TOrtiz@rwglaw.com)

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*To Owner:* Stanford Real Estate Office  
415 Broadway 3rd Floor, Mail Code 8873  
Redwood City, CA 94063  
Attn: Director, Property Services

*with copy to:* Ramsey F. Shuayto ([rshuayto@stanford.edu](mailto:rshuayto@stanford.edu))  
Mimi Dunkle ([mimiledu@stanford.edu](mailto:mimiledu@stanford.edu))  
Jean McCown ([jmccown@stanford.edu](mailto:jmccown@stanford.edu))  
Tom W Zigterman ([twz@stanford.edu](mailto:twz@stanford.edu))  
Lesley Lowe ([lloze@stanford.edu](mailto:lloze@stanford.edu))  
Karla Traynor Smith ([karlat@stanford.edu](mailto:karlat@stanford.edu))

*and copy to:* Perkins Coie LLP  
505 Howard Street Suite 1000  
San Francisco, CA 94105  
Attention: Camarin Madigan  
Email: [cmadigan@perkinscoie.com](mailto:cmadigan@perkinscoie.com)

Either Party may change its address by written notice to the other given in the manner set forth above.

**12 Injunctive Relief.** Licensee agrees that money damages may not be a sufficient remedy for Licensee's breach of this Agreement and that Owner would be entitled to injunctive relief, specific performance, and/or other appropriate equitable remedies with respect to any such breach upon a showing that money damages would not be a sufficient remedy therefor. These remedies are not the exclusive remedy for Licensee's breach of this Agreement, but are in addition to all other remedies available at law or in equity.

**13 No Waiver.** No failure or delay in exercising any right, power, or privilege granted in this Agreement will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise of any right, power, or privilege.

**14. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed entirely therein.

**15. Successors and Assigns.** This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns.

**16. References.** Unless otherwise indicated, (a) all section and schedule references are to the sections and schedules of this Agreement, and (b) all references to days are to calendar days. All schedules attached hereto are incorporated herein by this reference. Whenever under the terms and conditions of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday, or California state holiday, such time for performance shall be extended to the next business day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

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**17. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single original document. Facsimile, documents executed, scanned and transmitted electronically and digital signatures shall be deemed original signatures for purposes of this Amendment, with such facsimile, scanned and digital signatures having the same legal effect as original signatures. Owner and Licensee agree that this Agreement may be accepted, executed or agreed to through the use of an digital signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17), as such laws may be amended from time to time. Any document accepted, executed or agreed to in conformity with such laws will be binding on both Owner and Licensee the same as if it were physically executed.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Parties have executed this License Agreement as of the Effective Date.

**OWNER:**

**THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY**



By: \_\_\_\_\_ Pr  
Name:     Catherine    Palter Print Tit  
Associate Vice President, LUEP

**LICENSEE:**

**SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY**

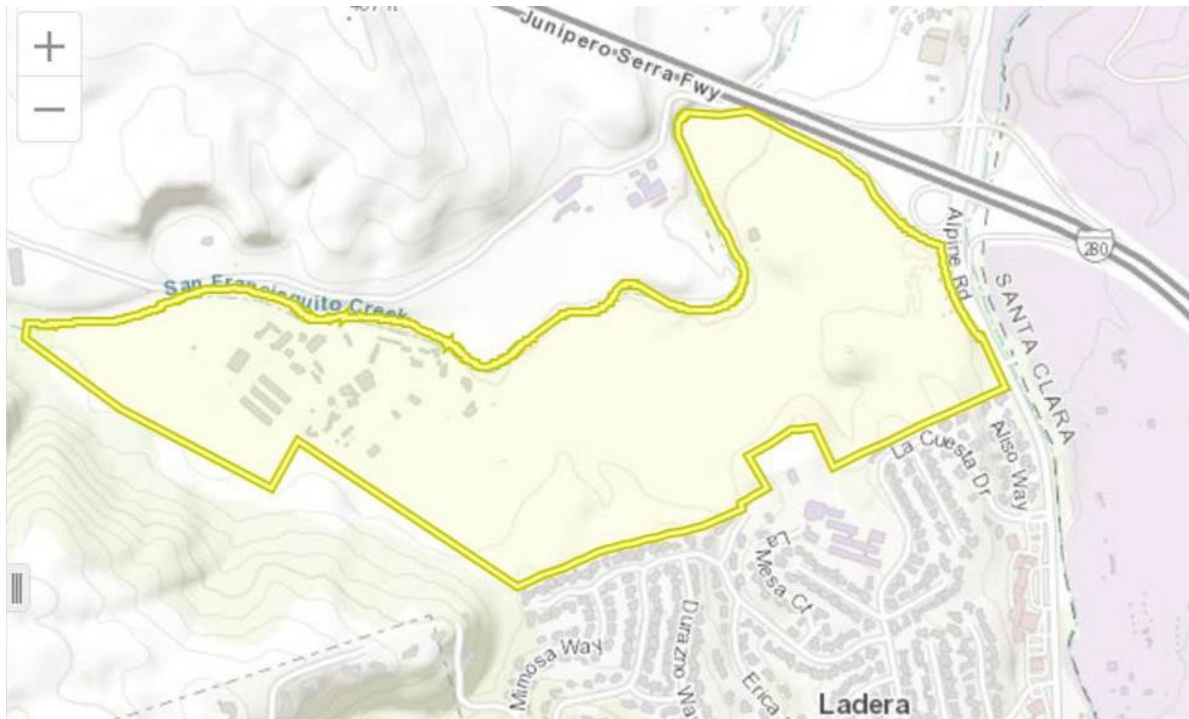


By: \_\_\_\_\_ Pr  
Name:     Margaret    V.    Bruce Print Tit  
Executive Director, SFCJPA

III. EXHIBIT A

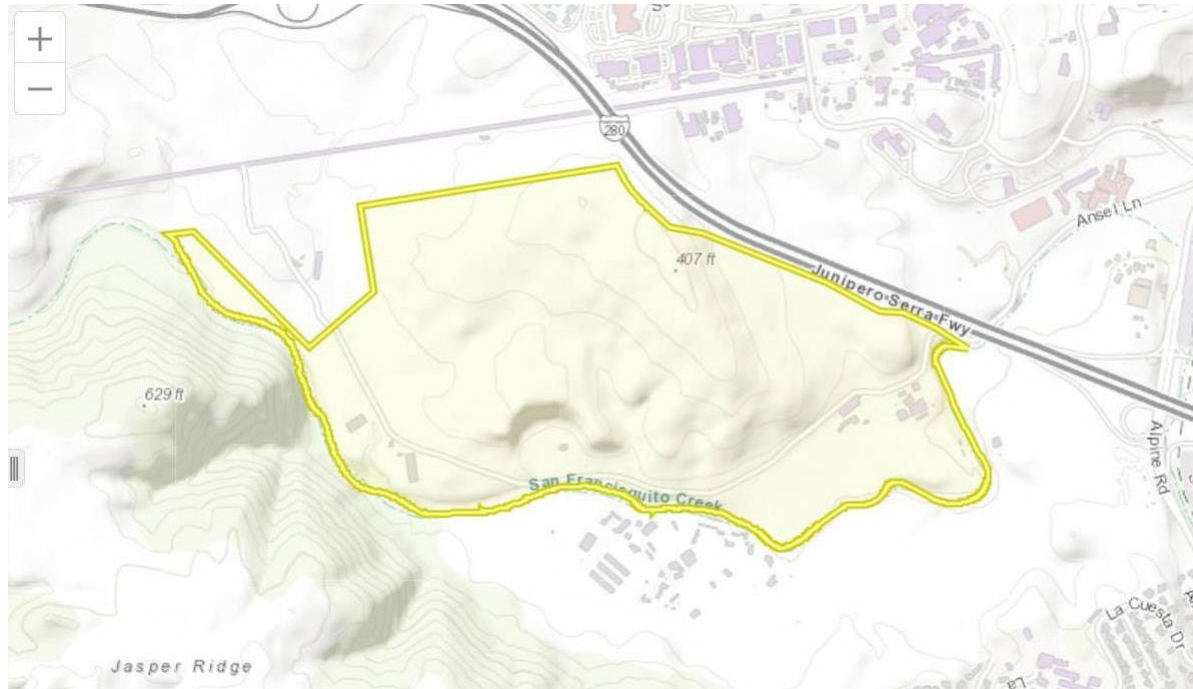
A. *Description of the Property*

Webb Ranch APN 134-291-510



Former Boething Plant Nursery APN 074-480-300





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#### IV. EXHIBIT B

##### A. *Scope of Work*

##### Part 1 Investigation

To be conducted within the Part 1 Investigation Areas as designated on Exhibit B-1, or as mutually agreed upon by Owner and Licensee.

Prior to Licensee's entry on to the Property for Part 1, Owner and Licensee shall meet to discuss initial thoughts about project description and resources.

Part 1 activities will include the following:

- Initial site reconnaissance,
- Investigation and due diligence to understand the site characteristics,
- Gathering of sufficient on-site and document data to evaluate potential detention basin locations, and
- Coordination with Owner to ensure the Tenants will not have their normal activities disrupted.

Part 1 shall not include any ground-disturbing activities.

B. ***Part 2a Investigation***

To be conducted with the Part 2a Investigation Areas as determined by Owner and Licensee as set forth below.

Prior to Licensee's entry on to the Property for Part 2a, Owner and Licensee shall meet to discuss the following:

- Licensee's conceptual design concepts,
- Any additional data/information needs and assess what information may – or may not – already exist,
- How to meet Licensee's analysis needs and Owner's needs for land and resource protection,
- Licensee's proposed scope and schedule for Part 2a (based upon and as a result of its Part 1 Investigations), and
- Any details or additional knowledge that Owner can provide or requests from Licensee.

Owner and Licensee shall mutually designate the portion of the Property that Licensee will need to access for the Part 2a Investigation (the "***Part 2a Investigation Areas***") and shall mutually develop a plan to ensure the Tenants will not have their normal activities disrupted. Once the Part 2a scope and Part 2a Investigation Areas are determined, Owner and Licensee shall plan and coordinate communications with the Tenants regarding Part 2a. Licensee acknowledges that Owner may need to obtain consent from its Tenants prior to Licensee's entry on to portions of the Property for Part 2a. In the event one or more Tenants raise objection or dispute in connection with access or the proposed scope of Part 2a Investigations, Owner and Licensee shall reconvene, confer and mutually develop alternatives for Part 2a.

Part 2a activities may include the following:

- On-site investigations to delineate the project APE, and
- Survey, geotechnical, groundwater, or other investigations pursuant to the Part 2a scope reviewed by Owner.

C. **Part 2b Investigation**

To be conducted within the Part 2b Investigation Areas as determined by Owner and Licensee as set forth below.

Prior to Licensee's entry on to the Property for Part 2b, Owner and Licensee shall meet to discuss the following:

- Licensee's proposed scope and schedule for Part 2b (based upon and as a result of its Part 2a Investigations),
- Project planning and design for preparation of the Project-Level EIR,
- Any details or additional knowledge that Owner can provide or requests from Licensee, and
- How to meet Licensee's analysis needs and Owner's needs for land and resource protection as implicated by the scope proposed by Licensee and communicated by Owner to Licensee.

Owner and Licensee shall mutually designate the portion of the Property that Licensee will need to access for the Part 2b Investigation (the "***Part 2b Investigation Areas***") and shall mutually develop a plan to ensure the Tenants will not have their normal activities disrupted. Once the Part 2b scope and Part 2b Investigation Areas are determined, Owner and Licensee shall plan and coordinate communications with the Tenants regarding Part 2b. Licensee acknowledges that Owner may need to obtain consent from its Tenants prior to Licensee's entry on to portions of the Property for Part 2b. In the event one or more Tenants raise objection or dispute in connection with access or the proposed scope of Part 2b Investigations, Owner and Licensee shall reconvene, confer and mutually develop alternatives for Part 2b.

Part 2b activities may include the following:

- Once Owner and Licensee mutually confirm land and resource protections are in place, CEQA and/or design purposes, pursuant to Part 2b scope reviewed by Owner, and
- Biological surveys, archaeological research, traffic counts, and other environmental investigations pursuant to Part 2b scope reviewed by Owner, as needed to determine the potential environmental impacts of the detention basin project alternatives.

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V. EXHIBIT B-1

A. *Part 1 Investigation Areas*



***“Part 1 Investigation Areas”*** are the areas shown in green and red on the above map, and locations along San Francisquito Creek within 350 feet (and up to 1,000 feet, if determined necessary in the field and acceptable to accompanying Owner field representatives) from the areas shown in green and red.

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## VI. AMENDMENT TO ACCESS AGREEMENT

This Amendment to Access Agreement (this "**Amendment**") dated as of October 28, 2021 (the "**Effective Date**"), is entered into by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California ("**Owner**"), and SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY ("**Licensee**") in the following factual context:

**E.** Owner and Licensee entered into that certain Access Agreement dated as of October 29, 2020 (the "**Agreement**") pursuant to which Owner granted Licensee a limited license to conduct certain investigations at the Property, more particularly described in the Agreement. Capitalized terms used in this Amendment that are not otherwise defined in this Amendment shall have the meanings given such terms in the Agreement.

**F.** Owner and Licensee mutually desire to amend the Agreement on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

**1. Term.** The end of the term of the License and of the Agreement is extended from "eighteen (18) months after the Effective Date" to December 31, 2022.

**2. Effect of Amendment.** Except as expressly modified hereby, the Agreement shall remain unmodified and in full force and effect. The parties ratify and affirm the terms and conditions of the Agreement, as further amended by this Amendment. To the extent any of the provisions of this Amendment are inconsistent with any of the provisions set forth in the Agreement, the provisions of this Amendment shall govern and control.

**3. Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single original document. Facsimile, documents executed, scanned and transmitted electronically and digital signatures shall be deemed original signatures for purposes of this Amendment, with such facsimile, scanned and digital signatures having the same legal effect as original signatures. Owner and Licensee agree that this Amendment may be accepted, executed or agreed to through the use of an digital signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17), as such laws may be amended from time to time.

Any document accepted, executed or agreed to in conformity with such laws will be binding on both Owner and Licensee the same as if it were physically executed.

[SIGNATURES ON THE FOLLOWING PAGE]

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154409627.1

IN WITNESS WHEREOF, the parties have executed this Amendment to Access Agreement as of the Effective Date.

**VII. OWNER:**

**LICENSEE:**

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY

*erin efner*

SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

By: [erin efner \(Oct 28, 2021 13:46 PDT\)](#)

By:

*Margaret Bruce*

Name: Erin Efner  
Associate Vice President, LUEP

Name: Margaret Bruce Its:  
Its: Executive Director

154409627.1



# JPA Access Agreement Extension

Final Audit Report

2021-10-28

## "JPA Access Agreement Extension" History

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AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY  
FOR THE  
SAN FRANCISQUITO CREEK, CA, SECTION 205, FEASIBILITY STUDY

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for San Francisco District (hereinafter the "District Commander") and the San Francisquito Creek Joint Powers Authority (hereinafter the "Non-Federal Sponsor"), represented by the Margaret Bruce, Executive Director.

WITNESSETH, THAT:

WHEREAS, Section 205 of the Flood Control Act of 1948 (P.L. 80-858), as amended, also referred to as Section 205 under the Continuing Authorities Program, authorizes the U.S. Army Corps of Engineers to study, design, and construct small flood risk management projects in partnership with non-Federal government agencies, such as cities, counties, special authorities, or units of state government.

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements;

WHEREAS, the Government and Non-Federal Sponsor have decided to terminate the study initiated under a feasibility cost sharing agreement, executed November 17, 2005, amended, November 12, 2008, and funded under the Investigations Program, and to execute a new feasibility cost sharing agreement and initiate a new Study funded under the Continuing Authorities Program (hereinafter the "Agreement"); and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Study" means the activities and tasks after the effective date of this Agreement that are required to identify and evaluate alternatives and the preparation of a decision document that, as appropriate, recommends a coordinated and implementable solution for flood risk management at San Francisquito Creek, CA.

B. The term “shared study costs” means all costs incurred by the Government and Non-Federal Sponsor after the effective date of this Agreement that are directly related to performance of the Study and cost shared in accordance with the terms of this Agreement. The term includes, but is not necessarily limited to: the Government’s costs for updating the PMP; for plan formulation and evaluation, including costs for economic, engineering, real estate, and environmental analyses; for preparation of a floodplain management plan if undertaken as part of the Study; for preparing and processing the decision document; for supervision and administration; for Agency Technical Review and other review processes required by the Government; and for response to any required Independent External Peer Review; and the Non-Federal Sponsor’s creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsor in the Study Coordination Team to discuss significant issues and actions; audits; an Independent External Peer Review panel, if required; or negotiating this Agreement.

C. The term “PMP” means the project management plan, and any modifications thereto, developed in consultation with the Non-Federal Sponsor, that specifies the scope, cost, and schedule for Study activities and tasks, including the Non-Federal Sponsor’s in-kind contributions, and that guides the performance of the Study.

D. The term “in-kind contributions” means those planning activities (including data collection and other services) that are integral to the Study and would otherwise have been undertaken by the Government for the Study and that are identified in the PMP and performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and in accordance with the PMP.

E. The term “maximum Federal study cost” means the \$1,500,000 Federal cost limit for the Study unless the Government has approved a higher amount.

F. The term “fiscal year” means one year beginning on October 1<sup>st</sup> and ending on September 30<sup>th</sup> of the following year.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations.

B. The Non-Federal Sponsor shall contribute 50 percent of shared study costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor to meet its share of shared study costs for the remainder of the initial fiscal year of the Study. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. No later than August 1<sup>st</sup> prior to each subsequent fiscal year of the Study, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1<sup>st</sup> prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. The Government shall include in shared study costs and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions, including associated supervision and administration, after the effective date of this Agreement. Such costs shall be subject to audit in accordance with Article VI to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor's share of shared study costs.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any items provided or performed prior to completion of the PMP; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Study. Federal program funds are those

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funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

G. If Independent External Peer Review (IEPR) is required for the Study, the Government shall conduct such review in accordance with Federal laws, regulations, and policies. The Government's costs for an IEPR panel shall not be included in shared study costs or the maximum Federal study cost.

H. In addition to the ongoing, regular discussions of the parties in the delivery of the Study, the Government and the Non-Federal Sponsor may establish a Study Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Study Coordination Team shall not be included in the shared study costs, but shall be included in calculating the maximum Federal study cost. The Non-Federal Sponsor's costs for participation on the Study Coordination Team shall not be included in shared study costs and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

#### ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, shared study costs are projected to be \$1,030,000, with the Government's share of such costs projected to be \$515,000 and the Non-Federal Sponsor's share of such costs projected to be \$515,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated shared study costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Study.

C. The Non-Federal Sponsor shall provide to the Government required funds by delivering a check payable to "FAO, USAED, San Francisco District (L3)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of shared study costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover

the Non-Federal Sponsor's required share of shared study costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional funds.

E. Upon completion of the Study and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of shared study costs, including contract claims or any other liability that may become known after the final accounting.

#### ARTICLE IV - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an extension is approved by the Assistant Secretary of the Army (Civil Works), the Study may be terminated if an Integrated Feasibility Report is not completed for the Study within 3 years after the effective date of this Agreement.

B. In the event of termination, the parties shall conclude their activities relating to the Study. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of contract claims, and resolution of contract modifications.

C. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an

equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Study. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Study shall not be included in shared study costs, but shall be included in calculating the maximum Federal study cost.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

#### ARTICLE VII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### ARTICLE VIII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Margaret Bruce

Executive Director

San Francisquito Creek Joint Powers Authority

2100 Geng Road, Suite 210

Palo Alto, CA 94303

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If to the Government:

Lieutenant Colonel John D. Cunningham  
District Commander and Engineer  
U.S. Army Corps of Engineers, San Francisco District  
450 Golden Gate Avenue  
San Francisco, CA

B. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

#### ARTICLE IX - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

#### ARTICLE XI - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the San Francisquito Creek Joint Powers Authority Board of Directors, where creating such an obligation would be inconsistent with Section 18 of Article XVI of the California Constitution. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

BY: \_\_\_\_\_

John D. Cunningham

Lieutenant Colonel, U.S. Army District Commander

DATE: \_\_\_\_\_

SAN FRANCISQUITO CREEK

JOINT POWERS AUTHORITY

BY: \_\_\_\_\_

Margaret Bruce

Executive Director

DATE: \_\_\_\_\_

## MEMORANDUM OF UNDERSTANDING

### AMONG THE CITY OF MENLO PARK, SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, PACIFIC GAS AND ELECTRIC COMPANY, AND META PLATFORMS, INC. IN CONNECTION WITH THE MENLO PARK PORTION OF THE SAFER BAY PROJECT

This MEMORANDUM OF UNDERSTANDING (this **MOU** or **Agreement**) is dated for convenience                     , 2021, to be effective as of the Effective Date (defined below), among the CITY OF MENLO PARK, a municipal corporation (**Menlo Park** or **City**), the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, an entity comprised of the cities of East Palo Alto, Palo Alto, and Menlo Park, the San Mateo County Flooding and Sea Level Resiliency District and the Santa Clara Valley Water District for the purpose of exercising special powers to lead projects that mitigate the risk of flooding along the San Francisco Creek and the Bay (**SFCJPA** or **JPA**), PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (**PG&E**) and META PLATFORMS, INC., a Delaware corporation (**Meta**) formerly known as Facebook, Inc., individually referred to as a **Party** and collectively referred to as the **Parties** and is for the purpose of collaborating on the Menlo Park portion of the SAFER Bay Project.

#### RECITALS

WHEREAS: The SFCJPA has released two Public Draft Feasibility Reports (**Feasibility Studies**) for a Strategy to Advance Flood protection, Ecosystems and Recreation along San Francisco Bay, referred to as the **SAFER Bay Project**; an October 2016 Feasibility Study with respect to portions of the SAFER Bay Project in East Palo Alto and Menlo Park; and a June 2019 Feasibility Study with respect to portions of the SAFER Bay Project in Palo Alto; and

WHEREAS: The Menlo Park portion of the SAFER Bay Project is a portion of the overall SAFER Bay Project in Menlo Park comprised of 3.7 miles of engineered levees and floodwalls that would protect segments of California State Route 84 and PG&E's Ravenswood Substation, which are anchors for power service and transportation to the area, and would include construction of new levees surrounding the Meta classic campus (formerly referred to as the east campus) (**Classic Campus**), along an alignment known as SAFER Bay Reach 4 and along Bayfront Expressway (Reaches 2 and 3) as depicted in the Vicinity Map attached as part of Exhibit A. The Menlo Park portion of the SAFER Bay Project will also increase recreational access to the Bay shoreline; and, by leveraging nature-based design, enable habitat restoration work in sections of the Don Edward San Francisco Bay National Wildlife Refuge; and

WHEREAS: The Parties acknowledge and agree that an overall San Francisco Bay flood control and sea level rise resiliency project is critical to the long term viability of the Parties' and the region's operations and facilities. For example, the networked infrastructure located within and serving residents of the City, which contains roads and highways, electric substations, and wastewater treatment plants that

are essential to day-to-day community and economic functions and a complex grid of services means that sea level rise could adversely affect regional businesses and residents. Thus, a flooded highway, wastewater treatment plant or electrical substation could temporarily shut-down businesses, close roads and lead to many community wide disruptions; and

WHEREAS: The goals of the Menlo Park SAFER Bay Project include protection of the PG&E Ravenswood Substation, a critical power supply for over 300,000 people, as well as the construction of flood control elements designed to provide a 100-year level of coastal flood protection and 3.5 feet of sea level rise adaptation; and

WHEREAS: In planning the SAFER Bay Project, the Parties recognize the importance of both “mitigation” and “adaptation” as strategies to reduce overall vulnerability to the adverse effects of flooding and sea-level rise; and

WHEREAS: In September 2020, PG&E expressed a desire to plan, design, and construct a flood control and sea level rise resiliency project around PG&E’s Ravenswood electrical substation located adjacent to 2005 Willow Road in Menlo Park, corresponding to a portion of Reach 5 identified in the SFCJPA’s SAFER Bay Project Feasibility Studies; and

WHEREAS: Menlo Park agreed to assume the role of applicant for the purpose of submitting an application for the Federal Emergency Management Agency (**FEMA**) fiscal year 2020 Building Resilient Infrastructure and Communities (**BRIC**) grant opportunity on behalf of a project for a portion of the overall SAFER BAY Project within Menlo Park (**Menlo Park SAFER Bay Project or Project**); and

WHEREAS: PG&E offered to contribute \$10 million to meet the grant program’s 25% minimum local match funding requirement and for flood control and sea level rise resiliency facilities around its Ravenswood electrical substation; and

WHEREAS: The SFCJPA, being familiar with the proposed project scope of work due to developing the SAFER Bay Project Feasibility Study, agreed to become a project partner; and

WHEREAS: Meta offered to contribute an additional \$7.808 million of local match funding to expand the proposed Project scope of work to include measures regarding its approximately 56.9 acre “Classic Campus” (including Buildings 10-19) located at 1 Hacker Way in Menlo Park; and

WHEREAS: The proposed Project scope of work was expanded to include a portion of Reach 2, a portion of Reach 5 and all of Reaches 3 and 4, all as described in the Feasibility Studies; and

WHEREAS: The Parties worked collaboratively to develop a complete Project grant application for submittal to FEMA; and

WHEREAS: On the basis of PG&E and Meta’s assurances of their support for the Project, Menlo Park confirmed in the BRIC grant application that it has secured the grant program’s 25% minimum local match funding requirement; and

WHEREAS: On January 29, 2021, the Parties received notification that the Menlo Park SAFER Bay Project application was accepted by FEMA for review and funding consideration; and

WHEREAS: On July 2, 2021, the Parties received notification that the Menlo Park SAFER Bay Project application was selected by FEMA for further review; and

WHEREAS: In anticipation of FEMA awarding Menlo Park \$50 Million in BRIC grant funding for the Menlo Park SAFER Bay Project and subject to such award, the Parties wish to enter into this MOU to establish a framework for funding, planning, permitting, designing, constructing, and operating and maintaining the Project.

NOW, THEREFORE, the parties hereby agree as follows:

**1. Definitions.**

Capitalized terms not defined elsewhere in this MOU shall have the following meanings:

**AHJ’s** means all federal, state, regional and local authorities having jurisdiction.

**Applicable Laws** mean all applicable federal, state, regional and local statutes, ordinances, laws, rules, regulations, orders and other laws, including without limitation all BRIC grant and AHJ requirements.

**City** is defined in the Preamble.

**Contractor** means any contractor, designer, consultant, supplier, vendor, manufacturer, or other third party hired by any of the Parties to perform any of the services or work in connection with the Project which is paid for, in whole or in part, with any Project funds.

**Council** means the City’s City Council.

**Effective Date** is defined in Section 3.

**Meta** is defined in the Preamble.

**O&M** means long-term operations and maintenance of the completed Project.

**Phase** is a Project phase more particularly described in Section 5.

**PG&E** is defined in the Preamble.

**Project EIR** is defined in Section 8.

**Programmatic EIR** is defined in Section 8.

2. **Purpose of MOU.** This MOU establishes a framework for funding, planning, permitting, designing, constructing, and operating and maintaining the Project, and establishes certain contractual obligations concerning, inter alia, commitment to pay promised local matching funds between and among the Parties in connection with the Project.
3. **Effectiveness.** This MOU is effective (**Effective Date**) immediately upon mutual execution by all Parties. The obligations of this MOU (with the exception of this Effectiveness provision) do not become legally enforceable until the date Menlo Park receives assurance adequate to the City Council or its designee and the Parties that an adequate level of FEMA grant funding, currently anticipated to be \$50 million, has been committed to this Project (“Assurance”). If by October 1, 2024, such Assurance has not been received, then at any time thereafter and prior to transmittal of such Assurance, any Party may terminate this Agreement by giving written notice to the other Parties.
4. **General Role of Each Party.** As more specifically described in this MOU, the general roles and responsibilities of each Party for the Project are as follows:
  - (a) **Menlo Park.**
    - (i) “Applicant” under the BRIC grant.
    - (ii) “Lead Agency” for the Project EIR.
    - (iii) “Lead” for certain property rights acquisition.
    - (iv) “Lead” for Project design and construction, including being the “Owner” (i.e., holder) of the Project consulting, design, and construction contracts.
    - (v) Subject to Section 12, responsibility for long-term Project O&M.
  - (b) **SFCJPA.**
    - (i) Provide technical support to Menlo Park under the BRIC application.
    - (ii) “Lead Agency” for the Programmatic EIR.
    - (iii) “Lead” for certain property rights acquisition.
  - (c) **PG&E.**
    - (i) Funding supporter of \$10,000,000 when, as, and subject to applicable conditions in this MOU.
    - (ii) Provider of review, comment, input and suggestions (as applicable) to whatever other aspects of the Project around the Ravenswood substation it chooses.

- (iii) Contributor (without additional cost to the Project and subject to California Public Utilities Commission approval pursuant to a Public Utilities Code Section 851 process,) of all mutually agreed upon, reasonably required and operationally feasible rights to Ravenswood electrical substation lands required for the Project facilities to be constructed, operated and maintained on Ravenswood substation land, so long as the easements and rights of access do not adversely impact PG&E's operations, in PG&E's reasonable discretion. Land rights are currently anticipated to be mutually agreed upon easements or rights of entry and/or access for levees – contingent / predicated upon environmental review / preliminary designs. This clause presumes the existing levee will remain in relatively the same position to protect the Ravenswood electrical substation and enable restoration. However, ecotone and t-zone area may be moved off of PG&E property at the discretion of Saltpond Project Management Team and Refuge, so long as this new location protects the Ravenswood Substation.
  - (iv) Following Project completion (i.e., during the O&M phase), having the same rights and responsibilities of any other private landowner within the Project area, e.g., in the event a special assessment district is formed, PG&E will be treated in the same manner as other property owners within the special assessment district.
  - (v) The obligations of this subsection will survive any withdrawal from this MOU by PG&E as long as the Project proceeds, except that the obligations of this subsection will not survive if this Agreement is terminated pursuant to Section 3.
- (d) Meta.
- (i) Funding supporter of \$7,808,000 when, as, and subject to applicable conditions in this MOU.
  - (ii) Provider of review, comment, input and suggestions (as applicable) to whatever other aspects of the Project it chooses. Meta will not, however, have any obligation to provide any review, comment, input or suggestions.
  - (iii) Contributor (without additional cost to the Project) of incidental easements, licenses, and/or rights of access over the Classic Campus that are reasonably required for the Project facilities to be constructed, operated and maintained, so long as the easements, licenses, and/or rights of access do not adversely impact Meta's operations, in Meta's reasonable discretion.
  - (iv) Following Project completion (i.e., during the O&M phase), having the same rights and responsibilities of any other private landowner within the Project area, e.g., in the event a special assessment district is formed, Meta will be treated in the same manner as other property owners within the special assessment district.
  - (v) The obligations of this subsection will survive any withdrawal from this MOU by Meta, as long as the Project proceeds, except that the obligations

of this subsection will not survive if this Agreement is terminated pursuant to Section 3.

- (e) There remain subjects that the Parties may require further refinement as to their respective responsibilities, as provided in more detail in Section 7 below.
- (f) Nothing in this MOU or the Project will alter or modify any pre-existing obligations of:
  - (i) PG&E to maintain the flood gate/wall in front of its Ravenswood electrical substation; and
  - (ii) Meta for infrastructure on its Classic Campus under its pre-existing conditional development permit with Menlo Park; provided, however, that if the existing levees protecting Classic Campus are made obsolete by the Project, then the City agrees to cooperate with Meta to remove its obligation under the conditional development permit for the Classic Campus to maintain the existing levees.

In the event of any conflict between any provision of this Section 4 and any other provision of this MOU, the provisions of this Section 4 will control.

#### **5. Project Description and Phases.**

- (a) The current Project description is attached as Exhibit A. Exhibit A will be revised from time to time as provided in this MOU. The Project may not be revised in a manner that adversely impacts Meta's property without Meta's prior written approval or in a manner that adversely impacts PG&E's property without PG&E's prior written approval.
- (b) For planning and budgeting purposes, the Project is expected to proceed in the following general Phases. Phases may run concurrently:
  - (i) Phase 1. Includes generally:
    - (1) CEQA/NEPA.
    - (2) Permitting.
    - (3) Project budgeting.
    - (4) Seeking additional funding sources.
    - (5) Pre-design and preliminary design.
    - (6) Initial property rights acquisition.
    - (7) Initial development of mitigation and monitoring plan.
    - (8) Initial development of O&M-related matters.

- (ii) Phase 2. Includes generally:
  - (1) Final property rights acquisition.
  - (2) Final design.
  - (3) Procurement and construction.
  - (4) Construction phase mitigation and monitoring activities.
  - (5) Final development of O&M-related matters.
- (iii) Phase 3. Includes generally:
  - (1) O&M.
  - (2) Post-construction mitigation and monitoring activities.

**6. Funding, Budgeting and Cash Flow.**

- (a) Concurrently with its approval of this MOU, the Council has adopted a Resolution accepting the BRIC grant funding.
- (b) The current Project funding sources and uses and timeline are attached hereto as Exhibit B and Exhibit C, respectively. The Parties will update Exhibit B and Exhibit C in a mutually agreed upon manner as further information becomes available.
- (c) The current Project Cash Flow Projections are attached hereto as Exhibit D. The Parties will update Exhibit D in a mutually agreed upon manner as further information becomes available.
- (d) PG&E and Meta will contribute their agreed \$10,000,000 and \$7,808,000, respectively, when and as required by the agreed Exhibit B and Exhibit C. PG&E and Meta will contribute 20% of their agreed contributions within thirty days of the date Assurance is received, then make pro rata contributions with the City throughout the design phase of the Project, then make the balance of their respective agreed contributions upon the commencement of Project construction. The obligations of this subsection will survive any withdrawal from this MOU by PG&E or Meta, as long as the Project proceeds.
- (e) The City and SFCJPA or other public partners will be responsible for seeking any and all grant funding and other funding sources to be used for the Project. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts.
- (f) Parties to align on engagement and outreach for this portion and future portions of the overall SAFER Bay Project.
- (g) The Parties acknowledge and agree that PG&E and Meta are not responsible for providing funding above the agreed respective \$10,000,000 and \$7,808,000 amounts.



- (h) If final Project costs are less than the amounts raised, the Parties will discuss uses of remaining funds for O&M and other costs.

7. **Subsequent Agreements.** As the Project progresses, the Parties anticipate developing further memoranda of understanding or agreements between some or all of them, including:

- (a) Permitting including potential timing and coordination between Programmatic EIR and Project EIR (see Section 8);
- (b) Procurement: In-kind contributions for the Project (such as, for example, surplus soil or equipment);
- (c) Real estate acquisition: Allocation of specific Project property rights acquisition; it is presently anticipated that SFCJPA will take the lead on initial outreach, communication, collaboration, and stakeholder coordination for property / easement / right of entry acquisition and that the City will undertake any eminent domain proceedings where necessary;
- (d) Responsibility, oversight and management of design and construction phases;
- (e) Responsibilities for review and approval of Project designs;
- (f) Creation of a special district(s) or other regional solution(s) to perform or pay for long-term O&M;
- (g) Ultimate ownership of Project facilities: Identifying specific owner(s) (public or otherwise), e.g., One Shoreline, of actual Project facilities, currently anticipated to be City and/or JPA;
- (h) Agreements with other potential Project stakeholders;
- (i) Project Administration; and
- (j) Negotiation cost and design of potential relocation of existing PG&E transmission / distribution facilities (if required by Project).

Neither Meta nor PG&E will be obligated to participate in or contribute to any of the preceding subjects.

8. **Environmental Review.**

- (a) SFCJPA will serve as the Lead Agency for the CEQA self-mitigating programmatic EIR for the entire SAFER Bay Project (**Programmatic EIR**). The current timetable for the Programmatic EIR is attached as on Exhibit E. SFCJPA will update Exhibit E in a mutually agreed upon manner as further information becomes available.

- (b) Menlo Park will serve as the Lead Agency for the CEQA Project-specific (non-programmatic) EIR (**Project EIR**). The current timetable for the Project EIR is attached as Exhibit F. Menlo Park will update Exhibit F in a mutually agreed upon manner as further information becomes available

**9. Project Definition and Contracts.**

- (a) The Parties intend that except for specific CEQA/NEPA or other (if any) matters for which SFCJPA is the Lead Agency, Menlo Park will hold all third-party contracts to accomplish the Phase 1 and Phase 2 portions of the Project. As for Phase 3, the Parties intend that Menlo Park will hold all third-party contracts, except to the extent O&M responsibilities can be assumed by a third party. Contracting responsibility includes responsibility for requiring other parties to maintain reasonable and appropriate insurance, any to pay prevailing wages if otherwise required by Applicable Law. However, nothing herein will require Menlo Park or SFCJPA to enter into any contract unless it has reasonable assurances of available funds.
- (b) Subject to Section 6(g), the City and SFCJPA or other public partners will be responsible for seeking any and all grant funding and other funding sources to be used for the Project in addition to the funds contributed by Meta and PG&E pursuant to this Agreement. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts.
- (c) Until final construction completion of the Project and for three years thereafter, City and SFCJPA shall maintain in accordance with their standard record retention procedures (and require any Contractor to maintain) all such records concerning expenditures of Project funds relating to the funding, planning, permitting, designing, constructing, and operating and maintaining the Project. The preceding shall include correspondence, internal memoranda, calculations, books and accounts, accounting records, and invoices, payrolls, records and all other data related to matters covered by this MOU and as may be required by FEMA or its designee(s). Upon the City's request, Meta and PG&E shall provide evidence of payment of the funds they have contributed to the Project pursuant to this Agreement.

**10. Project Permits, Entitlements and Approvals.**

- (a) Subject to the specifically agreed "lead" and other responsibilities of Menlo Park and the SFCJPA (as applicable), the City and SFCJPA will cooperate to obtain and/or provide all mutually agreed upon and reasonably required entitlements, permits and approvals for the Project and that do not unreasonably interfere with operational requirements. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts.

**11. Project Design and Construction.**

- (a) The City and SFCJPA will cooperate to obtain approval of all project designs and applicable construction requirements. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts. All Project designs

for facilities on PG&E or Meta's properties will be subject to PG&E or Meta's (as applicable) reasonable approval, so long as it is consistent with prior approvals.

**12. Project O&M.**

- (a) Concurrently with its approval of this MOU, and consistent with the BRIC grant documents, the Council has adopted a Resolution undertaking a commitment to provide for the Project's long term operations and maintenance expenses.
- (b) Menlo Park and SFCJPA will, with input from PG&E and Meta, have responsibility for developing a long-term O&M plan in compliance with all applicable laws and subject to approval of all AHJ's, ideally before final design is completed and construction contracts are let.
- (c) As for O&M funding, Menlo Park and SFCJPA and other regional stakeholders will cooperate to develop other, citywide or regional-based solutions, such as a potential assessment district. PG&E and Meta will be encouraged to provide meaningful input in developing the solutions. PG&E and Meta acknowledge that any solution may require them to make Project-related payments in addition to those described elsewhere in this MOU. However, provided that the final regional solution does not treat PG&E or Meta differently than any other similarly situated private property owner within the Project area, and PG&E and Meta have been given a reasonable opportunity to provide meaningful input, PG&E and Meta will not assert this MOU as a basis for different treatment than any other similarly situated private property owner within the Project area.
- (d) Nothing in this MOU or the Project will alter or modify any pre-existing obligations of:
  - (i) PG&E to maintain the flood gate/wall adjacent to its Ravenswood electrical substation [as required or necessary based on design of project]; and
  - (ii) Meta for infrastructure under its pre-existing conditional development permit for the Classic Campus (except as set forth in Section 4(f)(ii)).

**13. Term and Termination/Withdrawal.**

- (a) This MOU will be effective as of the Effective Date, and will unless terminated earlier by the Parties or superseded by other agreements will be effective until five years after construction of the Project is completed and accepted.
- (b) PG&E and Meta may withdraw from this MOU (subject to Section 13(c)) upon 120 days written notice to the other Parties.
- (c) The following obligations will survive expiration or termination of this MOU or withdrawal by a party: (i) PG&E and Meta agreements regarding their \$10,000,000 and \$7,808,000 contributions, respectively; and (ii) PG&E and Meta obligations under Section 4(c)(iii) and Section 4(d)(iii) respectively. Notwithstanding the preceding, if this MOU is terminated pursuant to Section 3 then all of PG&E's and Meta's obligations will also terminate and PG&E and Meta will not be obligated to make any further contributions to the Project.

**14. General Conditions.**

- (a) Project Communications and Meetings. Throughout the Project, the Parties, will reasonably communicate with each other in all matters relating to the Project. The Parties will agree on schedule of periodic meetings to apprise the Parties and other Project stakeholders regarding overall Project statues, funding, design and construction, etc.
- (b) Revisions to Exhibits and Schedules. All Exhibits and Schedules to this MOU are subject to revision and updating from time to time. The Parties will reasonably cooperate in such revisions.
- (c) No Consequential Damages. The Parties hereby agree that, in the event of default, any damages awarded or arising under this MOU shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. In no instance shall the Parties be entitled to special, incidental, indirect, consequential or punitive damages, lost profits or attorney's fees. By acceptance and execution of this MOU, the Parties hereby agree that the only monetary damages contemplated by them as arising from this MOU are actual or direct damages. The Parties specifically agree that damages suffered by Menlo Park as a result of PG&E or Meta's failure to pay their monetary contributions when and as required are actual and direct damages.

**15. Representations and Warranties.**

Each Party represents, warrants and covenants to the other parties as follows:

- (a) Authority. The Party has the legal power and authority to execute and deliver this MOU and to perform its obligations under this MOU.
- (b) Due Authorization. The approval, execution, and delivery of this MOU, and the performance by such Party of its obligations under this MOU, have been authorized by all requisite actions of the Party.
- (c) Due Execution and Delivery. The persons executing this MOU on behalf of the Party are duly authorized to execute and deliver this MOU on behalf of the Party.
- (d) No Conflict. The approval, execution, delivery and performance of this MOU does not conflict with any other agreement to which the Party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to the Party.

**16. Miscellaneous.**

- (a) Indemnification. Pursuant to Government Code Section 895.4, Menlo Park and SFCJPA agree to fully indemnify, defend, and hold the other Parties (including their appointed and elected officials, officers, employees, and agents) harmless and free from any damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its appointed or elected officials,

officers, employees, or agents, under or in connection with any work, authority, or jurisdiction delegated to such Party under this MOU. Neither Menlo Park nor SFCJPA, nor any appointed or elected official, officer, employee, or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of any other Party, its appointed or elected officials, officers, employees, or agents, under or in connection, with any work, authority, or jurisdiction delegated to such other Party under this MOU. Menlo Park and SFCJPA, while conducting their respective activities set forth above in Section 4 above shall each procure, carry, and maintain, in full force and effect, at all applicable times during the term of this MOU, such insurance and bonds to protect the Parties, inclusive of causing each Contractor to indemnify and defend the Parties and name the Parties as additional insureds in any contracts entered into to effectuate this MOU.

- (b) Further Assurances. The Parties shall cooperate with each other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations under this MOU.
- (c) Amendments. Any mutually agreed changes, modifications, revisions or amendments to this MOU shall be incorporated by written instrument, and effective when executed and signed by all Parties.
- (d) Severability. If any provision of this MOU shall be held to be invalid, void, or unenforceable, the validity, legality, or enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.
- (e) Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of California applicable to contracts executed and wholly performed within that state. The courts of the State of California shall have jurisdiction over any action arising out of this MOU, with venue in San Mateo County.
- (f) Construction of Agreement. In the event of a dispute between the Parties as to the language of this MOU or any amendment to this MOU or the construction or meaning of any term contained in this MOU or any amendment to this MOU, this MOU or any amendment to this MOU shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, any Party based on the preparation or negotiation of this MOU or any amendment to this MOU.
- (g) Notices. All notices, demands and other formal communications hereunder shall be deemed given if: (a) delivered personally or by courier, (b) sent by overnight express delivery, (c) mailed by registered or certified mail (return receipt requested), postage prepaid, or (d) sent by email in PDF format (**Email Notification**); provided that (i) notice received after 5:00 p.m. on a business day or on a non-business day shall be deemed received on the next business day, and (ii) any sender of an Email Notification also delivers the notice by one of the methods listed in (a)-(c) (**Secondary Notice**) (provided that if the recipient of the Email Notification responds with an email acknowledgement of receipt (an automatic "read receipt" does *not* constitute acknowledgement), Secondary Notice

is not required), to a party at its respective address(es) set forth below (or at such other address as shall be specified by the party by like notice given to the other party(ies):

<p><b>To:</b>  City of Menlo Park  Starla Jerome-  Robinson  City Manager  City Hall, 2nd Floor  701 Laurel St  Menlo Park, CA  94025</p>	<p><b>To:</b>  San Francisquito  Creek Joint Powers  Authority  Margaret Bruce  Executive Director  2100 Geng Road,  Suite 210  Palo Alto, CA 94303</p>	<p><b>To:</b>  Pacific Gas and  Electric Company  Heather Rock  Chief of Staff for  Engineering,  Planning and  Strategy  300 Lakeshore  Drive  Oakland, CA  94612</p>	<p><b>To:</b>  Meta Platforms, Inc.  Lauren Swezey  Sustainability &amp;  Landscape Project  Lead  1 Hacker Way  Menlo Park, CA  94025</p>
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- (h) Entirety of Agreement. This MOU, including Exhibits A through F, represents the entire and complete agreement among the Parties with respect to the subject matter hereof and supersedes any prior negotiations, representations and agreements, whether written or oral.
- (i) Debt Limitation. Menlo Park and SFCJPA are subject to laws or policies which limit their ability to incur debt in future years. Nothing in this MOU shall constitute an obligation of future governing bodies of the Parties to appropriate funds for the purpose of this MOU.
- (j) Conflict of Interest. The Parties shall undertake reasonable efforts to avoid conflicts of interest in the performance of this MOU and shall immediately notify the other Parties should a conflict of interest arise that would prohibit or impair the ability to perform under this MOU.
- (k) Disputes. The Parties agree that, with regard to all disputes or disagreements arising under this MOU that are not resolved informally at the staff level after a good faith attempt, the Parties may, at their sole and mutual discretion, agree to engage in mediation, and the costs of any such mediation shall be divided equally among the Parties involved in the mediation.
- (l) Non-Discrimination. Each Party shall comply with its own non-discrimination policies and practices and laws applicable to it.
- (m) Counterparts. This MOU 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.
- (n) Facsimile and Electronic Signatures. Facsimile or electronic signatures may be used in place of original signatures on this MOU. Each Party intends to be bound by the signatures on the facsimile or electronic document, is aware that the other Parties will rely on the facsimile or electronic signatures, and hereby waives any

defenses to the enforcement of the terms of this MOU based on the use of a facsimile or electronic signature.

- (o) Exhibits and Schedules. The following Exhibits and Schedules are attached and incorporated into this MOU:
- (i) Exhibit A: Project Description and Vicinity Map
  - (ii) Exhibit B: Project Funding Sources and Uses
  - (iii) Exhibit C: Project Timeline
  - (iv) Exhibit D: Cash Flow Projections
  - (v) Exhibit E: Programmatic EIR Timetable
  - (vi) Exhibit F: Project EIR Timetable
- (p) Signatures. In witness whereof, the Parties, through their respective duly-authorized representatives, have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

**[Signature Blocks Follow on Next Page]**

**IN WITNESS WHEREOF**, the Parties hereto, by their duly authorized representatives, have executed this Memorandum of Understanding.

**CITY OF MENLO PARK**

\_\_\_\_\_  
Starla Jerome-Robinson, City Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Judi Herren, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Nira Doherty, City Attorney

\_\_\_\_\_  
Date



**SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY**

\_\_\_\_\_  
**[Name, Title]**

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
**[Name], Agency Clerk**

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
**[Name, Title]**

\_\_\_\_\_  
Date

**PACIFIC GAS AND ELECTRIC COMPANY**

\_\_\_\_\_  
**[Name, Title]**

\_\_\_\_\_  
Date

**META PLATFORMS, INC.**

\_\_\_\_\_  
**[Name, Title]**

\_\_\_\_\_  
Date

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

#### **Menlo Park SAFER Bay Project**

##### **Scope of Work**

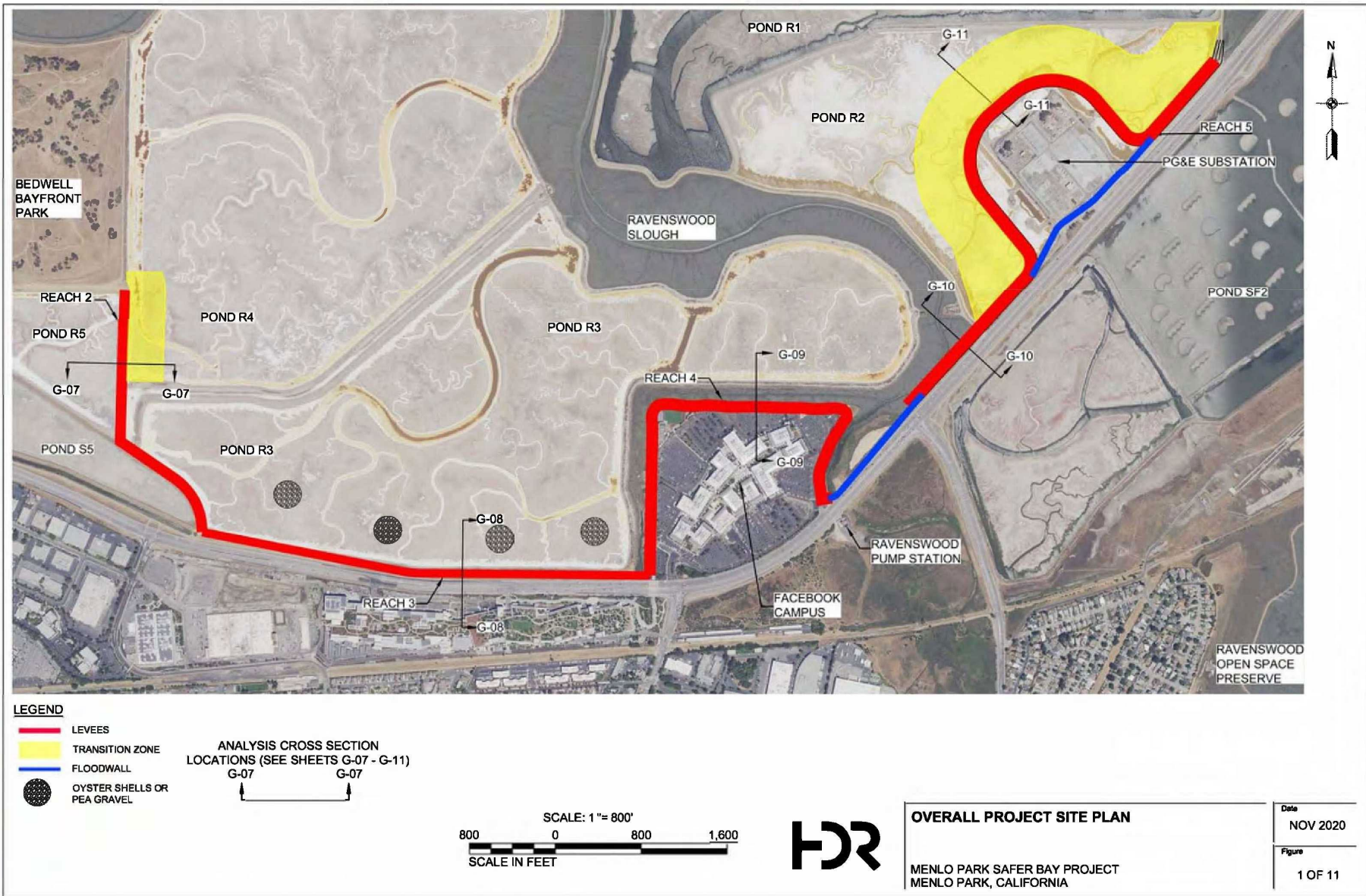
The proposed Menlo Park SAFER Bay Project involves preparation of environmental documentation, permitting, public outreach, field investigation, design, and construction for solutions to tidal and sea-level rise flooding along an approximately 3.7-mile alignment of the southeast San Francisco Bay shoreline near the City of Menlo Park (Attachment 1). The flood control elements will be designed to provide a 100-year level of flood protection in addition to 3.5 feet of sea-level rise adaptation.

The proposed Project will incorporate nature-based solutions and habitat enhancements. In total, the project will create approximately 31 acres of tidal marsh transition zone on the bayside slopes of multiple flood control levees. By extending the transition zones to elevations that account for 100-year storm events, in addition to 3.5 feet for sea level rise adaptation, the proposed project will create long-term, resilient, high-quality habitat and high tide refuge. The Project also proposes to enhance approximately 5 acres of western snowy plover breeding habitat in Pond R3 by placing oyster shells or pea gravel to enhance the breeding habitat of endangered bird species.

A primary focus of the proposed project is flood protection of Pacific Gas and Electric Company's (PG&E) Ravenswood Substation, which is part of critical power supply infrastructure to eight cities and nearly 300,000 people. The substation is sited at the margin of San Francisco Bay, and is at risk of tidal flooding and sea-level rise. When flooded, the substation must be de-energized until flood waters recede, and repair and maintenance activities must be completed before re-powering the substation. Hydrologic and infrastructure analysis has shown that flooding of the substation would result in an interruption of power supply for between 5 and 15 days to the project impact area, negatively impacting many community lifelines that are critical for human health and safety and to economic security.

The Project would be developed in phases. Phase 1 would include procurement of environmental and engineering services, public outreach, environmental permitting, and design to the 90% level. Phase 2 would include final design, procurement for construction management and contracting services, and construction activities.

The proposed Project is a significant portion of the overall SAFER Bay alignment that, when completed, will provide the additional benefit of protecting the communities of Menlo Park, East Palo Alto and others from tidal and sea level rise flooding.



**EXHIBIT B**

**PROJECT FUNDING SOURCES AND USES**

<b>Funding Sources</b>	<b>Amount</b>
FEMA BRIC grant	\$ 50,000,000
PG&E	\$ 10,000,000
Facebook	\$ 7,808,000
<b>Total</b>	<b>\$ 67,808,000</b>

<b>Funding Uses</b>	<b>Amount</b>
Pre-award Cost	\$ 190,000
<b>Phase 1</b>	
Task 1.1 - Procurement for Design and Environmental Services	\$ 26,000
Task 1.2 - Project Management including Kick-Off Meeting	\$ 150,000
Task 1.3 - Public Outreach	\$ 63,000
Task 1.4 - Environmental Permits	\$ 1,178,000
Task 1.5 - Right-of-Way Acquisition Negotiations	\$ 540,000
Task 1.6 - Engineering and Design	\$ 3,150,000
<b>Phase 2</b>	
Task 2.1 - Project Management	\$ 208,000
Task 2.2 - Public Outreach	\$ 75,000
Task 2.3 - Final Design	\$ 198,000
Task 2.4 - Procurement for Construction Management Service	\$ 26,000
Task 2.5 - Construction Bidding	\$ 42,000
Task 2.6 - Engineering During Construction	\$ 233,000
Task 2.7 - Construction Management	\$ 3,752,000
Task 2.8 - Construction Activities	\$ 57,844,087
<b>Operation &amp; Maintenance</b>	
O&M (5 years)	\$ 1,050,000
<b>Total</b>	<b>\$ 68,725,087</b>

**VIII.**

**EXHIBIT C**

**PROJECT TIMELINE**

**Proposed Project Timeline**

	Q1 Oct-Dec 21	Q2 Jan-Mar 22	Q3 Apr-Jun 22	Q4 Jul-Sep 22	Q5 Oct-Dec 22	Q6 Jan-Mar 23	Q7 Apr-Jun 23	Q8 Jul-Sep 23	Q9 Oct-Dec 23	Q10 Jan-Mar 24	Q11 Apr-Jun 24	Q12 Jul-Sep 24	Q13 Oct-Dec 24	Q14 Jan-Mar 25	Q15 Apr-Jun 25	Q16 Jul-Sep 25	Q17 Oct-Dec 25	Q18 Jan-Mar 26	Q19 Apr-Jun 26	Duration	
Phase 1																					~ 21 months
EPA Review																					~ 11 months
Phase 2 Review																					~ 8 months
Phase 2																					~ 29 months
Duration																					~ 57 months

is subject to change as the project evolves

## EXHIBIT D

### CASH FLOW PROJECTIONS

#### Cash Flow Forecast

- Scenario - Maintain minimum of \$1 M cash balance through completion of Phase 1
- 20% of local match contribution upfront
  - Local match reimbursements on pro-rata basis through completion of Phase 1
  - Remainder of local match contribution at beginning of Phase 2

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20	Q21	Q22	TOTAL		
	Oct-Dec 23	Jan-Mar 24	Apr-Jun 24	Jul-Sep 24	Oct-Dec 24	Jan-Mar 25	Apr-Jun 25	Jul-Sep 25	Oct-Dec 25	Jan-Mar 26	Apr-Jun 26	Jul-Sep 26	Oct-Dec 26	Jan-Mar 27	Apr-Jun 27	Jul-Sep 27	Oct-Dec 27	Jan-Mar 28	Apr-Jun 28	Jul-Sep 28	Oct-Dec 28	Jan-Mar 29			
<b>Expenditures</b>																									
<b>Pre-award Cost</b>																									
FEMA BRIC subapplication Preparation	(180,000)																						(180,000)		
<b>Phase 1</b>																									
Task 1.1 - Procurement for Design and Environmental Services	(25,000)																						(25,000)		
Task 1.2 - Project Management including Kick-Off Meeting	(2,500)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	(25,750)	
Task 1.3 - Public Outreach	(1,400)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)		
Task 1.4 - Environmental Permits	(94,000)	(200,200)	(278,348)	(299,658)	(211,804)	(246,308)	(48,378)																(1,378,000)		
Task 1.5 - Right-of-Way Acquisition Negotiations		(80,000)	(162,000)	(162,000)	(133,000)																		(467,000)		
Task 1.6 - Engineering and Design	(184,900)	(1,021,055)	(1,313,829)	(110,511)	(135,612)	(138,054)	(174,750)	(28,123)															(3,335,000)		
<b>FEMA NEPA Review</b>																									
<b>FEMA Phase 2 Review</b>																									
<b>Phase 2</b>																									
Task 2.1 - Project Management										(25,842)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)	(21,899)		
Task 2.2 - Public Outreach										(4,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)	(8,058)		
Task 2.3 - Final Design										(88,000)	(88,000)												(176,000)		
Task 2.4 - Procurement for Construction Management Service										(17,134)													(17,134)		
Task 2.5 - Construction Bidding										(45,000)													(45,000)		
Task 2.6 - Engineering During Construction										(1,438)	(22,908)	(10,548)	(14,388)	(14,388)	(14,388)	(14,388)	(14,388)	(14,388)	(14,388)	(14,388)	(14,388)	(14,388)	(14,388)		
Task 2.7 - Construction Management										(145,308)	(340,484)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)	(466,007)		
Task 2.8 - Construction Activities										(1,840,853)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)	(2,887,800)		
<b>TOTAL EXPENDITURES</b>	<b>(714,800)</b>	<b>(1,253,158)</b>	<b>(1,428,976)</b>	<b>(804,029)</b>	<b>(541,930)</b>	<b>(471,184)</b>	<b>(254,873)</b>	<b>(28,123)</b>	<b>0</b>	<b>(122,482)</b>	<b>(391,571)</b>	<b>(4,325,784)</b>	<b>(8,406,677)</b>	<b>(8,414,324)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	<b>(8,418,147)</b>	
<b>Payments</b>																									
FEMA Reimbursements (75% expenditures less 30% retention)			482,496	843,882	964,134	407,750	365,388	338,056	378,111	39,639	0	83,777	223,810	2,893,804	3,674,307	3,679,689	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	4,106,761	48,000,000	
FEMA Retention Release (30%)																							3,000,000	3,000,000	
Local Match Contribution - PG&E	2,000,000	3,000,000	3,750,000	200,514	84,787	75,985	66,548	35,795	4,089	2,256,375														35,000,000	
Local Match Contribution - Facebook	3,361,600	78,353	137,363	336,570	66,210	58,137	51,649	27,949	3,192	5,663,777														7,808,000	
<b>TOTAL PAYMENTS</b>	<b>5,361,600</b>	<b>3,078,353</b>	<b>3,887,363</b>	<b>3,202,874</b>	<b>1,115,181</b>	<b>540,052</b>	<b>489,070</b>	<b>391,801</b>	<b>179,882</b>	<b>12,841,811</b>	<b>0</b>	<b>83,777</b>	<b>223,810</b>	<b>2,893,804</b>	<b>3,674,307</b>	<b>3,679,689</b>	<b>3,682,248</b>	<b>3,682,248</b>	<b>3,682,248</b>	<b>3,682,248</b>	<b>3,682,248</b>	<b>3,682,248</b>	<b>4,106,761</b>	<b>5,000,000</b>	<b>67,808,000</b>
<b>NET QUARTERLY CASH FLOW</b>	<b>2,646,799</b>	<b>(1,074,805)</b>	<b>(541,613)</b>	<b>2,398,845</b>	<b>573,251</b>	<b>71,868</b>	<b>228,217</b>	<b>352,678</b>	<b>179,759</b>	<b>12,851,179</b>	<b>(311,571)</b>	<b>(4,242,007)</b>	<b>(8,182,867)</b>	<b>(5,494,403)</b>	<b>(4,743,840)</b>	<b>(4,746,458)</b>	<b>(4,735,899)</b>	<b>(4,735,899)</b>	<b>(4,735,899)</b>	<b>(4,735,899)</b>	<b>(4,735,899)</b>	<b>(4,735,899)</b>	<b>(4,735,899)</b>	<b>(4,735,899)</b>	<b>312,814</b>
<b>NET QUARTERLY CASH BALANCE</b>	<b>2,646,799</b>	<b>1,772,332</b>	<b>1,230,719</b>	<b>3,729,564</b>	<b>2,312,522</b>	<b>2,384,390</b>	<b>2,612,597</b>	<b>2,965,275</b>	<b>3,144,665</b>	<b>15,963,844</b>	<b>15,652,273</b>	<b>11,389,266</b>	<b>3,206,399</b>	<b>(2,288,031)</b>	<b>(5,091,631)</b>	<b>(7,778,139)</b>	<b>(11,516,037)</b>	<b>(11,233,831)</b>	<b>(14,664,199)</b>	<b>(18,975,847)</b>	<b>(14,867,984)</b>	<b>(14,867,984)</b>	<b>(14,867,984)</b>	<b>(14,867,984)</b>	

PG&E percentage share of local match - 56.15% of 25%

**EXHIBIT E**

**PROGRAMMATIC EIR TIMETABLE**

**(Provided by SFCJPA)**

<b>TASK</b>	<b>ANTICIPATED DATE</b>
Notice of Preparation (NOP) Publication	Dec '21
NOP Public Comment Period	Dec '21 – Jan '22
Project Description	Mar '22 – Jun '22
Administrative Draft EIR	Jun '22 – Jan '23
Publish Draft EIR	Feb '23
Final EIR Certified	Aug '23

\*These dates are subject to change as the project evolves

**EXHIBIT F**

**PROJECT EIR TIMETABLE**

**(Provided by City of Menlo Park)**

<b>TASK</b>	<b>ANTICIPATED DATE</b>
Project Description	Dec '21 – Feb. '22
Notice of Preparation / Scoping	Feb '22 – May '22
Draft EIR	May '22 – Feb '23
Final EIR	Oct '22 – Feb '23
Notice of Determination	Feb '23 – Mar '23

\*These dates are subject to change as the project evolves



## **Agenda Item 6.B. Executive Director's Report**

It was very nice to see everyone in person on March 9<sup>th</sup>. It has been a long three years of Zoom meetings. We recognize that staff, community members, and the Board may all be a little rusty with the resumption of in-person meetings, especially since they have the added complexity of being hybrid meetings. We are all getting to know this new reality. At the Chair's request, to help us all move through board agendas smoothly, the board slides will have a step-by-step guide for each agenda item. This process follows standard board meeting protocols and helps us move through the agenda while ensuring that discussion, comments, and questions happen in an organized way.

### **Community Engagement –**

**Newsletter** – A newsletter focused on storm preparedness was distributed on March 8, ahead of the series of atmospheric river storms. Newsletter distribution goes to approximately 450 recipients, who are a mix of community members and interested stakeholders. Our next newsletter will be distributed in April and will highlight Earth Day activities and opportunities for engagement in the SFCJPA communities.

**Website** – Updates have been added to the Reach 2 project web page.

**Community Events** – The Executive Director presented an overview of the SFCJPA with a focus on the Reach 2 project to the Palo Alto Rotary on March 13. Approximately 50 people were in attendance. On March 15, the Executive Director presented to the APWA's "Storm Response Roundtable", where the role of the SFCJPA as watershed and creek subject matter expert and EOC resource was highlighted, along with the planned flood risk mitigation measures of the Reach 2 project. Approximately 75 people were in attendance.

**Shoreline Cleanup**- As part of San Francisco Bay Restoration Authority grant SFB0041-RA035, the SFCJPA has partnered with Grassroots Ecology for shoreline educational events. The first event will be this Saturday March 18, 2023 and will include habitat restoration and trash cleanup by Bay Trail in East Palo Alto. We'd love to see you there- for more information and registration, see link below – or there will be some walk-in signups on the morning of:

<https://www.grassrootsecology.org/event-calendar/2023/2/21/volunteer-in-east-palo-alto-to-beautify-the-bay-trail>

**Stanford University** – Stanford released the Notice of Intent/Notice of Preparation for a combined EIS/EIR for their planned project at Searsville on February 8, 2023. On February 28 Stanford held two Scoping Meetings. The SFCJPA attended the Scoping Meetings. The NOI/NOP comment period has been extended to April 7. SFCJPA will coordinate with member agency staff and submit comments before the deadline.

## **Operations/Administration**

Committees of the Board - For the benefit of our two new board members and our community's understanding, the following are the regular committees of the SFCJPA Board, and their scope of duties.

*Personnel Committee:* This committee negotiates with the Executive Director regarding employment contract and compensation. This committee also determines the frequency and content of external/360 performance evaluations for the Executive Director. The Personnel Committee meets at least once annually.

The Personnel Committee can anticipate meeting in late March or early April.

*Finance Committee:* This committee reviews and provides input to the draft operations budget of the SFCJPA. The Finance committee typically reviews a draft budget in March or early April. Their recommendations are integrated into the final draft budget typically presented to the full Board of Directors in April for their consideration. The finance committee may also meet occasionally to review, discuss, and provide input on draft project funding agreements. The Finance Committee meets at least once annually.

The Finance Committee can anticipate meeting in late March or early April.

*ACWA-JPIA Committee:* One member of the board and one staff member are selected to represent the SFCJPA to the ACWA-JPIA committee. There is typically one meeting per year.

The Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA, aka JPIA) was formed to provide liability coverages tailored to the unique needs of California water agencies. Because risk sharing among water agencies was so successful in its first few years, a Property Program was added in January of 1983 and a Workers' Compensation Program was added in July of 1984. In July 2012, the Employee Benefits Program was added. Each water agency that joins the JPIA must also be a member of ACWA, be a public entity, and be directly involved with water. Each member names one of its directors to sit on the JPIA's Board of Directors. In addition, the water agency's board members and staff become eligible to participate on the JPIA's various Committees of the Programs for which they are members.

Website – Updates are made to the website as needed, reflecting updates to project activities, new documents, or links to information, and the addition of timely information such as storm and flood preparedness resources. In the past month the SFCJPA website has had 1200 visits, which represents a 39% increase month-over-month. We think this is associated with winter storm activity and will decrease as the weather settles down.

Banking – The SFCJPA banks with First Republic Bank. Regional banks have been in the news lately. We are continuing to monitor the situation, have consulted with our legal counsel. Based on recent infusions of capital to First Republic Bank, we do not think any changes to our banking services are necessary at this time but are ready to act should that become advisable.

### **Follow-up Items from the March 9 Special Meeting of the Board of Directors and General Information**

The following information items may be of interest to the members of the board and the community and respond to questions or comments received during the March 9 special board meeting.

Newell Road Bridge Replacement – The following links provide detailed information regarding Newell Road Bridge.

Palo Alto's Newell Road Bridge project website: [www.cityofpaloalto.org/newell](http://www.cityofpaloalto.org/newell)

Newell Road Bridge Final EIR: [https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/pe-12011-newell-road-san-francisquito-creek-bridge/newell\\_rd\\_final\\_eir-ea\\_042120.pdf](https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/pe-12011-newell-road-san-francisquito-creek-bridge/newell_rd_final_eir-ea_042120.pdf)

The Palo Alto Architectural Review Board (ARB) approval drawings: [https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/pe-12011-newell-road-san-francisquito-creek-bridge/draft-environmental-impact-report/20191209\\_arb-exhibits\\_newell-bridge-road-project-final-copy.pdf](https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/pe-12011-newell-road-san-francisquito-creek-bridge/draft-environmental-impact-report/20191209_arb-exhibits_newell-bridge-road-project-final-copy.pdf)

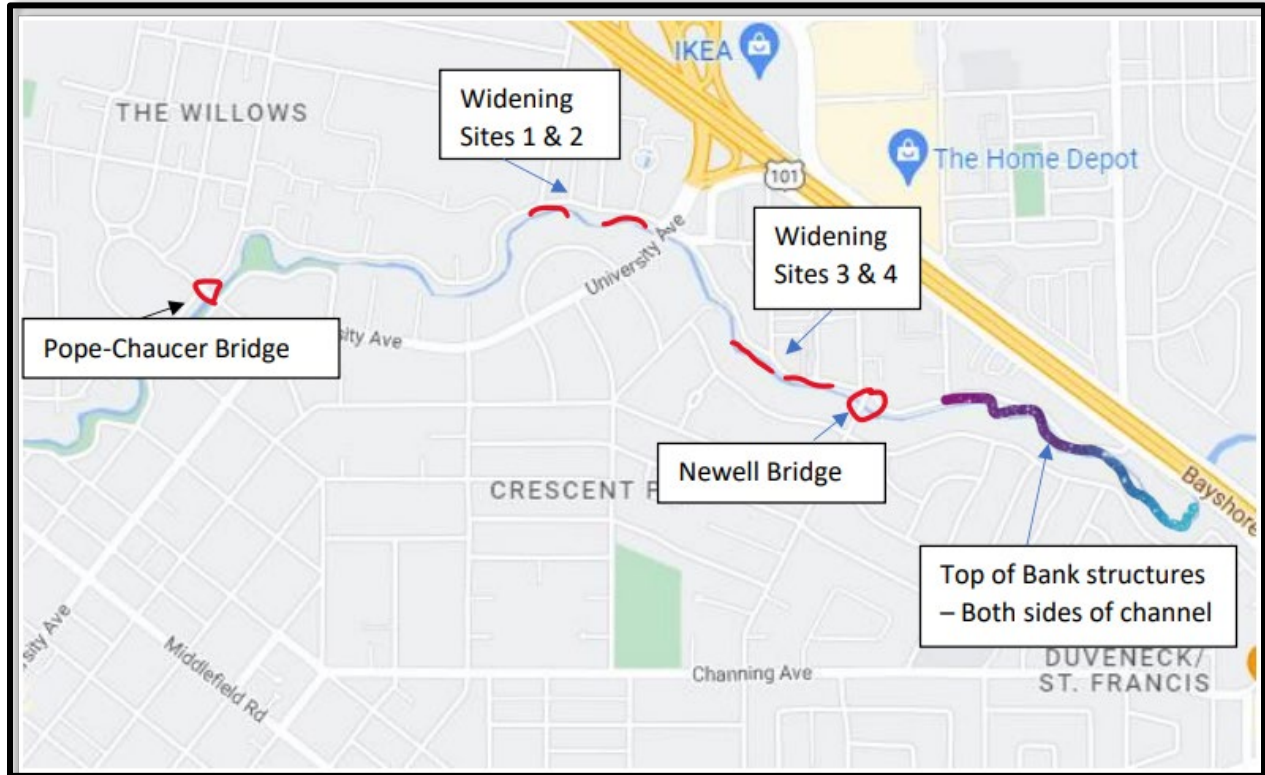
The following is a link to a presentation given to East Palo Alto City Council on June 19, 2019 with visual aids [https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/pe-12011-newell-road-san-francisquito-creek-bridge/19\\_0619-pwtpc-newell-road-bridge-cpa-presentation.pdf](https://www.cityofpaloalto.org/files/assets/public/public-works/engineering-services/webpages/pe-12011-newell-road-san-francisquito-creek-bridge/19_0619-pwtpc-newell-road-bridge-cpa-presentation.pdf)

The following news article from June 2020 may also be of interest: <https://www.paloaltoonline.com/news/2020/06/02/despote-calls-to-think-smaller-newell-road-bridge-replacement-plan-wins-final-approval>

These materials are also now available on the SFCJPA Reach 2 project web page at: <https://www.sfcjpa.org/reach-2-upstream-project>

Responding to a request for a map of the Reach 2 project area and project elements, the following map sketches the locations of the Reach 2 project elements: Widening sites 1 through 4, top-of-bank structures downstream of the Newell Bridge, and both Newell and Pope-Chaucer bridges.

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Executive Director's Report



Additional project details, including the Certified EIR, and various drawings and presentations, can be found at the Reach 2 project web page.

Questions or comments received (paraphrased below) during the board meeting from community members included:

Q: Are sandbags being placed strategically ahead of the anticipated storms?

A: No.

Q: There are inconsistent dates in the Comprehensive Plan regarding the Reach 2 project schedule. Which are correct?

A: Thank you for bringing this error to our attention. We will review and correct the document to ensure the dates in the document are consistent and reflect our current estimated schedule for the project. The corrected document will be posted on the SFCJPA website.

Q: Why are the Permissions to Enter being delayed?

A: Some residents are reluctant to provide access and wish to negotiate terms and conditions or are simply uncomfortable providing access. A few property owners we have been unable to contact or locate. The law requires we follow a defined process to ensure property owners have an opportunity to negotiate the conditions of survey

San Francisquito Creek Joint Powers Authority  
March 23, 2023, Regular Board Meeting,  
Executive Director's Report

access. There is a formal process that can (and will) be undertaken to gain reasonable access for necessary surveys once all legally required efforts have been made to accommodate property owners concerns or lack of response.

Q: What is the timeline of actions? What has hampered progress?

A: Timeline - In September 2019 the SFCJPA Board of Directors certified the final Reach 2 EIR. On October 24, 2019, Mr. Joshua filed suit, claiming a fault in our CEQA process and findings. This slowed progress, as some work required funding from State agencies who require that the project have no pending legal action. Mr. Joshua lost the case and appealed; on August 23, 2022, his appeal was denied. Since the 2019 EIR Certification, the SFCJPA has continued to move project elements along where we could; work has progressed on: required regulatory permits (analyses of impacts based on preliminary designs, assessments of required mitigation measures), arborist tree surveys, review processes with our three City members of preliminary plans, ongoing development of engineering and design of project elements – including the partnership and Feasibility Study with the U.S. Army Corps of Engineers CAP 205 program for the channel widening work, archeological surveys and Native American tribal coordination, various grant applications and funding requests, and coordination with Stanford University regarding the potential ramifications of the Searsville Project.

The Joshua legal challenge caused the SFCJPA to lose project funding from DWR; however, after the suit was resolved, we applied again in October 2022 and were notified that that the Reach 2 project was recommended funding in the amount of \$3,799,086.54 via Bay Area Integrated Regional Water Management Program: <http://bayareairwmp.org/list-of-prop-1-round-2-recommended-projects/>

Other issues that have hampered progress have been accommodating project neighbors who wanted us to evaluate an alternative channel widening approach, and most importantly, funding limitations (government and grant money typically comes in specific 'buckets' with limited flexibility and schedules that sometimes do not correspond project schedules or needs).

Q: Are we designing the SFCJPA Reach 2 projects with the assumption of the Searsville dam's removal?

A: No. Full removal of the Searsville dam is one of the options being considered by Stanford University but is not their preferred alternative. Whatever alternative is chosen, the Searsville project will have an impact on the creek channel, including the movement of large amounts of sediment downstream. The SFCJPA is communicating and coordinating with its project partners and with Stanford to a) fully understand the potential amounts, timing, and nature of the sediment transport and b) to provide useful feedback to Stanford University as it considers project alternatives and their potential downstream impacts. We encourage members of the community to read the Stanford Searsville Project Notice of Preparation/Notice of Intent and consider providing their own comments by the deadline of April 7, 2023.

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Click [here](#) to access the US Army Corps of Engineers Federal Register Notice of Intent.

Click [here](#) to access the Department of Water Resources Notice of Preparation.

**Forward view of upcoming agendas**

April 27	Draft SFCJPA operations budget for FY2023-2024 Vision/Mission Statements
May 25	Final SFCJPA operations budget for FY2023-2024 Detention basins study session (tentative)
June	tbd

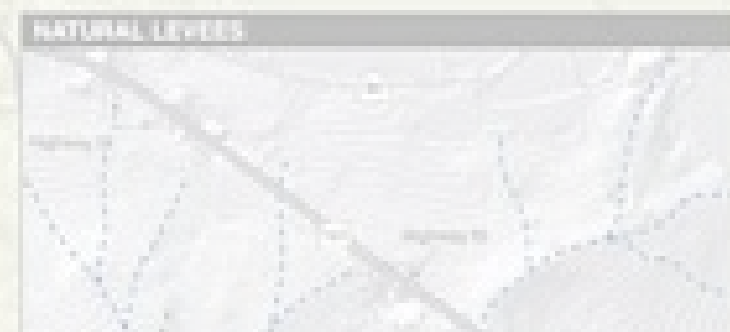


Artificial bodies of water, modern



# SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

Regular Meeting of the Board of Directors  
March 23, 2023





# AGENDA

**\*Members of the Public may speak on any agenda item for up to three minutes\***

1. ROLL CALL

2. APPROVAL OF AGENDA: Changes or additions to the agenda.

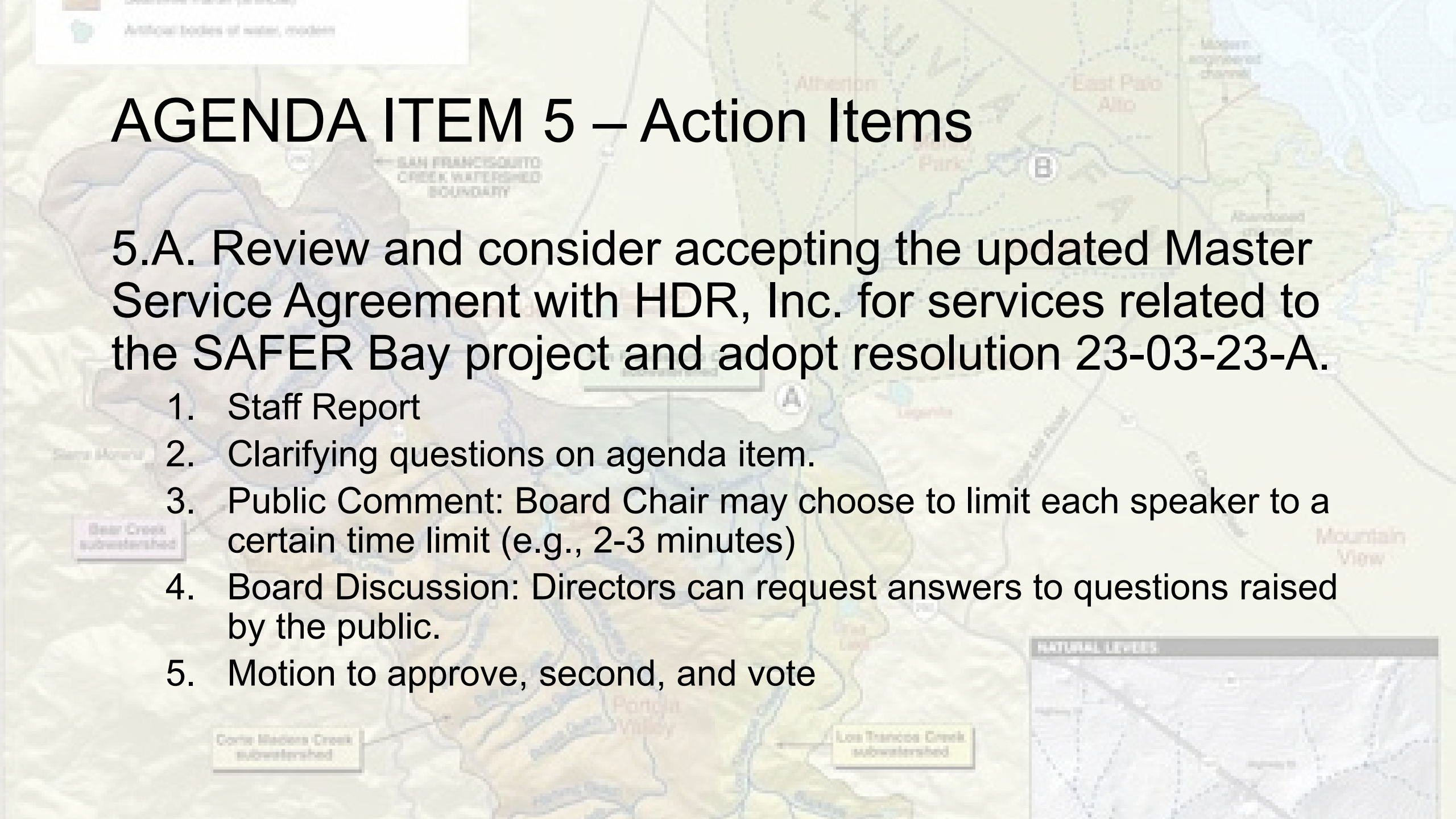
3. Approval of Special Board Meeting Minutes: March 9, 2023.

4. PUBLIC COMMENT: Individuals may speak on a non-agendized topic for up to three minutes on a topic within the SFCJPA's jurisdiction.

*Members of the public speaking in person should submit a speaker card to the Clerk of the Board, indicating which agenda item or items they wish to speak about, in order to be recognized. When the agenda item is called, please stand at the podium and speak clearly.*

*Members of the public speaking via video conference should raise their hand, indicating their desire to ask a question or comment. They will be recognized by the Clerk of the Board and once unmuted and recognized, please speak clearly.*

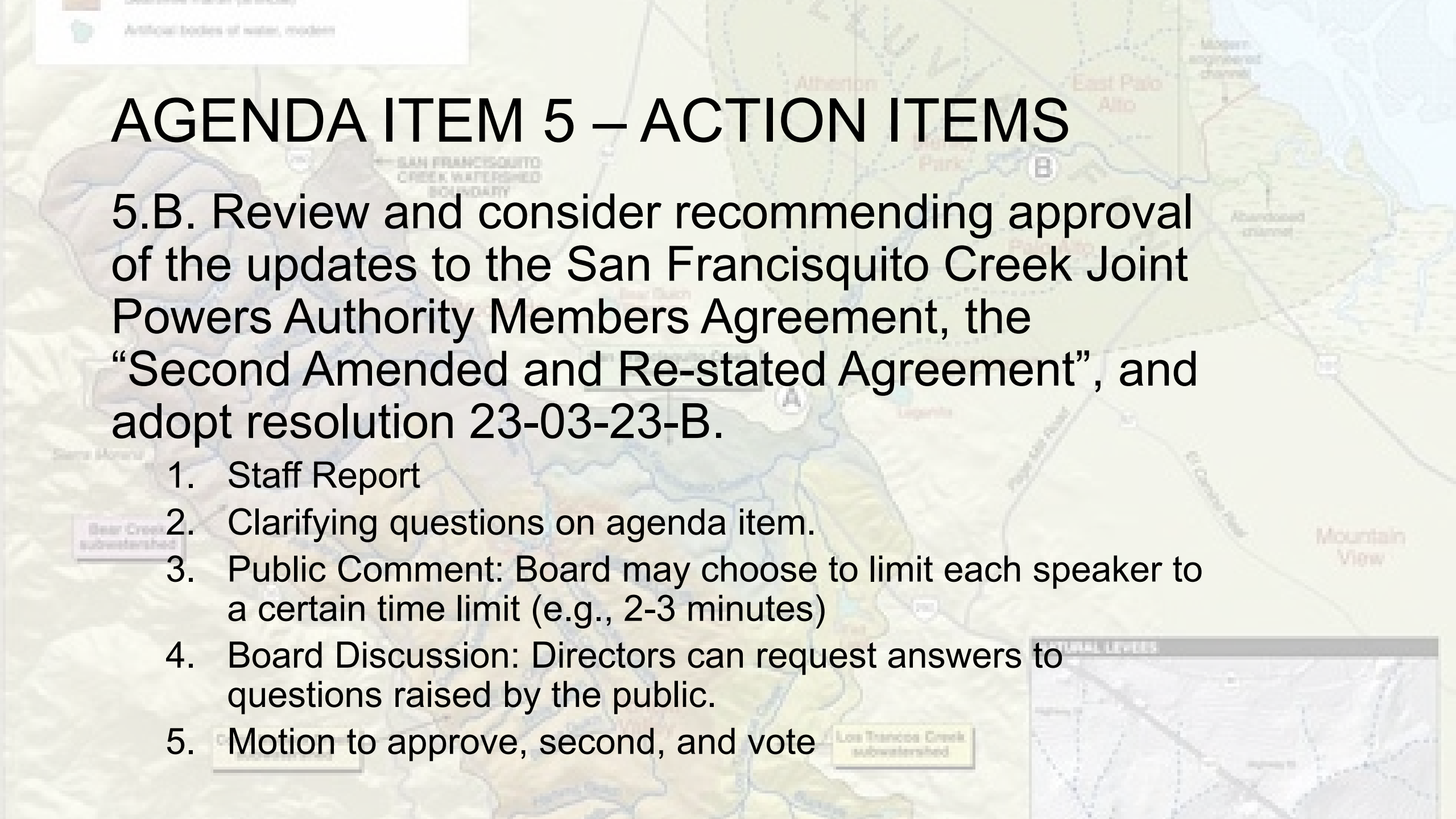


A topographic map of the San Francisco Bay Area showing various watersheds. A legend in the top left corner identifies 'Artificial bodies of water, modern' with a blue icon. The map includes labels for 'SAN FRANCISCO CREEK WATERSHED BOUNDARY', 'Alhambra', 'East Palo Alto', 'Mountain View', 'Palo Alto', 'Los Altos', 'Los Altos Hills', 'Los Gatos', 'San Jose', 'Santa Clara', 'Santa Clara Valley', 'Santa Clara River', 'San Antonio', 'San Antonio Valley', 'San Antonio Creek', 'San Antonio Subwatershed', 'Bear Creek subwatershed', 'Corte Madera Creek subwatershed', 'Piedra Valley', 'Los Trancos Creek subwatershed', and 'Mountain View'. A 'Modern engineered channel' is also indicated. A small inset map in the bottom right corner is titled 'NATURAL LEVELS' and shows a different topographic representation of the same area.

# AGENDA ITEM 5 – Action Items

5.A. Review and consider accepting the updated Master Service Agreement with HDR, Inc. for services related to the SAFER Bay project and adopt resolution 23-03-23-A.

1. Staff Report
2. Clarifying questions on agenda item.
3. Public Comment: Board Chair may choose to limit each speaker to a certain time limit (e.g., 2-3 minutes)
4. Board Discussion: Directors can request answers to questions raised by the public.
5. Motion to approve, second, and vote



Artificial bodies of water, modern

# AGENDA ITEM 5 – ACTION ITEMS

5.B. Review and consider recommending approval of the updates to the San Francisquito Creek Joint Powers Authority Members Agreement, the “Second Amended and Re-stated Agreement”, and adopt resolution 23-03-23-B.

1. Staff Report
2. Clarifying questions on agenda item.
3. Public Comment: Board may choose to limit each speaker to a certain time limit (e.g., 2-3 minutes)
4. Board Discussion: Directors can request answers to questions raised by the public.
5. Motion to approve, second, and vote

A topographic map of the San Francisco Bay Area, showing various watersheds and creeks. The map is color-coded by elevation, with higher elevations in brown and lower elevations in green and blue. Key features include the San Francisco Bay, the Golden Gate, and several creeks and rivers. A legend in the top left corner identifies 'Artificial bodies of water, modern' with a blue icon. A box in the top right corner is labeled 'Modern engineered channel'. A box in the bottom right corner is labeled 'Abandoned channel'. A box in the bottom left corner is labeled 'Natural Levels'. The map also shows the 'SAN FRANCISQUITO CREEK WATERSHED BOUNDARY' and several subwatersheds: 'San Francisco Creek subwatershed', 'Bear Creek subwatershed', 'Corte Madera Creek subwatershed', 'Portola Valley', and 'Los Trancos Creek subwatershed'. Other labels include 'Alhambra', 'East Palo Alto', 'Woodside', 'Sausalito', 'Mountain View', 'Loma', and 'Loma'. A 'Bear Gulch Reservoir' is also marked. A 'B' in a circle is located near Palo Alto, and an 'A' in a circle is located near the San Francisco Creek subwatershed. The text 'AGENDA ITEM 6 – Information Items' is overlaid on the map in large black font. Below it, '6.A. Board Handbook Update' is also overlaid in large black font. A list of four items is overlaid on the map in black font.

# AGENDA ITEM 6 – Information Items

## 6.A. Board Handbook Update

1. Staff Report
2. Clarifying questions on agenda item.
3. Public Comment: Board may choose to limit each speaker to a certain time limit (e.g., 2-3 minutes).
4. Board discussion (Directors can request answers to questions raised by the public.) and any further direction to staff.

A topographic map of the San Francisco Peninsula. The map shows the San Francisco Bay Area with various creeks and watersheds highlighted. A legend in the top left corner indicates that blue lines represent 'Artificial bodies of water, modern'. The map includes labels for 'SAN FRANCISCO CREEK WATERSHED BOUNDARY', 'Woodside', 'San Francisco Creek subwatershed', 'Palo Alto', 'Mountain View', 'Los Trancos Creek subwatershed', 'Corte Madera Creek subwatershed', 'Bear Creek subwatershed', 'Portola Valley', 'Loma Park', 'Alhambra', 'East Palo Alto', 'Modern engineered channel', and 'Abandoned channel'. There are also labels for 'Bear Gulch Reservoir' and 'Loma Prieta'. A box labeled 'NATURAL LEVELS' is visible in the bottom right corner.

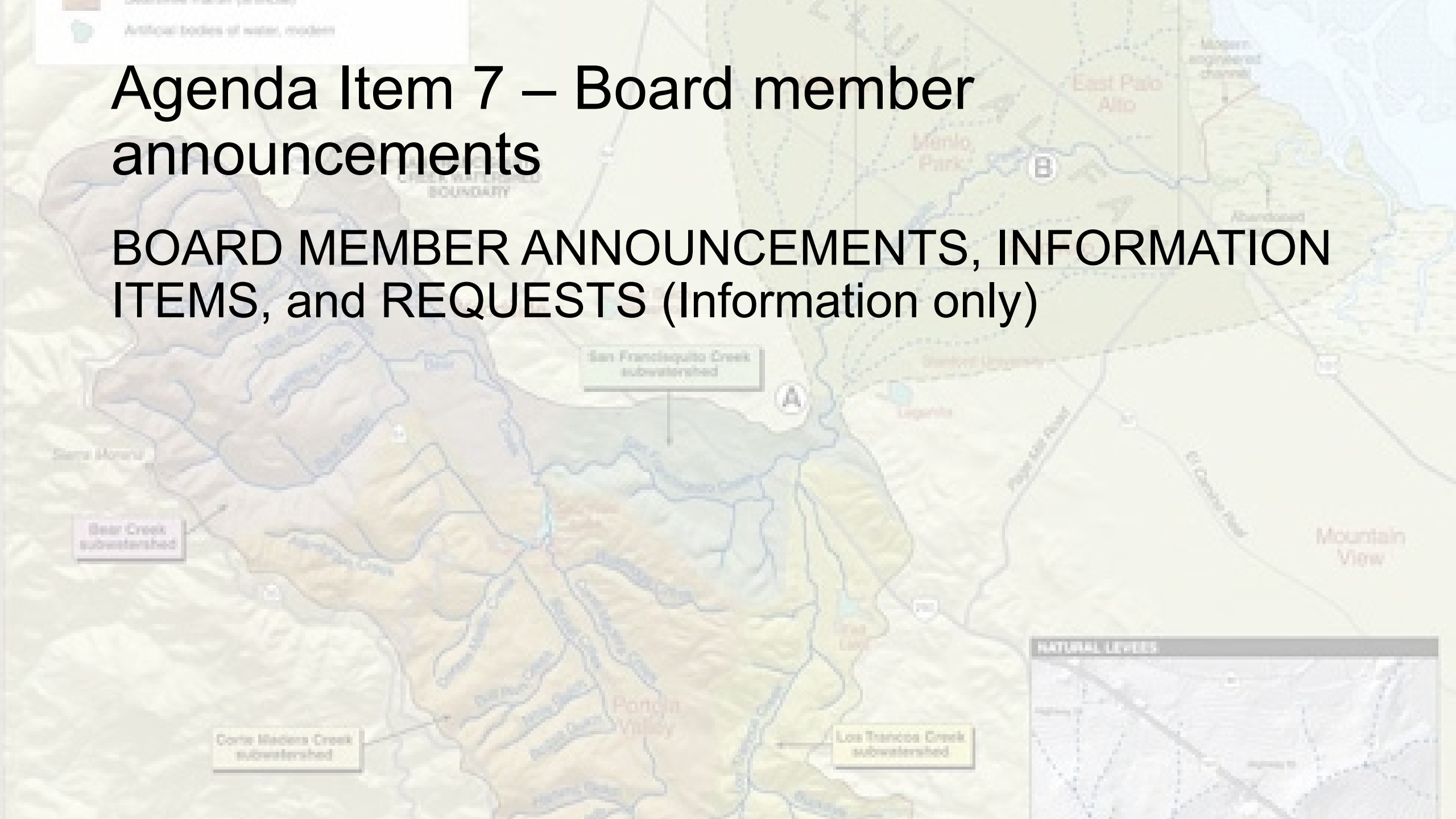
# AGENDA ITEM 6 – Information Items

## 6.B. Executive Director's Report

1. Staff Report
2. Clarifying questions on agenda item.
3. Public Comment: Board may choose to limit each speaker to a certain time limit (e.g., 2-3 minutes).
4. Board discussion (Directors can request answers to questions raised by the public.) and any further direction to staff.

# Agenda Item 7 – Board member announcements

BOARD MEMBER ANNOUNCEMENTS, INFORMATION ITEMS, and REQUESTS (Information only)





# Agenda Item 9

## ADJOURNMENT

