



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

Notice of Regular Meeting of the Board of Directors

Thursday, December 15, 2022

3:30 P.M.

Due to the risk of COVID-19 transmission, this meeting will be held remotely via video/teleconference pursuant to Government Code Section 54953(e) (Assembly Bill 361). Members of the public may observe or participate in this meeting by joining the meeting online through the Zoom link provided below or by joining the meeting with a telephone by dialing the Zoom teleconference number provided below.

You may provide public comment during the meeting: (1) by using the chat function and typing your question or comment, (2) if you are joining online, by selecting the raise your hand function and speaking when called upon, or (3) if you are joining by phone, by pressing*9 to raise your hand and *6 to mute/unmute yourself and to speak. If you experience technical problems with the Zoom meeting, please contact the Clerk of the Board at the phone number or email listed at the bottom of this Agenda.

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.

You are invited to a Zoom meeting.

When: Dec 15, 2022, 03:30 PM Pacific Time (US and Canada)

Register in advance for this meeting:

<https://us02web.zoom.us/meeting/register/tZcrf-2orT0vHNRqkoQK15eEiklknsLP1Cng>

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

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

1. CALL TO ORDER AND ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF MEETING MINUTES November 17, 2022
4. PUBLIC COMMENT: *Individuals may speak on a non-agendized topic for up to three minutes.*
5. CONSENT AGENDA

- A. Consider adopting Resolution 22-12-15-A to authorize public meetings to continue to be held via teleconferencing pursuant to Government Code Section

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

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54953(e).

- B. Consider adopting Employee Handbook - 2022 Updates
 - C. Consider adopting Board Handbook – 2022 Updates
6. STUDY SESSION ON SAFER BAY – Discussion and Possible Direction to Staff regarding SAFER Bay Project

7. ACTION ITEMS

- A. Consider resolution 22-12-15-B. Recognition and appreciation for Director Gary Kremen’s service to the SFCJPA Board of Directors.
- B. Consider adopting a resolution (22-12152-C) to authorize the Executive Director to negotiate and sign Task Order 4 with the HDR SAFER Bay Project Team that includes HDR Inc., ESA Associates, and H.T. Harvey for work enabled by approved funding from the San Francisco Bay Restoration Authority.

8. INFORMATION ITEMS:

- A. UPDATE ON BROWN ACT AND COVID STATE OF EMERGENCY
- B. PROVISIONAL REGULAR BOARD MEETING SCHEDULE FOR 2023
- C. EXECUTIVE DIRECTOR’S REPORT

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. on Monday December 12, 2022, at sfcjpa.org -- click on the “Meetings” tab near the top.

San Francisquito Creek Joint Powers Authority
November 17, 2022, Regular Meeting of the Board
Agenda Item 3
December 15, 2022, Board Meeting Minutes
DRAFT

Director Abrica called the meeting to order at 3:30 p.m. via 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 (Not present at roll call)
Director Pat Burt, City of Palo Alto
Director Gary Kremen, Santa Clara Valley Water District (Valley Water)
Director Dave Pine, San Mateo County Flood and Sea Level Rise Resiliency District (not present at roll call)

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

Legal Present: Trisha Ortiz

2) APPROVAL OF AGENDA

ACTION: Motion and second (Burt/Abrica) to approve the agenda, passed 3-0.

Roll call vote:
Director Abrica Aye
Director Burt Aye
Director Kremen Aye

Director Combs and Director Pine not present at time of vote.

3) APPROVAL OF MEETING MINUTES: October 27, 2022, Regular Meeting minutes

Director Pine arrived at 3:31 pm.

ACTION: Motion and second (Kremen/Abrica) to approve October 27, 2022, Regular Meeting minutes, passed 4-0.

Roll call vote:
Director Abrica Aye
Director Burt Aye
Director Kremen Aye
Director Pine Aye

Director Combs not present at time of vote.

4) PUBLIC COMMENT

None.

5) CONSENT AGENDA

Consider adopting Resolution 17-11-22-A to authorize public meetings to continue to be held via teleconferencing pursuant to Government Code Section 54953(e).

ACTION: Motion and second (Pine/Abrica) to approve the Consent Agenda passed 4-0.

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Roll call vote:
Director Abrica Aye
Director Burt Aye
Director Kremen Aye
Director Pine Aye

Director Combs not present at time of vote.

6) INFORMATION ITEMS

Guest Presentation by Woodard & Curran Regarding Reach 3 Upstream Detention

Director Combs arrived at 3:47 pm.

Millicent Cowley-Crawford & Katie Cole of Woodard & Curran provided a presentation of Reach 3 upstream detention.

Director Kremen thanked Ms. Bruce and staff for reengaging the relationship with Stanford. Director Kremen asked for clarification on the two peak flow graphs that were presented. Ms. Crawford explained the graph presented on the left shows the potential basin that could be built while the graph presented on the right shows the Searsville project with no basin highlighted in orange and the Searsville project with the potential basin built highlighted in blue. Director Kremen requested that the images be relabeled for clearer understanding. Director Burt concurred and questioned if the Searsville project is completed what the need for the upstream detention basin is. Mr. Murray explained that proceeding with the upstream detention basin brings the freeboard to get residents out of the flood zone.

Director Burt asked for staff to provide current flood insurance rates and the impact of the additional freeboard impacts to landowners.

Director Pine commented that the cost of the project is higher than expected. Ms. Crawford explained that the excavation and hauling of dirt is leading factor in the higher cost. Director Pine asked what the current dialogue is with between the SFCJPA and Stanford regarding the projects and costs. Ms. Bruce stated that conversations with Stanford are ongoing, friendly, and open.

Director Abrica asked for clarification regarding the plans Stanford may have regarding the proposed upstream basin area; is Stanford looking to donate or lease the land. Mr. Murray explained that land costs are not included in the current estimate that has been presented.

Jerry Hearn, Portola Valley resident, commented that Stanford is reluctant to give up land. Mr. Hearn asked if the weir will be operational, and he expressed his concern regarding structures that will block fish passage. Ms. Crawford explained that the inflow weir will be a passive structure and that there will be an adjustable grade control weir that provides fish passage installed across the channel to set the water elevation for the target diversion flow.

Executive Director's Report

Ms. Bruce provided a quick summary of the Executive Director's report.

7) ACTION ITEMS

Consider adopting a resolution (17-11-22-B) to approve a contract with EMC Planning Group, Inc. to conduct a Supplementary Environmental Impact Report (S-EIR) related to the additional evaluation of Reach 2 project elements in Palo Alto and East Palo Alto.

ACTION: Motion and second (Kremen/Abrica) to approve a contract with EMC Planning Group, Inc.

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to conduct a Supplementary Environmental Impact Report (S-EIR) related to the additional evaluation of Reach 2 project elements in Palo Alto and East Palo Alto passed 5-0.

Roll call vote:

Director Abrica Aye
Director Combs Aye
Director Burt Aye
Director Kremen Aye
Director Pine Aye

8) CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant exposure to litigation pursuant to Section 54956.9(d)(4) - one case, tender from Santa Clara Valley Water District to the Authority for the defense of Scott R. Yeaman v. Santa Clara Valley Water District, Court Case No. 20CV369378

Adjourned to closed session at 4:30 pm.

Readjourned to regular meeting session at 4:49 pm.

Director Kremen left at 4:49 pm.

Trisha Ortiz, SFCJPA legal representative stated that there were no reportable actions from the closed session.

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

Director Abrica shared that the recent city-wide cleanup in East Palo alto yielded one hundred and twenty bags of garbage. Director Abrica wished everyone a happy holiday.

10) ADJOURNMENT

Adjourned at 4:51 pm.

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

RESOLUTION NO. 22-12-15-A

**A RESOLUTION OF THE SAN FRANCISQUITO CREEK JOINT POWERS
AUTHORITY RECONSIDERING THE CIRCUMSTANCES OF THE COVID-19 STATE
OF EMERGENCY AND MAKING FINDINGS IN CONNECTION THEREWITH TO
AUTHORIZE MEETINGS TO BE HELD VIA TELECONFERENCING PURSUANT TO
GOVERNMENT CODE SECTION 54953(e)**

WHEREAS, the Board of Directors (the “Board”) of the San Francisquito Creek Joint Powers Authority (the “Authority”) is committed to public access and participation in its meetings while balancing the need to conduct public meetings in a manner that reduces the likelihood of exposure to COVID-19; and

WHEREAS, all meetings of the Authority are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the Board conduct its business; and

WHEREAS, pursuant to Assembly Bill 361, signed by Governor Newsom and effective on September 16, 2021, legislative bodies of local agencies may hold public meetings via teleconferencing pursuant to Government Code Section 54953(e), without complying with the requirements of Government Code Section 54953(b)(3), if the legislative body complies with certain enumerated requirements in any of the following circumstances:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

WHEREAS, on March 4, 2020, Governor Newsom declared a [State of Emergency](#) in response to the COVID-19 pandemic (the “Emergency”).

WHEREAS, the Centers for Disease Control and Prevention continue to advise that COVID-19 spreads more easily indoors than outdoors and that people are more likely to be exposed to COVID-19 when they are closer than 6 feet apart from others for longer periods of time.

WHEREAS, due to the ongoing COVID-19 pandemic and the need to promote social distancing to reduce the likelihood of exposure to COVID-19, the Authority intends to hold public meetings via teleconferencing pursuant to Government Code Section 54953(e).

WHEREAS, to continue meeting remotely pursuant to Government Code Section 54953(e), an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) the emergency impacts the ability of the body’s members to meet

safely in person, or state or local officials continue to impose or recommend measures to promote social distancing.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY DOES RESOLVE AS FOLLOWS:

1. The Recitals provided above are true and correct and are hereby incorporated by reference.
2. The Board has reconsidered the circumstances of the COVID-19 state of emergency and hereby finds that the state of emergency continues to directly impact the ability of the members to meet safely in person. As required by Government Code Section 54953(e)(3), the findings made pursuant to this Section 2 shall apply as of September 11, 2022 and shall cover the period of time until the next regular meeting of the Board.
3. The legislative bodies of the Authority may conduct their meetings pursuant to Government Code section 54953(e).
4. Staff is hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act. Such actions include returning to the Board within 30 days and every 30 days thereafter to make the findings required by Section 54953(e)(3).
5. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of Directors of the San Francisquito Creek Joint Powers Authority this 15th day of December, 2022, by the following vote:

Agenda Item 5.B. Employee Handbook 2022 Update

Background

The SFCJPA has compiled employee-related policies and guidance into the Employee Handbook. To ensure the SFCJPA remains in compliance with State laws and regulations, the Employee Handbook is reviewed and revised occasionally.

Discussion

The most recent review by SFCJPA counsel indicated that there are five areas where minor updates and clarifications are needed:

- 1) Removing reference to marital status
- 2) Clarification/confirmation that SFCJPA does not pay the employee portion of PERS PEPPRA
- 3) Clarification of language regarding investigations of harassment
- 4) Adding clarifying language to comply with State sick leave laws
- 5) Adding information about the California Family Rights Act

The Employee Handbook – 2022 Update, included in your board packet, reflects these suggested changes.

Recommendation

Please accept the recommended updates to the Employee Handbook.



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY
SFCJPA.ORG

Employee Policies Handbook

Revised December 12, 2022

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This handbook and all of its contents are the property of the
San Francisquito Creek Joint Powers Authority

I. INTRODUCTION to EMPLOYMENT

a. Nondiscrimination/Equal Employment Opportunity Policy

The San Francisquito Creek Joint Powers Authority (SFCJPA) is an equal opportunity employer. The SFCJPA will not discriminate against qualified applicants or employees based on race, color, national origin, ancestry, sex, gender, gender identity or gender expression, sexual orientation, age (40 or older), religion, creed, physical or mental disability, medical condition, marital status, citizenship status, military or veteran status, or any other basis protected by state or federal law.

b. Employee Classifications

SFCJPA employees who have successfully completed the sixty (60) day probationary period will be classified in one of the following categories:

1. Full-Time Exempt Employee

Permanent employees who have successfully completed the sixty (60) day probationary period and are paid on a salary basis for work performed.

Full-Time Exempt Employees are eligible for CALPERS, vacation, personal leave and holiday time off.

2. Executive Exempt Employee

The SFCJPA has one Executive Exempt Employee, the Executive Director. This permanent employee is paid on a salary basis for work performed.

Executive Exempt Employees are eligible for such CALPERS, vacation, personal leave, holiday time and transportation allowance

3. Consultant

The SFCJPA may at times need assistance with projects beyond the scope of the agency's usual course of business. At these times the SFCJPA will pursue the hiring of a consultant or group of consultants who meet the required eligibility standards necessary to perform the project. The SFCJPA will conduct the search and hiring of a consultant or group of consultants in accordance with all applicable labor laws and agency policies including but not limited to monitoring the enforcement of the SFCJPA Labor Compliance Code for all employees assigned by "hired" contractors during the course of and to the completion of the project or contract agreement. (See Labor Compliance Code).

4. Part-time Non-Exempt/ Temporary

Employees who have successfully completed the sixty (60) day probationary period and are assigned a work schedule of less than 30 hours per week for an indefinite period of time. Part-time regular employees may be eligible for vacation, sick leave, and holiday time off.

Temporary employees are hired to perform a specific task for a temporary period of time and are not eligible for health benefits but may be eligible for participation in the CALPERS Retirement program.

Part-Time Non-Exempt and Temporary employees are paid on an hourly basis and therefore not exempt from overtime. The Executive Director must approve all work beyond

normal shift hours. Overtime is paid at a rate of one and one-half (1 ½) times the normal hourly rate.

c. Probationary Period

New employees will be subject to an evaluation period of sixty (60) days. This period will be utilized for closely observing the employee's work, and evaluating whether the employee's work is performed in an effective and capable manner.

The Probationary period for new employees will begin with the hire date and run for sixty (60) days, during which time the employee will be classified as a "new hire." At least one month prior to permanent appointment, the SFCJPA shall begin to review the work of the probationary employee to determine whether to:

1. certify the probationary employee for the position,
2. extend the probation, or
3. reject the probationary employee for the position

The SFCJPA will take action on this determination by the last day of the probation period by notifying the employee in writing. If the SFCJPA fails to take action on this determination by the last day of the probation period, the probation period shall be considered extended on a month-to-month basis. If the service of the probationary employee is unsatisfactory or otherwise does not meet the standards or needs of the SFCJPA or if the SFCJPA otherwise determines that the employment is no longer desirable, he/she will receive a letter of rejection from the SFCJPA prior to the last day of the probation period. Said letter may contain the reasons for rejection.

Probationary employees shall have the same rights as permanent employees under the nondiscrimination policy contained in this document. During the probation period and for the entire term of employment, all employees are at-will employees. The designation of a probation period or designation of an employee as "probationary" or "permanent" does not change the at-will nature of employment.

d. Pay Rates

The salary of a new full-time employee will be determined by the Executive Director and publicly released at the time of the opening of the new position. A worker employed on a part-time basis or as a consultant will not be considered a permanent employee and will be compensated at an hourly rate to be determined prior to employment.

e. Work Hours

The regular work period for all permanent employees shall consist of eight hour work days between the first day of the month and fifteenth day of each month, and between the sixteenth and final day of each month. The normal work hours are Monday through Friday, 9:00 a.m. to 5:00 p.m., excluding holidays.

A portion of the hours of the regular work period may be completed outside of the office when necessary upon approval of the Executive Director. Work completed in the field, attendance of scheduled meetings, or any other assigned duties outside of the office shall be considered part of the employees regular work period. It is the responsibility of the employee to log all hours worked for purposes of hours and attendance tracking. Work schedules for each employee shall

be assigned by the Executive Director, and timesheets shall be submitted to the Executive Director for approval at the end of each work period.

Full-time exempt and Executive exempt employees are not eligible for overtime pay requirements. Exempt employees may, under special circumstances or by assignment, should duties and responsibilities of his/her position exceed a full-time work schedule, and those duties and responsibilities necessitate that said employee work greater than eighty (80) hours in a given work period, work and track the additional hours of work upon approval of the Executive Director and the employee. Additional hours will be accrued, tracked and reported on a semi-monthly basis, beginning with and ending in congruence with each work period. The additional hours accrued by an exempt employee may be compensated for with paid leave to be documented and accounted in any of the subsequent work weeks of that month, pending prior submittal to and approval of the Executive Director. Additional hours accrued in a particular month may not be transferred to the following month for compensatory leave.

Non-exempt employees will be paid overtime as required under the Fair Labor Standards Act, as applied to public agencies. Non-exempt employees must receive prior authorization from their supervisor before working overtime. No non-exempt employee may work overtime hours without the Executive Director's approval and accurately recording and reporting their overtime hours.

f. Performance Evaluations

The Executive Director will conduct performance evaluations within the first sixty (60) days of employment for probationary employees and periodically for each permanent employee. The frequency of evaluations may be altered for purposes of advancement, demotion or termination as determined by the Executive Director, but will occur at least annually. The employee will receive a copy of the evaluation, accompanied by suggestions for performance improvement if applicable.

g. Reclassifications

The Executive Director may, if significant and observable changes in the duties or responsibilities of an employee have occurred or been assigned, authorize to petition the reclassification of that employee. Reclassification may include a change in job title, job description, salary or scheduled work hours and/or days. Any reclassification will occur in congruence with a performance evaluation and is subject to approval by the Board of Directors.

Reclassification of an employee may also occur, if the employee is not capable of completing the duties of the position, or is no longer capable of working a full-time schedule as a result of compelling circumstances reviewed and approved by the Executive Director. The employee may return to his/her previous job classification upon request and review of the SFCJPA when and if circumstances are remedied or expired.

h. Access to Personnel Records

The Administrative Manager shall maintain personnel records for each employee showing the name, title of position held, salary, changes in employment status, attendance records, accrued personal leave balance and other information as may be considered pertinent. The Executive Director shall maintain records containing employee performance evaluations and all paperwork regarding employee disciplinary actions.

The SFCJPA shall notify the employee of any adverse material placed in his/her personnel file if that material has not been reviewed by the employee.

Personnel files of individual employees are confidential information and shall be used or exhibited only for administrative purposes, or as otherwise required by law. The SFCJPA will release information to creditors or other person upon proper identification of the inquirer and acceptable reasons for the inquiry. Information then given from personnel files is limited to verification of employment, length of employment and verification and disclosure of salary

range information. Release of more specific information may be authorized in writing by both the employee and Executive Director. An employee may review his/her personnel file by submitting a request to the Administrative Manager or Executive Director.

II. PAYROLL ADMINISTRATION

a. Employee Self Services

Employees can access payroll information by logging into <https://workforce.intuit.com/> (updated 06/25/2020). Employees can also access their CALPERS information by logging into my.calpers.ca.gov. Employees can access health benefit information my logging into www.jpia.bswift.com. Employees should contact the Administrative Manager for information on accessing these websites.

b. Payroll Deductions

State and Federal laws require the SFCJPA to make proper deductions on its employees' behalf. Amounts withheld vary according to earnings and number of exemptions claimed. Required deductions include Federal Income Tax, FICA "Medicare Only" Contribution, State Income Tax and CalPERS.

c. Direct Deposit/Pay Day

The SFCJPA uses direct deposit to distribute employee paychecks. The Administrative Manager will enroll all employees for this service. All employees must bring a voided check in order to enroll in the direct deposit service. Payroll is processed on the 15th and last day of every month. When a payday falls on a weekend or federal holiday, paychecks will be deposited the business day directly prior. For example, if the pay date falls on a Sunday, employees will receive their direct deposit the preceding Friday.

d. Changing Personal Information

Your current address and phone number are essential for many purposes. These changes should be noted in writing or via email as soon as possible. You are solely responsible to notify the Director of Administration of changes in your personal status including, but not limited to:

- Name and/or marital status
- Address and/or telephone number
- Number of eligible family members
- Payroll tax deductions
- Emergency Contact Information

III. EMPLOYEE BENEFITS

a. Introduction

The SFCJPA provides medical, dental, vision, life insurance, and CALPERS benefits to eligible employees at no cost (excluding all plan co-pays, deductibles, prescriptions and applicable fees). Eligible employees' spouses/domestic partners are covered under the employee's medical, dental and vision benefits at no cost (excluding all plan co-pays, deductibles, prescriptions and applicable fees). Eligible employees' children are covered under the employee's dental and vision at no cost (excluding all plan co-pays, deductibles, prescriptions and applicable fees.) Eligible employees' children are covered under the employee's medical plan up to 75% agency paid cost. Eligible employees are responsible for a 25% cost-share of their eligible children's medical care and all plan co-pays, deductibles, prescriptions and applicable fees. (See note below from ACA/JPIA)

* AB1083, California's version of the Affordable Care Act, requires that medical plans offered by employers of all sizes have waiting periods no longer than 60 days. (The Affordable Care Act cites 90 days.) Since JPIA plans are effective on the first day of the month, a new hire waiting period of first of the month following 30 days would be the longest period that ensured compliance. Therefore, all JPIA medical plan waiting periods will be changed to the first of the month following 30 days. Those with shorter waiting periods, such as the first of the month following hire, will remain unchanged. This change only impacts medical plans. *

Eligible employees are defined as full-time exempt and executive exempt employees (see Sect. I. b).

Eligible dependents are defined as the following:

- Spouse.
- Children to their 26th birthday including stepchildren, Domestic partnership children, and children placed in home due to legal guardianship.
- Children eligible for coverage as a result of a valid qualified medical child support order.
- Domestic Partner as defined by the State of California for state registration requirements.
- Those designated according to the law.
- For an eligible dependent to be eligible for coverage, a copy of a marriage license, State of California Declaration of Domestic Partnership form (NP/SF DP-1), birth certificate, or other identifying paperwork is required.

NOTE: It is the employee's responsibility to notify the SFCJPA upon divorce, termination of domestic partnership, over-age dependent, or any event that changes the status of dependency.

The following is a brief description of the plans available and is not meant to replace the actual wording of the policy, which makes the final determination of the benefits to be provided.

b. Medical, Dental, Vision

1. Persons Eligible: Full-time exempt and executive exempt employees and their eligible dependents.
2. Waiting Period: First day of the month following thirty (30) days of continuous employment for medical. First day of the month following sixty (60) days of continuous employment for dental and vision benefits.
3. Employee Contribution: 25% medical cost-share for eligible children.
4. Employer Contribution: Total cost for employee and spouse/domestic partner. Total cost for dental and vision for eligible children and 75% of total cost for medical for eligible children.
5. Medical Benefits Provided:
 - Anthem Blue Cross: Classic PPO, Advantage PPO, COBRA/CalCare HMO, Value HMO and Account Based HP
 - Kaiser: HMO, HMO with Optical, Senior Advantage, Value HMO and Account Based HP
6. Vision and Dental Benefits Provided:

- Vision benefits are provided through VSP
- Dental benefits are provided through Delta Dental

Filing Claims: As provided by carrier or see the Administrative Manager.

c. Life Insurance

The SFCJPA provides eligible employees with basic life and accidental death insurance through The Standard Insurance Company at a flat level of \$50,000.

Waiting period: First day of the month following sixty (60) days of continuous employment

d. Disability Insurance

The SFCJPA provides disability insurance through a third-party carrier. Short-term and Long-term disability insurance is provided through The Standard Insurance Company.

e. COBRA/Cal-COBRA

COBRA was enacted to protect employees and their eligible family members by allowing them to continue their group health insurance under the employer's plan. COBRA applies to employers and group health plans that cover 20 or more employees and lets you keep your plan for 18 months. Cal-COBRA is a State of California law that is like the Federal COBRA law and it applies to employers and group health plans that cover 2 – 19 employees. Cal-COBRA lets you keep your plan for 36 months.

Employees are given information regarding their rights under COBRA/Cal-COBRA during the hiring process. Employees are responsible for notifying the Administrative Manager of any qualifying event (see below) within 60 days of the event. Any San Francisquito Creek Joint Powers Authority employee/eligible family member who loses regular group eligibility because of a qualifying event is eligible for enrollment under COBRA for eighteen (18) months then transfer to Cal-COBRA for eighteen (18) months. See below note from ACWA/JPIA

*Both COBRA and Medicare rules vary based on whether employers have more or less than twenty employees. However, when participating in a multi-employer group health plan, it is the size of the largest employer in the pool that should determine which Medicare and COBRA rules apply. Kaiser does not recognize the less than twenty employer size in our pool. Anthem recognized the small sized employers but requires constant reminders and intervention to have the small employer rules apply. Medicare will sometimes make exceptions on an individual basis annually. For consistency, simplicity, and clear legal compliance with the law, all groups in the pool will be treated as employers with twenty or more employees.

- Qualifying events are defined by COBRA regulations include loss of coverage due to: termination of employment; reduction of hours; death of employee; employee's Medicare entitlement; divorce or legal separation; child ceasing to be eligible; bankruptcy of employer.
- Additional information regarding COBRA-Cal COBRA can be found at:
www.hmohelp.ca.gov/dmhc_consumer/hp/hp_cobra.aspx

f. Workers Compensation

The SFCJPA provides worker's compensation to employees who sustain a work related injury as required by law. Employees involved in work related injuries must immediately report their injuries to the Executive Director. In the event of an emergency call 911. Questions, comments or concerns regarding worker's compensation should be directed to the Administration Manager.

g. CALPERS (Retirement Benefits)

The SFCJPA provides retirement benefits to eligible employees through the California Public Employee's Retirement System (CALPERS). In 2012 legislation passed the Public Employee's Pension Reform Act (PEPRA) of 2013 which has resulted in a two tier employee setup; employees hired before January 1, 2013 and employees employed on and after 2013. A brief description of the CALPERS retirement benefits are below. Additional information may be found at www.calpers.ca.gov and or by emailing the SFCJPA Finance & Administration Manager at mhparker@sfcjpa.org.

1. Eligible employees consist of full-time employees, part-time employees who meet the minimum hour commitment and employees who are already a CALPERS member who have completed the six (6) month probationary period.
2. Tier 1 provides members 2% @ 55 with a 2% annual COLA increase. For eligible employees who were hired before January 1, 2013, the SFCJPA pays the 7% required employee contribution for Executive Exempt staff and 5-6% of the required employee contribution for Full-time exempt staff.
3. Tier 2 provides members 2% at 62 with a 2% annual COLA increase. For eligible employees who were hired on or after January 1, 2013, the employee pays 50% of normal costs and the 6.25% employee contribution; the SFCJPA pays 50% of normal costs and does not pay any of the required employee contribution for Tier 2 employees.

h. Educational/Training Assistance

Upon the approval of the Executive Director, an employee may be required to attend courses, conferences or other events for purposes of training, education, experience or exposure. As attendance of said events will be considered to improve knowledge and skill level with respect to duties of his/her position, attendance is considered part of the employees regular work week and will be logged and tracked as paid time.

Employees who wish to further their educational background by obtaining a higher degree and or certificate by attending college courses that will improve their knowledge and skill level with respect to duties of his/her position will be reimbursed for expenses related to tuition, book fees and other fees associated with higher education upon approval of the Executive Director. Employees will submit to the Executive Director a request for reimbursement that will include receipts and detailed class information. Attendance of these courses is not considered work and will not be logged and tracked as paid time.

IV. Paid Leave

a. Holidays

Except as otherwise provided, permanent employees shall have the following holidays with pay:

New Year' Day.....	January 1
Martin Luther King Day	Third Monday in January
President's Day... ..	Third Monday in February
Memorial Day... ..	Last Monday in May
Independence Day... ..	July 4
Labor Day.....	First Monday in September
Veteran's Day... ..	November 11
Thanksgiving.....	Fourth Thursday in November

Day after Thanksgiving	Fourth Friday in November
Christmas Eve	December 24
Christmas Day.....	December 25

Two additional “floating” holidays may be taken by each employee annually, pending prior submittal to and approval of the Executive Director. Employee shall not accrue more than two floating holidays, and not additional floating holidays will be granted until and employee’s balance falls below two floating holidays.

In the event that any of the aforementioned days, except December 24, falls on a Sunday, the following Monday shall be considered a holiday. In the event that any of the aforementioned days falls on a Saturday, the preceding Friday shall be considered a holiday. In the event that December 24 falls on a Sunday, the preceding Friday shall be considered a holiday.

b. Vacation

Each permanent employee; except the Executive Director, shall be entitled to an annual paid vacation, accrued as follows:

- Less than three (3) years of service – 112 hours per year
- Three (3) to five (5) years of service – 128 hours per year
- Six (6) to ten (10) years of service – 144 hours per year
- Over 10 years of service – 160 hours per year

The Executive Director shall receive 160 hours of vacation per year (updated 06/25/2020)

Vacations may not be taken prior to the first six (6) months of employment; however the probationary period counts for purposes of vacation accrual.

Vacation days will be based on an eight (8) hour workday. Vacation time will continue to accrue if unused to a maximum of two hundred eighty (280) hours, however no more than thirty (30) days may be requested as vacation at one time. The Executive Director must approve an employees requested vacation schedule a minimum of thirty (30) days prior to the first day of the vacation.

Reasonable efforts will be made to accommodate vacation requests, however a request may be denied if the requested leave conflicts with staffing and/or workload constraints.

Upon separation, employees shall be paid for all vacation time accrued and not taken up to a maximum of 280 hours.

c. Personal Leave

The SFCJPA provides 96 hours of personal leave as a benefit to full-time employees which may be, upon approval of the Executive Director, used for personal obligations of urgent and or compelling importance, which cannot be addressed outside of normal working hours. In addition, as required by law, the SFCJPA's personal leave allotment includes protection to pay for times when an employee is ill, being treated by a physician or dentist or otherwise incapacitated due to health problems. With limitations, personal leave may also be used to take care of a member of the employee’s immediate family, as bereavement leave, or to seek any legal or equitable relief if the employee is a victim of domestic violence, sexual assault, or stalking, to help ensure the health, safety, or welfare of the employee or their child; or to seek medical, psychological, or social services assistance or participate in safety planning or other programs to increase safety from future domestic violence, sexual assault, or stalking. Personal leave can accrue to a maximum of 180 hours per fiscal year.

e. Leave under the California Family Rights Act of 1993 (CFRA)

The SFCJPA provides unpaid leave pursuant to the CFRA for employees who have more than 12 months of service with the SFCJPA and have worked at least 1,250 hours in the 12-month period

before the date of leave. CFRA leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of an employee's child or for the employee's own serious health condition or that of the employee's child, parent, parent-in-law, grandparent, sibling, spouse, or domestic partner.

f. Cash Out

In excess of forty (40) hours and up to one hundred twenty (120) hours of accrued vacation leave may be converted to cash, payable to an employee once during each fiscal year at a time requested by the employee.

Upon separation, employees shall be paid for all vacation time accrued and not taken up to a maximum of two hundred eighty (280) hours. (updated 06/25/2020)

g. Emergency Response Compensation

During or after an emergency event, which may include but is not limited to flood, creek related structure failure, or any natural or induced event or act of vandalism, terrorism or negligence that adversely affects the creek bed, water flow or induces human or habitat endangerment that requires urgent and timely action, employees will be obligated to work additional hours, when necessary, for purposes of emergency response. These obligations are not limited by time of day or length of shift, provided the employee is physically capable of performing emergency response. Permanent employees will be compensated for such services at an emergency response hourly rate (ERH rate) dependent upon that employee's single pay period regular salary (SPPRS), consistent with the equation below. $SPPRS/80 \times 1.5 = ERH \text{ rate}$. For purposes of this determination, the SPPRS will be equal to the amount of the gross pay from the most recent pay period. Following an emergency response event, an employee may take personal leave or leave without pay as necessary to recuperate as approved by the Executive Director.

h. Jury Duty and Subpoenas

An employee required to report for jury duty or answer a subpoena as a witness, provided the witness has no financial interest in the case, shall be granted a leave of absence with pay until released by the court, up to a maximum of two (2) weeks, provided the employee remits all fees received from such duties other than mileage or sustenance allowances within 30 days from the termination of jury service.

i. Military Leave

Military leave of absence shall be granted and compensated in accordance with all applicable laws. Workers entitled to military leave shall give the appointing power an opportunity, within the limits of military regulation, to determine when such leave shall be taken.

j. Compensatory Leave

A permanent (exempt) employee may, under special circumstances or by assignment, should duties and responsibilities of his/her position exceed a full-time work schedule, and those duties and responsibilities necessitate that said employee work greater than eighty (80) hours in a given work period, work and track the *additional hours* of work upon approval of the Executive Director and the employee. *Additional hours* will be accrued, tracked and reported on a bi-weekly basis, beginning with and ending in congruence with each work period. The *additional hours* accrued by a permanent employee may be compensated for with paid leave to be documented and accounted in any of the subsequent work weeks of that month, pending prior submittal to and approval of the Executive Director. *Additional hours* accrued in a particular month may not be transferred to the following month for compensatory leave.

V. Unpaid Time off

Additional leave time for an employee may be granted by the SFCJPA Executive Director in the event of uncontrollable circumstances, when provided a serious and compelling reason for the leave. Duration of leave will be determined on an individual basis. Except as otherwise required by law, such approved leave time may not be considered personal leave, and as such, will be

classified as “leave without pay.”

Compensation for an employee during a “leave without pay” period may be considered by the Executive Director should the employee be capable of addressing a portion of the responsibilities of his/her position while on leave. Compensation will be calculated as an estimated time allotment proportional to that employee’s regular salary.

VI. Employee Relations

a. Harassment Policy

The SFCJPA is committed to providing a workplace that is free of discrimination. In keeping with this policy, the SFCJPA is also committed to providing a workplace that is free of sexual harassment as well as harassment based on such factors as race, color, national origin, ancestry, sex (including pregnancy, childbirth, or related conditions), sexual orientation, gender, gender identity or gender expression, age (40 years or older), religion, creed, physical or mental disability, medical condition, marital status, citizenship status, military or veteran status or any other protected status under state or federal law. The SFCJPA strictly prohibits and will not tolerate harassment of employees by officers, managers, supervisors or co-workers. Similarly, the SFCJPA will not tolerate harassment by its employees of non-employees with whom SFCJPA employees have a business, service or professional relationship. Harassment means verbal, physical, visual, or other conduct based on a protected status that creates an intimidating, offensive or hostile working environment or that interferes with work performance. Such conduct constitutes harassment when:

Submission to or rejection of the conduct is used as the basis for an employment decision; or

The harassment interferes with an employee’s work performance or creates an intimidating, hostile or offensive work environment.

Harassing conduct can take many forms and includes, but is not limited to, the following:

1. Slurs;
2. Jokes;
3. Statements;
4. Gestures;
5. Assault;
6. Impeding or blocking another’s movement or otherwise physically interfering with normal work; or
7. Pictures, drawings or cartoons based on an employee’s sex, race, color, national origin, ancestry, sexual orientation, gender, gender identity or gender expression, age (40 years and older), religion, creed, physical or mental disability, medical condition, marital status, citizenship status, military or veteran status or any other protected status under state or federal law. Sexually harassing conduct includes all of these prohibited actions as well as other unwelcome conduct such as requests for sexual favors, conversation containing sexual comments, and unwelcome sexual advances. Sexually harassing conduct can be by a person of either the same or opposite sex.

b. Reporting and Investigation (Complaint Procedures)

Any incident of harassment, including work-related harassment by any San Francisquito Creek Joint Powers Authority personnel or any other person, shall be reported promptly to the Executive Director, who is responsible for investigating the matter. The Executive Director may delegate any portion of the investigation to another employee or to an outside party, but shall remain responsible for assuring proper completion of the investigation. An employee is not required to complain first to the Executive Director if the Executive Director is the individual who is harassing the employee. Instead, the employee may report the harassment to any member of the Board of Directors. Under such circumstances, the involved Board Member shall

promptly consult with the General Counsel to assure proper investigation of the matter.

Harassment complaints will be investigated thoroughly and promptly. Efforts will be made to keep the complaint and investigation confidential; however, absolute confidentiality cannot be guaranteed. In addition, the San Francisquito Creek Joint Powers Authority will not tolerate retaliation against any employee for cooperating in an investigation or for making a complaint of unlawful harassment.

In the case of San Francisquito Creek Joint Powers Authority employees, if harassment is established, the San Francisquito Creek Joint Powers Authority will discipline the offender. Disciplinary action for a violation of this policy can range from verbal or written warnings up to and including immediate termination, depending on the circumstances.

harassment and retaliation for opposing harassment or participating in investigations of harassment are illegal. While the San Francisquito Creek Joint Powers Authority encourages use of the internal procedure described above for harassment or retaliation complaints, affected employees may also direct their complaints to the California Department of Fair Employment and Housing (DFEH) or Equal Employment Opportunity Commission (EEOC). An employee can contact the nearest office of the DFEH or EEOC at the locations listed on the San Francisquito Creek Joint Powers Authority's DFEH and EEOC posters.

c. Alcohol-Drug (substance) Free Workplace

As an employee of the San Francisquito Creek Joint Powers Authority you have a responsibility to ensure that you are not in any capacity being negligent of all applicable laws and regulations regarding a "substance free workplace."

Employees of the San Francisquito Creek Joint Powers Authority will not report to work or conduct any business during any workday or work event including offsite meetings, trainings or conferences under the influence of any alcohol or illegal drug .

Employees of the San Francisquito Creek Joint Powers Authority will not use alcohol or illegal drugs nor have in their possession any open containers of alcohol or illegal drugs while on duty.

Employees of the San Francisquito Creek Joint Powers Authority will not in any way, shape or form, manufacture, distribute, dispense, sell or provide illegal drugs to any person while on duty.

The San Francisquito Creek Joint Powers Authority recognizes that there are times when an employee may be ill or have a health issue that requires the use of prescription medication. In the event an employee of the San Francisquito Creek Joint Powers Authority is required to use prescription medication and the use of that prescription medication conflicts with the duties of the required job and creates an unsafe working condition, the employee will notify the Administrative Manager prior to reporting to work. Reassignment, medical examinations, or other actions specified by applicable statues and regulations may occur if an employee is not able to safety and effectively perform their job due to use of a legally prescribed medication.

VII. Anti Fraud/Ethics Policy

Employees of the San Francisquito Creek Joint Powers Authority are expected to comply with all laws and regulations as applicable to working for a government agency in the state of California. If at any time an employee is in doubt and or has confusion of the application or interpretation of any law or regulation he/she must make every reasonable effort to seek clarification by contacting the Executive Director.

VIII. Safety

a. Work Place Violence

The San Francisquito Creek Joint Powers Authority strives to provide a safe and secure workplace environment for all employees, and visitors of the agency. Harmful acts including but not limited to:

- negligent and unsafe behavior

- threatening behavior,
- acts of violence
- any related conduct which disrupts co-workers or agency operations including but not limited to; phone calls, faxes, e-mails, mailed letters/notes or packages, text messages and any other form of communication will not be tolerated and any such person whether an employee or visitor may be removed from the premises upon determination of fault.

Any employee who violates the SFCJPA safety policy will face disciplinary action that may include SFCJPA who violates the agency's safety policy may be barred from agency property and future SFCJPA activities.

The SFCJPA expects employees to be responsible and report any harmful acts or unfit behaviors that they have witnessed, received, or have been told that another person has witnessed or received.

If an employee of the SFCJPA receives a protective or restraining order that lists the SFCJPA premises as a protected area, that employee is required to provide the Director of Administration with a copy of such order.

b. Request for Reasonable Accommodation

The SFCJPA complies with applicable laws ensuring equal employment opportunities to qualified individuals with a disability and will make reasonable accommodations for any known physical or mental disability of an otherwise qualified individual unless undue hardship would result.

An applicant or employee of the SFCJPA who requires an accommodation to perform the essential functions of the job should contact the Executive Director to discuss the accommodation need.

IX. Staff Reimbursement Guidelines

The SFCJPA recognizes that there may be out-of-pocket expenses incurred by employees in connection with agency business including but not limited to; office supplies, equipment, meeting supplies and off-site travel fees. As referenced from the SFCJPA Financial Management and Accounting Policies, employees can purchase up to \$1,000 per transaction on behalf of the agency and be reimbursed with appropriate documentation and approval of the Executive Director. All purchases must be within the approved budget. (See SFCJPA Financial Management and Accounting Policies for more information.)

X. Acceptance of At-Will Employment and acknowledgement of receipt of Employee Policies Handbook

All employees of the SFCJPA are employed "at-will." This means that any employee, or the Executive Director as authorized by the Board of Directors to act as the employer, have the right to terminate employment at any time, with or without cause and with or without advance notice. No one, other than the Board or Directors, has the authority to alter this arrangement, to enter into an agreement for employment for a specified period of time or to make any arrangement contrary to this policy. Any such agreement or arrangement must be in writing and approved by the Board of Directors to be effective.

This Employee Policies Handbook is provided to inform and guide employees of the SFCJPA. It is a summary of the SFCJPA's policies, benefits and work rules and supersedes previous written or unwritten policies, benefits or work rules. The policies and practices in this Handbook are not intended to imply a contractual relationship and are not intended to create any legally enforceable obligations on the part of the SFCJPA, its directors, officers or employees. All contents within this handbook are considered confidential and should not be shared, copied or reproduced. Contents within this handbook can and may be changed at any time.

Please read this handbook carefully and become familiar with its contents. If you have any questions about the SFCJPA's policies and practices, please send your questions to the Administrative Manager or the Executive Director.

ACKNOWLEDGEMENT

I acknowledge that I have received a copy of the San Francisquito Creek Joint Powers Authority Employee Policies Handbook. I understand that I am responsible for reading the Handbook and for knowing and complying with its contents. I also understand and agree that my employment with the San Francisquito Creek Joint Powers Authority is "at-will," meaning that either the Executive Director of the San Francisquito Creek Joint Powers Authority or I may terminate our employment relationship at any time, with or without cause and with or without advance notice.

Date: _____

Signature: _____

Printed Name: _____

Agenda Item 5.C. Proposed Board Handbook 2022 Updates

Background

In 2021, the executive director's review process was documented and included in the Board Handbook. There may have been some misunderstanding of the process details, so the following clarifications to the Board Handbook are proposed.

Discussion

The following is the text of the update to the Board Handbook, adding more specificity and clarifying details regarding the executive director annual review process. This is proposed to be inserted into and replace the existing section 1.5.

~~**~**~**

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 this 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 this part of the 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.

Recommendation:

Staff recommends acceptance of these suggested clarifications and additional details to the Board Handbook.



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

SFCJPA Board Handbook

December 2022

Version history

Date of Action	Action	Detail
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

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- B. Current inter-agency agreements

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.

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.

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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

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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.



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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-xxx-xxxxxxxxx#xxxxx#

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

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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.

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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 comprised of the Board Chair and Vice Chair. 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 February, March, April 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.
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 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.

3.8 COVID-19 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 will conform to the requirements of AB361 regarding a finding of public health requirements when determining its meeting format and location.

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. Please visit the FPPC website for filing information.

<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 until 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,
- A visual representation of streamflow conditions to interested members of the community,
- An automated flood warning system for members of the community who signed up for text or phone alerts.

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).

There are multi-colored circles on the map corresponding to monitoring stations. These circles change color depending on streamflow conditions:

In the event of Flood WATCH conditions: Areas of this map will appear YELLOW where flooding may occur within the next 90 minutes.

In the event of Flood WARNING conditions: Areas of this map will appear RED where flooding may be imminent.

Green indicates there are low-flow conditions and there is no risk of flooding.

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.

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. Three year rolling work plan

The three year rolling work plan is reviewed and updated at least twice per year, typically in June and December.

SFCJPA - 3-year Rolling Workplan – May 2021 Update

This living document will be updated at least annually to reflect completed work, emerging priorities, and new opportunities.

	FY 2020/2021	Status	FY 2022/2023	FY 2023/2024
Upstream (Priority: H, M, L)	Identify and confirm full funding for Upstream Project (H), Detention (as needed) and SAFER Bay:	In progress/ on track	Initiate and Complete Channel Widening Construction	Initiate and Complete Pope/Chaucer Construction
	o Create roadmap for funding all projects, starting with Reach 2 (H)	In progress/ on track	Support PA Newell Bridge work as needed	Engage/coordinate w/ Stanford
	o Seek and apply for grants, negotiate agency contributions, etc. (H)	In progress/ on track	Engage/coordinate w/ Stanford	Engage/coordinate w/ Stanford
	Complete Property/ easement/access for Upstream work and/or work with V.V. in this process – specific needs pending further hydraulic analysis and potential design adjustments. (H)	In progress/ on track	Coordinate with ACOE Re-scope CAP 205 if needed	
	Explore additional property donations in strategic locations – <u>suspended</u> . (L)	N/A		
	Convene multi-agency meeting (H)	Date TBD		
	Permit submittals to regulatory agencies (H)	In progress/ on track		
	ACOE coordination and CAP 205 process – continue (H)	In progress/ on track		
	Engage/coordinate w/ Stanford (M)	In progress/ on track		
	Support PA Newell Bridge work – evaluate potential benefits of combined Newell and Reach 2 agency permits. (M)	In progress		

	<ul style="list-style-type: none"> Create a community Engagement Plan (as this may be requested by certain grant funders) for Reach 2 (M) <ul style="list-style-type: none"> Conduct community outreach events (two in spring, two in <u>winter</u>) (H) 	Just started		
Flood Early Warning System	<ul style="list-style-type: none"> Flood early warning system – Evaluate options and opportunities. Make plans accordingly. (M) 	In progress/ on track		
Downstream	<ul style="list-style-type: none"> Water Board approval of O&M Manual (H) Mitigation Maintenance Monitoring/Reporting Install Interpretive Panels (M) Ensure continued permit compliance including updating <u>Ecobites</u> (H) 	In progress/ on track Ongoing In progress Ongoing	<ul style="list-style-type: none"> Mitigation Maintenance Monitoring/Reporting 	<ul style="list-style-type: none"> Mitigation Maintenance Monitoring/Reporting Prepare Work Plan for 5-year Technical Report
100 Year Flood Protection	<ul style="list-style-type: none"> Complete peak flow detention initial constructability evaluation to determine next steps (H) Regular coordination and communication with Stanford University (H) 	In progress/ on track Ongoing	<ul style="list-style-type: none"> Upstream detention 'next steps' (pending outcome of constructability evaluation). Regular coordination and communication with Stanford University 	<ul style="list-style-type: none"> Regular coordination and communication with Stanford University
SAFER Bay	<ul style="list-style-type: none"> Complete Phase 1 Geotechnical investigations and move forward with design and permitting using 	In progress	<ul style="list-style-type: none"> MOA with funding partners- by June 2021 	<ul style="list-style-type: none"> Complete programmatic EIR

	Department of Water Resources Grant funding (assumes approval of Amendment #2 First Quarter) (M)	In progress	<ul style="list-style-type: none"> Engineering Design and permitting Initiate FEMA/HMGP Grant activities (tentative) 	<ul style="list-style-type: none"> Engineering design and permitting Engage w/ MTC and <u>CalTraps</u> Engage w/ community organizations
	BBRIT permitting response and continued <u>coordination</u> (H)	On track	<ul style="list-style-type: none"> Draft Programmatic EIR and public meetings Additional stakeholder engagement- (tribal and disadvantaged communities) 	<ul style="list-style-type: none"> Potentially initiate Menlo Park FEMA BRIC grant work (if successful)
	Apply for additional funding from:	Planned/ On track		
	o Measure AA	Planned/ On track		
	o FEMA BRIC	Planned/ On track		
	o OPC Grant	Planned/ Not yet done.		
	Initiate Programmatic EIR by issuing Notice of Preparation Q2 (H)	Planned/ On track		
	Create a Community Engagement Plan (as this may be requested by certain grant funders) (M) and <u>conduct public outreach</u>	Planned/ Not yet done.		
	Continued coordination with <u>OpenShoreline</u> , Palo Alto, East Palo Alto, etc. (M)	Ongoing		
	Engage w/ MTC and <u>CalTraps</u> (M)	Planned/ Not yet done.		
Continue regular engagement w/ community organizations: Ravenswood Business Assoc., Climate Resilient Communities, and Nuestra Casa, etc. (M)	Ongoing			
Continued coordination with developers plans, attend Ravenswood Shores Business Development meetings (M)	Not yet started			
Continued utility coordination (PGE EPASD) and others (M)	Ongoing			
Continued Facebook coordination (M)	In progress			

	<ul style="list-style-type: none"> SAFER Phase 1 FEMA HMGP grant: Determine status of grant w/ <u>CalTraps</u>/FEMA. (H) MOU with partners for project and funding management (M) Update <u>OpenShoreline</u> needs for suitable import, investigation potential storage areas (L) 	In progress Not yet started Not yet started		
Finance	<ul style="list-style-type: none"> Bring audits <u>up-to-date</u> (H) Upcoming 22/23 FY Budget, with a 'look ahead' for future years. (when to create and share this 'look ahead') (M) Transition to new banking services (H) 	On Track Not yet started In progress	<ul style="list-style-type: none"> Complete annual audit Budget, with a 'look ahead' for future years. 	<ul style="list-style-type: none"> Complete annual audit Budget, with a 'look ahead' for future years.
Administration/ Organization	<ul style="list-style-type: none"> Reconcile, update, and ratify the JPA members agreement (H) Improve IT systems for efficiency, business continuity, etc. (H) Create an "SFCJPA Board Handbook" (M) Implement DocuSign or Adobe for board and staff signatures (H) Initiate volunteer program (M) Scan and digitize historical hard-copy documents (L) Prepare for CSDA's Transparency Certificate of Excellence (L) Review all organization policies, update as necessary (M) Annual review and update of Comprehensive Plan (H) 	In progress Ongoing In progress Completed Completed Not yet started Not yet started In progress To begin in May/June.	<ul style="list-style-type: none"> Explore funding for internship stipends/ provisionally, develop internship program Apply for CSDA's Transparency Certificate of Excellence Review all organization policies, update as necessary. Annual review and update of Comprehensive Plan 	<ul style="list-style-type: none"> Review all organization policies, update as necessary. Annual review and update of Comprehensive Plan

Communications	<ul style="list-style-type: none"> Website – continue to improve, expand catalogue of posted documents and recordings. (H) Video Tours of Upstream, SAFER (including securing funding and production assistance) (L) Quarterly newsletter (M) SFC and SAFER Tours (ad hoc) (M) Expand contacts database (M) Project updates / community outreach (H) Board meeting/community outreach (expand list) (M) At least one webinar on SFC ‘general interest’ and/or SAFER (M) 	<p>Ongoing</p> <p>Not yet started</p> <p>2 editions published Ongoing Two events done</p> <p>Ongoing</p> <p>Not yet started</p>	<ul style="list-style-type: none"> Website – continue to improve Quarterly newsletter SFC and SAFER Tours Expand contacts database Project updates / community outreach Board meeting/community outreach (expand list) Tours of SFC and SAFER (ad hoc) At least one webinar on SFC and/or SAFER 	<ul style="list-style-type: none"> Website – continue to improve Quarterly newsletter SFC and SAFER Tours Expand contacts database Project updates / community outreach Board meeting/community outreach (expand list) Tours of SFC and SAFER (ad hoc) At least one webinar on SFC and/or SAFER
Professional Development	<ul style="list-style-type: none"> CSDA webinars UC Extension course(s) on CEQA Webinars on Smartsheet project management tool(s) CRAM updates Regulatory updates 	<p>MHP has done several. MB has attended for web dev, smartsheet.</p>	<ul style="list-style-type: none"> CSDA and other webinar resources Regulatory updates 	<ul style="list-style-type: none"> Professional certifications updates

9. 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
	rabrica@cityofepa.org	lgauthier@cityofepa.org
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
	dcombs@menlopark.org	cttaylor@menlopark.org
City of Palo Alto	Pat Burt, Vice Mayor	Allison Cormack
	250 Hamilton Ave	250 Hamilton Ave
	Palo Alto, CA 94303	Palo Alto, CA 94303
	650/892-0925	650/329-2480
	Pat.Burt@CityofPaloAlto.org	alison.cormack@cityofpaloalto.org
	Dave Pine, County Supervisor	Don Horsley, County Supervisor
	555 County Center	
	Redwood City, CA	
	650 363-4571	
	dpine@smcgov.org	
Santa Clara Valley Water District (Valley Water)	Gary Kremen, 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
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APENDICIES

APENDIX A

SFCJPA MEMBERS' AGREEMENT

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 1st and end on June 30th.

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:

PROVISIONS

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.

SFCJPA/SCVWD

Cost Sharing Agreement Upstream Inlet

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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.

SFCJPA/SCVWD

Cost Sharing Agreement Upstream Inlet

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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)

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 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

v.4, 062119 9

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, 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

with copy to: Kevin Murray (kmurray@sfcjpa.org)
Tess Byler (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

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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)
Mimi Dunkle (mimiledu@stanford.edu)
Jean McCown (jmccown@stanford.edu)
Tom W Zigterman (twz@stanford.edu)
Lesley Lowe ([llowe@stanford.edu](mailto:l Lowe@stanford.edu))
Karla Traynor Smith (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

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**

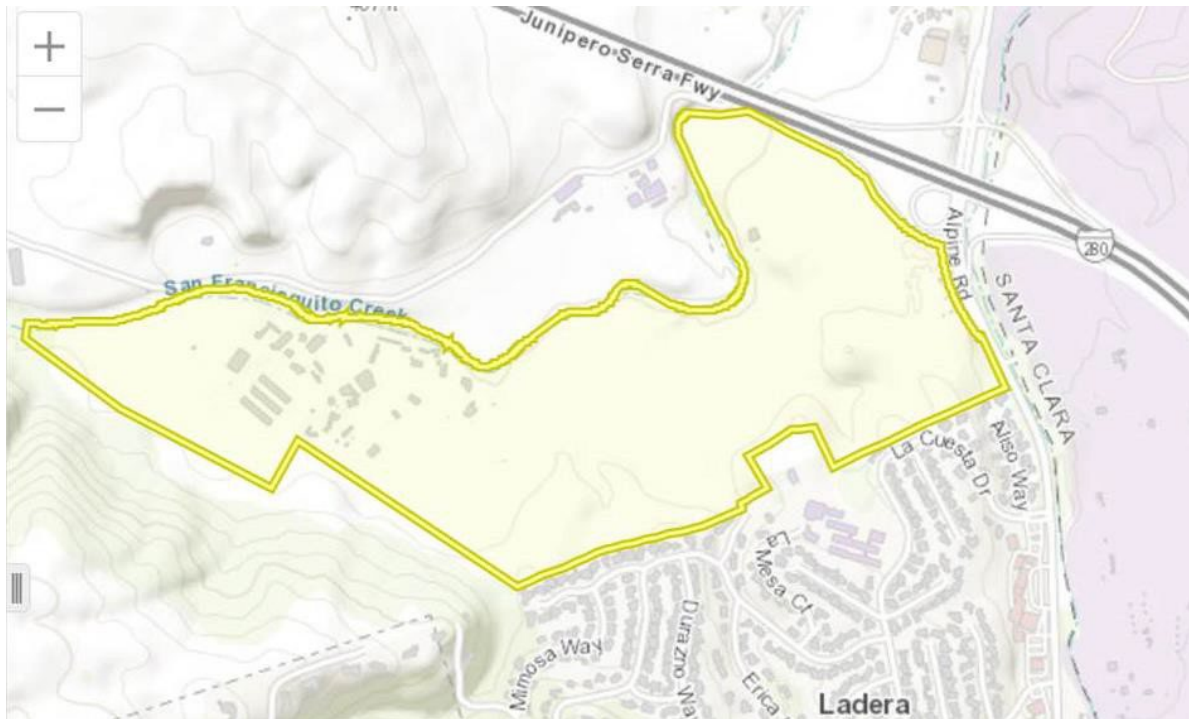


By: _____ Pr
Name: Margaret V. Bruce Print Tit
Executive Director, SFCJPA

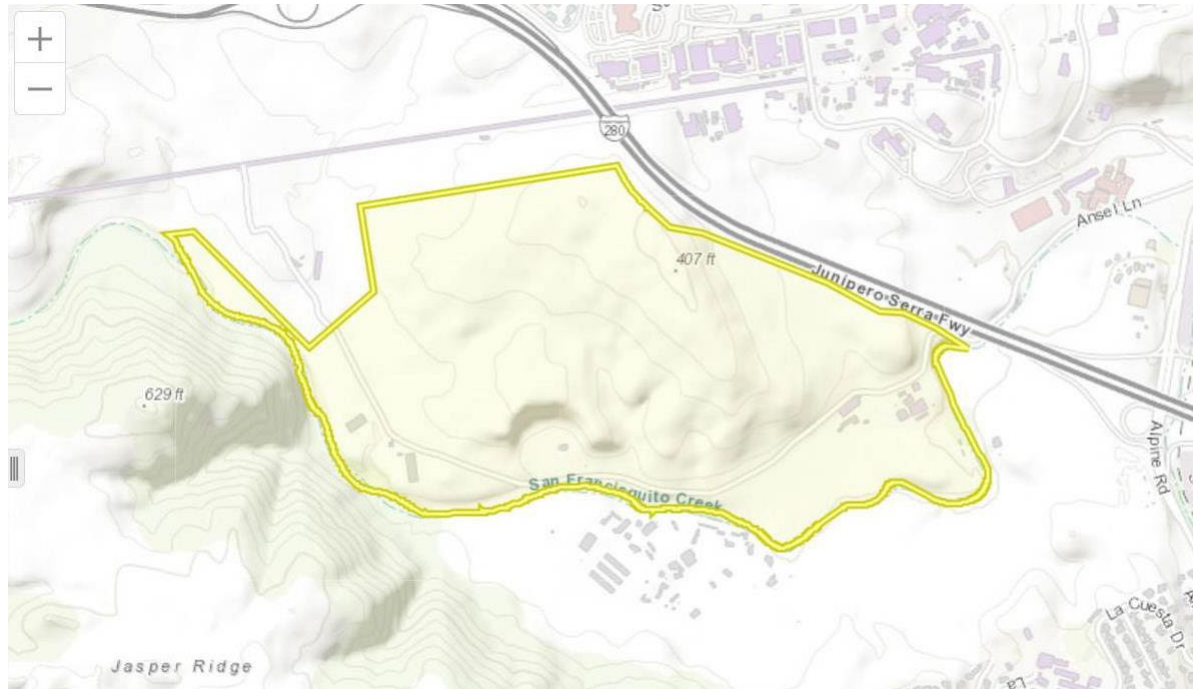
III. EXHIBIT A

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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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 1st and ending on September 30th 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 1st 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 1st 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 Bay 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>To: City of Menlo Park Starla Jerome- Robinson City Manager City Hall, 2nd Floor 701 Laurel St Menlo Park, CA 94025</p>	<p>To: San Francisquito Creek Joint Powers Authority Margaret Bruce Executive Director 2100 Geng Road, Suite 210 Palo Alto, CA 94303</p>	<p>To: Pacific Gas and Electric Company Heather Rock Chief of Staff for Engineering, Planning and Strategy 300 Lakeshore Drive Oakland, CA 94612</p>	<p>To: Meta Platforms, Inc. Lauren Swezey Sustainability & 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.

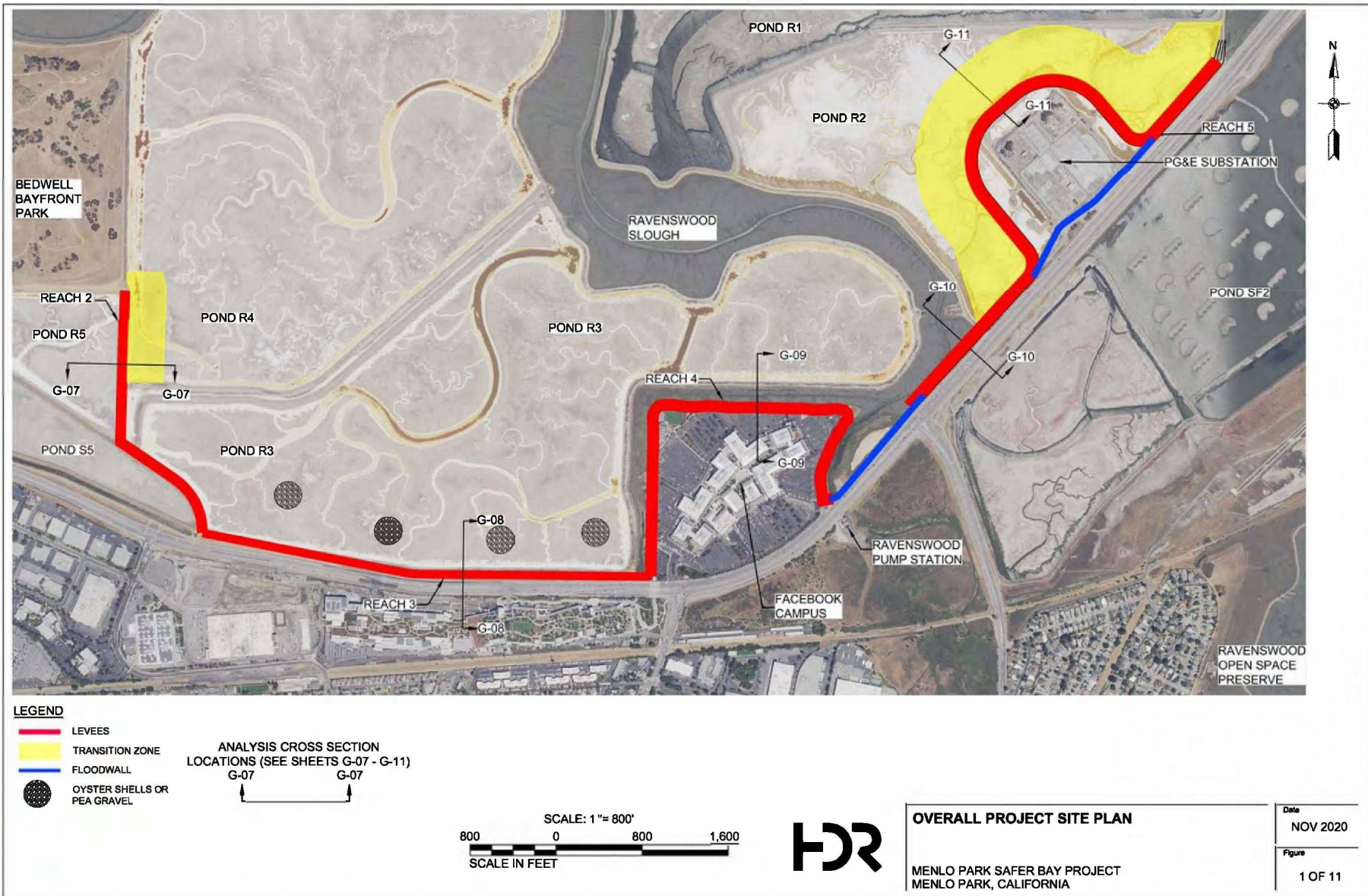


EXHIBIT B

PROJECT FUNDING SOURCES AND USES

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

Funding Uses	Amount
Pre-award Cost	\$ 190,000
Phase 1	
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
Phase 2	
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
Operation & Maintenance	
O&M (5 years)	\$ 1,050,000
Total	\$ 68,725,087

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		
Description	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	TOTAL		
Expenditures																									
Pre-award Cost																									
FEMA BRIC subapplication Preparation	(180,000)																							(180,000)	
Phase 1																									
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)																(153,000)	
Task 1.3 - Public Outreach	(2,400)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)																	(50,100)	
Task 1.4 - Environmental Permits	(94,000)	(200,200)	(278,348)	(295,658)	(211,824)	(246,308)	(48,378)																	(1,373,000)	
Task 1.5 - Right-of-Way Acquisition Negotiations		(80,000)	(163,000)	(163,000)	(163,000)	(133,000)																		(542,000)	
Task 1.6 - Engineering and Design	(184,900)	(1,021,055)	(1,233,829)	(1,133,511)	(1,133,612)	(1,138,054)	(1,74,750)	(28,123)																(5,335,000)	
FEMA NEPA Review																									
FEMA Phase 2 Review																									
Phase 2																									
Task 2.1 - Project Management										(25,647)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(21,895)	(208,000)	
Task 2.2 - Public Outreach										(4,050)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(8,099)	(73,000)	
Task 2.3 - Final Design										(86,000)	(86,000)													(172,000)	
Task 2.4 - Procurement for Construction Management Service										(8,667)	(17,333)													(26,000)	
Task 2.5 - Construction Bidding										(45,000)														(45,000)	
Task 2.6 - Engineering During Construction											(2,453)	(22,908)	(20,556)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(213,000)	
Task 2.7 - Construction Management											(2,453)	(22,908)	(20,556)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(24,580)	(213,000)	
Task 2.8 - Construction Activities											(1,403,308)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(1,840,484)	(17,844,000)	
TOTAL EXPENDITURES	(734,800)	(1,253,158)	(1,428,976)	(804,029)	(941,930)	(471,184)	(254,973)	(26,125)	0	(122,682)	(391,571)	(4,325,786)	(5,406,677)	(5,814,324)	(5,818,147)	(5,818,147)	(5,818,147)	(5,818,147)	(5,818,147)	(5,818,147)	(5,818,147)	(5,818,147)	(5,818,147)	(5,818,147)	(87,675,087)
Payments																									
FEMA Reimbursements (75% expenditures less 30% retention)			482,496	843,882	964,134	407,720	363,388	328,056	372,111	33,636	0	83,777	223,810	2,893,804	3,674,307	3,679,669	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	41,067,911	48,200,000
FEMA Retention Release (30%)																								3,000,000	3,000,000
Local Match Contribution - PG&E	2,000,000	1,003,449	1,753,628	200,524	84,787	75,985	66,349	35,795	4,099	2,256,375														35,000,000	
Local Match Contribution - Facebook	3,361,600	78,353	137,363	336,370	66,210	58,337	51,649	27,949	3,192	5,663,777															7,808,000
TOTAL PAYMENTS	5,361,600	1,760,202	3,728,818	1,115,181	549,052	480,319	381,801	179,382	12,841,811	0	80,777	223,810	2,919,904	3,674,307	3,679,669	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	50,008,000
NET QUARTERLY CASH FLOW	2,626,791	(482,956)	(700,158)	311,152	(392,878)	(89,865)	(77,172)	(146,743)	12,159,129	(122,682)	(310,794)	(4,142,009)	(5,182,867)	(5,494,417)	(5,148,478)	(2,136,479)	(2,136,479)	(2,136,479)	(2,136,479)	(2,136,479)	(2,136,479)	(2,136,479)	(2,136,479)	(2,136,479)	(12,666,814)
NET QUARTERLY CASH BALANCE	2,626,791	1,772,335	1,338,744	1,793,692	2,312,522	2,184,383	2,612,397	2,965,279	3,144,665	33,963,944	33,633,277	31,789,266	3,206,389	(2,288,021)	(5,091,631)	(7,228,109)	(11,364,578)	(13,501,057)	(15,637,305)	(17,773,553)	(19,910,032)	(22,046,511)	(24,182,989)	(26,320,468)	(28,457,952)

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

EXHIBIT E

PROGRAMMATIC EIR TIMETABLE

(Provided by SFCJPA)

TASK	ANTICIPATED DATE
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)

TASK	ANTICIPATED DATE
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. – SAFER Bay Project Study Session Staff Brief

Background

At the Board's direction, and to facilitate the Board's discussion, staff is presenting this summary of information about the SFCJPA's engagement to address shoreline flood risk through the SAFER Bay project.

Discussion

Context –

The SAFER Bay project emerged from the realization that tidal flooding is a component of the FEMA floodplain in East Palo Alto that must be addressed to enable our member cities' desire to remove properties from costly FEMA flood insurance requirements. This is a long process and may not be accomplished until after the majority of (or all of) the shoreline levee systems are complete.

Because FEMA accredits levee systems (not just individual levee components), it is important to consider the SAFER Bay project as a series of project components. Each component (or 'reach') has independent utility, but the levees and contemplated natural flood protection will only provide the desired flood protection and sea level rise resiliency when the integrated, multi-component, multi-benefit project elements are all completed.

To accomplish the project's objectives, restoration of the former Ravenswood salt-ponds 1 and 2 north of the Dumbarton Bridge approach – in part or in total - were included in the overall project scope as probable locations for both flood protection and project impacts mitigation. The SFCJPA has opened a dialog with key salt pond restoration stakeholders and regulators to identify ways to meet diverse ecological as well as flood and sea level rise protection objectives in this area.

The Dumbarton Bridge, and its approach on Highway 84, bisect the SAFER Bay project area. This critical infrastructure is the responsibility of the California Department of Transportation (CalTrans). The SFCJPA actively participated in the 2019 Dumbarton Corridor Study, evaluating this important area. Continuing those relationships, the SFCJPA has maintained an open a dialog with the regional CalTrans team and has encouraged CalTrans to prioritize the evaluation of and plans for protecting these assets from flooding and sea level rise.

Other key stakeholders that have been involved include PG&E and Facebook (now META). The PG&E Ravenswood sub-station serves over 300,000 customers in San Mateo and Santa Clara Counties. Both PG&E and META contributed meaningfully and

financially to the Menlo Park BRIC grant application and were key to winning the BRIC grant award.

Engagement Timeline –

2009 – SFCJPA Board acknowledged the continued risk of flooding along the shoreline.

2013 - SFCJPA Board authorized a feasibility study to study remaining risks from tidal flooding.

2013 –. SFCJPA Board accepted a California Natural Resource Agency Department of Water Resources grant Agreement No. 4600009955, with the Cities of East Palo Alto and Menlo Park providing matching funding to evaluate levees to protect East Palo Alto and Menlo Park from tidal flooding and sea level rise

2014 – The city of Palo Alto allocated funds in their CIP to participate in the SAFER Bay project and Palo Alto provided funds for a SFCJPA managed Feasibility Study for their shoreline.

2016 – Public Draft Feasibility Study Report for the cities of Menlo Park and East Palo Alto reaches were completed.

2018 – SFCJPA Board approved/accepted the pursuit of a grant via CalOES Hazard Mitigation Grant Program (HMGP) with the City of East Palo Alto for the SAFER Bay Project. The City of East Palo Alto City Council voted to approve the local match for this grant (\$~5M).

2019 –

SFCJPA Board approved Task Order #3 of our consulting agreement with HDR for continued planning and design work.

Palo Alto's Public Draft Feasibility Study was completed.

2020 –

SFCJPA participated in the MTC [Dumbarton Bridge West Approach + Adjacent Communities Resilience Study](#), published June, 2020.

Menlo Park, with SFCJPA's support, applied for \$50 million FEMA BRIC grant, and established SFCJPA's role in leading the programmatic CEQA for the project.

The Board approved the [SFCJPA Comprehensive Plan](#) that included SAFER Bay as one of four SFCJPA projects. The Board reaffirmed this in the 2021 Comprehensive Plan update.

2021 –

SFCJPA applied for a Measure AA SFBRA Round 5 grant.

June: Menlo Park received notice of BRIC award.

December: SFCJPA Board voted to adopt the Bay Adapt principles for the SAFER Bay Project.

2022 -

February: SFCJPA is notified of staff recommendation for Measure AA SFBRA Round 5 grant funding of \$1M supporting planning and design studies.

April: SFCJPA releases NOI for Programmatic EIR for Menlo Park and part of East Palo Alto and Project-level EIR for the southern reaches of Palo Alto.

July: SFCJPA applied for supplemental funding as part of SFBRA Round 6 funding.

September: East Palo Alto was notified of award of \$3,486,930 Phase 1 funding for HMGP DR-4344-541-93R for initial studies supporting design and environmental documentation, with local match of \$1,162,310 supplied by City of East Palo Alto. In addition, management costs of \$156,323 were also approved.

October: SFBRA staff recommended an additional \$ 3,980,000 for the SAFER Bay Project. This recommendation will be considered for approval by the SFBRA Governing Board in Q1 of 2023.

December: First Citizen's Advisory Group meeting for SAFER Bay project was convened on December 6. 35 community members attended and actively participated. This group will be convened ~1x/Quarter.

Project Relationships

The SAFER Bay project is located along the shores of SFCJPA members Menlo Park and East Palo Alto, in San Mateo County.

SFCJPA – has been technical lead on all work to date and currently anticipates having funding to complete a programmatic EIR for SAFER Bay for the shorelines of Menlo Park and East Palo Alto in San Mateo County, and a project level EIR for elements south of Bay Road in East Palo Alto, engineering designs up to 90 percent for project level areas, community outreach and environmental permitting via Bay Area Restoration Regulatory Integration Team. The necessary conversations with regulators, property owners, and project partners regarding utilization of former salt ponds R1 and R2 for restoration and potential project impacts mitigation are currently being led by SFCJPA.

Valley Water– has not been involved in the SAFER Bay project (as it is outside their jurisdiction), but a few elements overlap with the 2019 SAFER Bay Feasibility Study conducted for JPA member Palo Alto, such as options for the Palo Alto Flood Basin flood gate. USACE is leading the South Bay Shoreline Phase 2 Feasibility Study which

extends from San Francisquito Creek in Palo Alto to Permanente Creek in Mountain View. This study began in 2019 and is scheduled to be completed in 2025.

OneShoreline – San Mateo County’s Flood and Sea Level Rise Resiliency District anticipates taking a larger role in the SAFER Bay project area at some point in the future. OneShoreline plans to pursue a FEMA BRIC grant in 2023 for the SAFER Bay project element at the entrance to Bedwell Bayfront Park.

Menlo Park – Is leading the FEMA BRIC efforts, including project-level CEQA and NEPA work, bidding and awarding design and construction contracts. The City of Menlo Park has accepted long term Operations and Maintenance of the BRIC project areas.

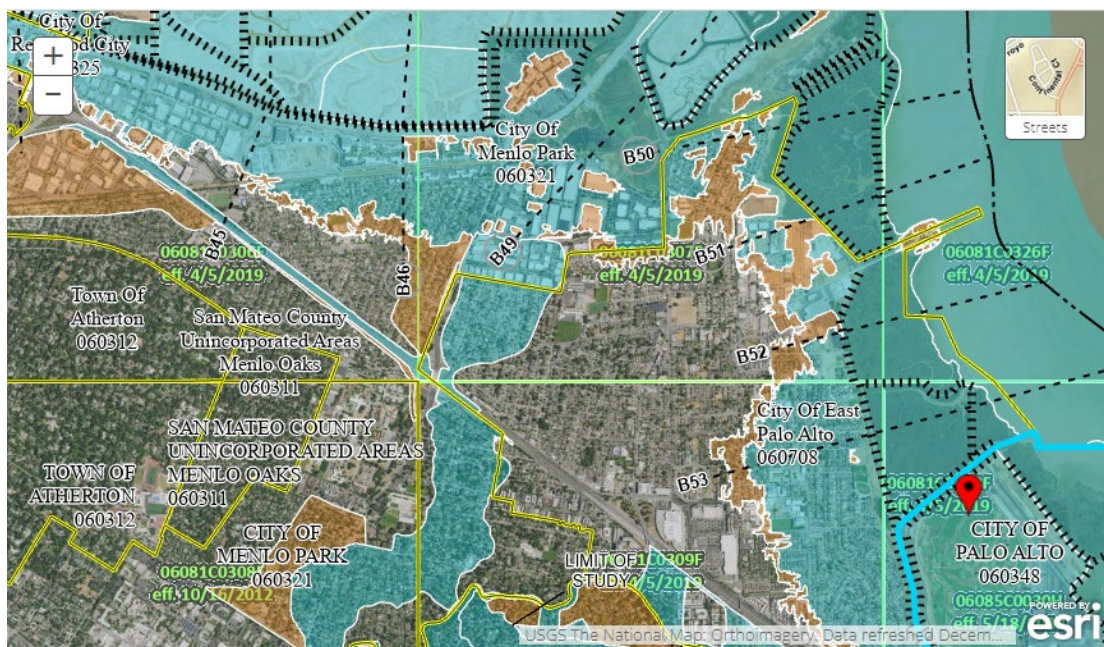
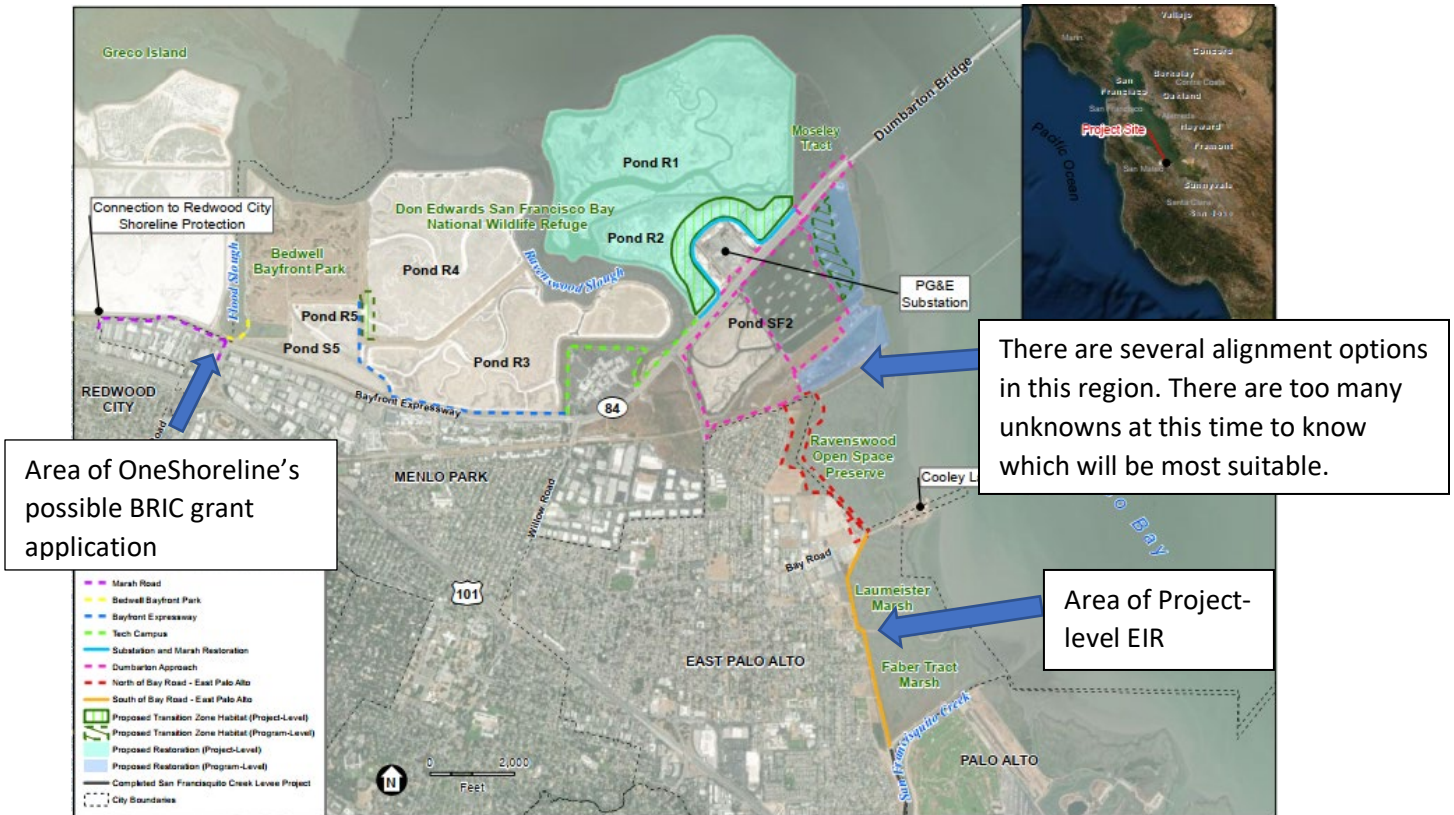
East Palo Alto –Official grantee for HMGP grant, and will lead, with SFCJPA assistance, bidding of Phase 1 design. The City of East Palo Alto will bid and oversee construction of SAFER Bay project elements within their jurisdiction. The City has accepted long term Operations and Maintenance of East Palo Alto project areas.

Palo Alto – Incorporated the 2019 SAFER Bay Feasibility Study into the South Bay Shoreline Phase 2, a partnership with Valley Water, Army Corps of Engineers (USACE) and the State Coastal Conservancy. Note that the City of Palo Alto owns property within the City of East Palo Alto and within the SAFER Bay Project Area, along with adjacent infrastructure, including utilities and the nearby airport and would therefore remain a stakeholder in the project.

Caltrans – The SFCJPA and Caltrans maintain regular communications regarding the SAFER Bay project, and SAFER Bay is part of their plans for the Dumbarton Bridge west approach. Caltrans will be initiating a new project for Highway 84 Dumbarton approach using a headquarters award of internal resources to start planning for a Project Initiation Document (PID) The PID starts their process for project approval; after which they can apply for funding for design and construction. Timing for this PID is - project kickoff before June 2023 and completion within a 2-year timeline.

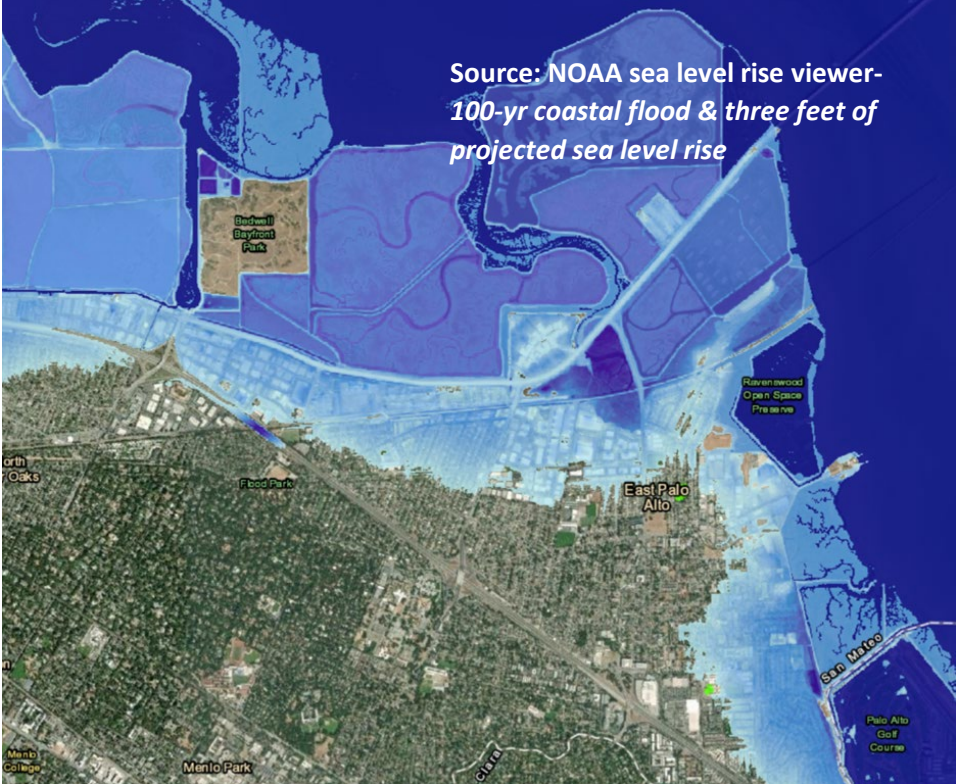
Bay Area Regional Collaboration/MTC/BCDC – The SFCJPA maintains regular communications with the Bay Area Regional Collaboration (BARC), most recently to contribute to an analysis of current bay area shoreline projects: their status, projected costs and timelines, to create a coordinated framework for federal and State funding requests.

Geographical Context: Note that alignments shown are entirely conceptual and are not final anywhere for the SAFER Bay Project.



Screenshot of FEMA Floodplain Map of Menlo Park, East Palo Alto, Palo Alto shoreline areas. (blue is 1% flood)

Potential Sea Level Rise along the Menlo Park, East Palo Alto and Palo Alto Shorelines.



RESOLUTION # 22-12-15-B
RECOGNIZING GARY KREMEN'S SERVICE TO
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

WHEREAS, Gary Kremen has served the on the Board of the San Francisquito Creek Joint Powers Authority since January 2014; and

WHEREAS Gary provided political support and advocacy that enabled the completion of the critical Reach 1 project, protecting the Cities of Palo Alto and East Palo Alto, and

WHEREAS Gary consistently advocated passionately and clearly for the needs of Palo Alto residents, and all community members, particularly those who have been under-represented or historically disenfranchised, and

WHEREAS, Gary catalyzed the evaluation and update of the way the SFCJPA managed its web-based early flood warning community text alert system, ensuring the SFCJPA's practices and systems coordinated with current County-wide alert systems, and

WHEREAS, Gary encouraged frank and meaningful dialog with our watershed partner Stanford University, to ensure projects in the watershed are well-coordinated, and

WHEREAS Gary has kept the well-being of the SFCJPA and its staff in mind through discussions and decisions regarding changes to the members and members agreement, contracts, budgets, internal policies and procedures, staff safety and helped ensure the SFCJPA is on solid footing, and

WHEREAS Gary's high level of engagement and practical insights have enabled him to be a strong and uniquely effective advocate for the interests of all inhabitants of the San Francisquito Creek Watershed;

WE, THE BOARD MEMBERS (and staff) OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, DO NOW RESOLVE to thank and to recognize Director Gary Kremen for his exemplary service to the SFCJPA.

On behalf of the Cities of Menlo Park, East Palo Alto, Palo Alto, the San Mateo County Flood and Sea Level Rise Resiliency District and the Santa Clara Valley Water District (Valley Water):

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

Clerk of the Board/Date

Chairperson/Date

Agenda Item 7.B. - Consultant Agreement for SAFER Bay Project

Background:

On October 24, 2013, the SFCJPA Board authorized the Executive Director to execute a Master Services Agreement (MSA) with the HDR Team, consisting of HDR Inc., ESA Associates and H.T. Harvey, to complete feasibility analysis, design, and environmental documentation for the Strategy to advance Flood protection, Ecosystems and Recreation along the Bay (SAFER Bay) project. A MSA was selected as the appropriate contract vehicle because it provided flexibility for complex projects like SAFER Bay. The MSA does not authorize work or expenditures of funds – this is done through Task Orders that have a not-to-exceed amount. The HDR Team was selected via a public procurement process using the City of Palo Alto's procedures that included a partner review panel and interviews with teams determined to be qualified. A summary of previous Board approved Task Orders under this MSA is provided below with their major focus areas:

- Task Order 1- 2016 Feasibility Study for East Palo Alto and Menlo Park (Funded by the Cities of East Palo Alto and Menlo Park and closed SFCJPA DWR Grant Agreement #4600009955).
- Task Order 2 -2019 Feasibility Study for Palo Alto (Funded by the City of Palo Alto.)
- Task Order 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 (funded under SFCJPA DWR Grant 4600009954 with local match from City of Menlo Park and East Palo Alto). Approximately 50% of Task Order 3 not-to-exceed amount of \$1,290,000.00 has been expended through September 24, 2022.

The proposed Scope of Work for Task Order 4 (TO4) was prepared to execute work under the \$1,000,000 in new funding awarded by the SFBRA. Work is in accordance with the executed contract dated June 28, 2022, supplemented with approximately \$518, 803 in remaining funds for the relevant tasks for TO4 from DWR Grant 4600009954. The TO4 work scope includes engineering, biological, and hydrological study tasks as part of CEQA, and related documentation towards completion of the SAFER Bay project's programmatic CEQA.

Task Order 3 will be closed out, with all work beginning January 2023 moving to Task Order 4.

Discussion:

The SFPJPA Board approved accepting grant funds from the San Francisco Bay Restoration Authority via Resolution No. 22-5-26-B. The approved scope under the SBRA Work Program includes separate contracts with Climate Resilient Communities and Nuestra Casa for community outreach that were approved by the SFCJPA Board on May 25, 2022.

Total costs for the SFBRA Work Program are estimated to be \$1.4M or less, which is less the currently available grant funding of \$1,518,803.

Recommended Action:

Authorize the Executive Director to negotiate and execute Task Order 4 under the approved Master Services Agreement with the HDR Team, in accordance with SFBRA Work Program Approval.



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

RESOLUTION NUMBER 22-12-15-C

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR TO
NEGOTIATE AND APPROVE TASK ORDER #4
FOR
SAFER BAY PROJECT**

RECITALS

Whereas, the SFCJPA Board of Directors unanimously approved Resolution No. 22-5-26-B for the Acceptance of Potential Grant of Funds from the San Francisco Bay Restoration Authority (SFBRA); and

Whereas, on June 28, 2022, a contract was executed between the SFCJPA and SFBRA for \$1,000,000 in funding to further the “Strategy to advance Flood protection, Ecosystems and Recreation along the Bay” (SAFER Bay) Project planning and design, pending an approved Work Program; and

Whereas, a draft Work Program was submitted to the SFBRA on November 8, 2022; and is acceptable to SFBRA, pending receipt of insurance certificate and signed Resolution No. 22-5-26-B and

Whereas, on October 24, 2013, the SFCJPA Board authorized the Executive Director to execute a Master Services Agreement (MSA) with the HDR Team, consisting of HDR Inc., ESA Associates and H.T. Harvey, to complete feasibility analysis, design and environmental documentation for the SAFER Bay Project,

Whereas, Task Order 1 was for East Palo Alto and Menlo Park 2016 Public Draft Feasibility Study and

Whereas, Task Order 2 was funded by the City of Palo Alto for the 2019 Palo Alto Public Draft Feasibility Study and

Whereas, on April 25, 2019, Task Order 3 was approved by the SFCJPA Board to move forward with SAFER Bay work using funding from DWR grant Agreement No. 4600009954 and funding from CalOES and

Whereas, due to funding limitations TO3 work was halted in 2020 and slowed 2021- 2022 to match the current funding from DWR grant, and

Whereas, a proposal for Task Order 4 was submitted to the SFCJPA on October 27, 2022 to close out Task Order 3 to scope work with new funding from SFBRA; and



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

Whereas, Task Order 4 incorporates remaining funding from Department of Water Resources Grant Agreement No. 4600009954 in accordance with approved budget as of September 22, 2022 and invoiced amount as of October 31, 2022; and

Whereas, the estimated cost for Task Order 4 of approximately \$1.4M is within the available funding from SFBRA (\$1,000,000) and remaining funding for applicable tasks from DWR grant agreement No. 4600009954 (\$516,003) that totals \$1,516, 003.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisquito Creek Joint Powers Authority that the Executive Director is authorized to negotiate and sign Task Order 4 for work that is part of and in an amount not to exceed the available funding from the SFBRA and remaining applicable tasks from DWR Grant No. 4600009954 that totals \$1,516, 003.

APPROVED AND ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Date: 12/15/2022

Vice Chairperson

Date: 12/15/2022

Chairperson



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

APPROVED AS TO FORM:

Legal Counsel

Date: 12/15/2022



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MEMORANDUM

TO: Chairman Abrica and Board of Directors for the San Francisquito Creek Joint Powers Authority

CC: Margaret Bruce, Executive Director

FROM: Trisha Ortiz, General Counsel

DATE: December 8, 2022

SUBJECT: Agenda Report on COVID 19 State of Emergency and Brown Act Meeting Rules

Background:

Governor Newsom recently announced that he will lift the COVID-19 State of Emergency on February 28, 2023, which affects relaxed teleconferencing provisions for public meetings subject to the Brown Act. During the pandemic, public agencies have operated under relaxed teleconferencing rules, which facilitated remote attendance of public meetings during a time when public gatherings presented personal and public health risks. Once the Governor lifts the State of Emergency declaration, the traditional rules for teleconferencing, which predate the pandemic, will apply to public meetings. This will create significant changes with respect to Directors' ability to attend public meetings remotely by teleconference (including videoconference platforms like Zoom). Therefore, the Authority should prepare for a return to in-person Board of Directors meetings, with limited exceptions as described further below.

Traditional Teleconferencing Under the Brown Act:

The Brown Act requires that all meetings of a local agency legislative body be open and public and that all persons be permitted to attend and participate.¹ The Brown Act allows for meetings to occur via teleconferencing subject to certain requirements:

¹ Gov. Code § 54953(a).

- The agency must **identify the teleconference location of each legislative body member** that will be participating in the meeting;
- each teleconference location must be **accessible to the public**;
- Members of the public must be allowed to **address the legislative body at each teleconference location**;
- The meeting **agenda must be posted at each teleconference location**; and
- At least a **quorum** of the legislative body must participate from locations within the boundaries of the agency's jurisdiction.²

AB 361: Relaxed Teleconferencing Requirements During a State of Emergency

AB 361, adopted as urgency legislation in 2021 and effective until January 1, 2024, amended the Brown Act to relax teleconferencing requirements during Governor-proclaimed emergencies. The AB 361 relaxed teleconferencing requirements only apply when a Governor-proclaimed emergency exists and either (a) state or local officials have imposed or recommended measures to promote social distancing, or (b) the legislative body determines that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.³ Under AB 361's relaxed teleconferencing provisions, a legislative body may meet via teleconference:

- without a quorum of members physically present;
- without having to post agendas at all teleconference locations; without identifying each teleconference location; and
- without making each teleconference location accessible to the public.

Since the enactment of AB 361, the Board of Directors has been making the required findings every 30 days to utilize the relaxed teleconferencing rules.⁴ However, the Governor has announced his intention to lift the COVID-19 state of emergency on February 28, 2023. At that time, the Board of Directors could no longer make the required findings to meet remotely and would be required to comply with traditional Brown Act teleconferencing rules.

AB 2449: New Teleconferencing Rules for Limited Circumstances

The legislature adopted AB 2449 to provide local agency legislative bodies an additional, but very limited, teleconferencing option starting January 1, 2023. However, under AB 2449, the Authority

² Gov. Code § 54953(b).

³ Gov. Code § 54953(e)(1).

⁴ Gov. Code § 54953(e)(3).

must have a physical meeting space because a quorum of members must participate in-person from a singular location.⁵

AB 2449 is not intended to allow for frequent teleconferencing under relaxed requirements, but rather provides an option for a member of the legislative body to participate remotely under limited very circumstances, without following the traditional Brown Act teleconferencing rules. Specifically, AB 2449 only allows for remote participation by legislative body members in two specified circumstances: (1) “just cause” or (2) “emergency circumstances.”

“Just Cause” is defined as:

- a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation;
- a contagious illness that prevents a member from attending in person;
- a need related to a physical or mental disability not otherwise accommodated by the agency’s procedures for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the Americans with Disabilities Act; or
- travel while on official business of the legislative body or another state or local agency.⁶

In order to participate remotely for just cause, a Director must notify the Board “at the earliest opportunity possible, including at the start of a regular meeting,” and provide a general description of their circumstances supporting the need to appear remotely.⁷ A Director may only appear remotely due to “just cause” twice per year.

“Emergency Circumstances” are defined as a physical or family emergency that prevents a member from attending a meeting in person.⁸ A legislative body member should request to participate remotely at a meeting due to emergency circumstances as soon as possible, and a separate request is required for each meeting in which they seek to participate remotely.⁹ The legislative body considers the request and if the legislative body does not approve it, the member may not participate via teleconference under AB 2449 at that meeting. If the request does not allow sufficient time to place proposed action on the posted agenda for the meeting, the legislative body may take action on the request at the beginning of the meeting.¹⁰

⁵ Gov. Code § 54953(f)(1).

⁶ Gov. Code § 54953(j)(2).

⁷ Gov. Code § 54953(f)(2)(A)(i).

⁸ Gov. Code § 54953(j)(1)

⁹ Gov. Code § 54953(f)(2)(A)(i)(I).

¹⁰ Gov. Code §§ 54953(f)(2)(A)(ii)(II).

Under AB 2449, Directors may not participate solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the legislative body within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.¹¹

AB 2449 specifies public access requirements for noticing, agendas, and conducting public meetings by teleconference. Meeting agendas must identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in option, via an internet-based service option, and at the in-person location of the meeting.¹² The legislative body may not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.¹³

For a Director participating remotely under AB 2449, the participation must be through both audio and visual technology so that the public can remotely hear and visually observe them.¹⁴ Members of the legislative body participating remotely pursuant to AB 2449 must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.¹⁵

Conclusion

In sum, utilizing AB 2449 only supports remote participation in a public meeting a few times per year and will result in new Brown Act compliance burdens for the Directors who wish to appear remotely. Additionally, Authority staff will need to track requests for remote attendances, prepare teleconferencing technology for the meeting, and facilitate remote public access to the meeting, which is not required when the meeting is held under traditional Brown Act rules. Because AB 2449 does not authorize the full Board of Directors to conduct meetings via teleconferencing and the Governor has announced his intention to lift the state of emergency on February 28, 2023, the Authority should prepare for returning to traditional Brown Act meeting rules in March 2023.

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¹¹ Gov. Code § 54953(f)(3).

¹² Gov. Code § 54953(f)(1)(C).

¹³ Gov. Code § 54953(f)(1)(E).

¹⁴ Gov. Code § 54953(f)(2)(C).

¹⁵ Gov. Code § 54953(f)(2)(B).

AGENDA ITEM 8.B. – Proposed Provisional Regular Meeting Schedule for Calendar Year 2023

Convening at 3:30pm on the 4th Thursday of each month, except for a recess month in August, has been the SFCJPA’s regular meeting schedule.

During the Governor’s declared COVID health emergency, meetings have been held via Zoom. With the end of the declared health emergency, the SFCJPA will return to in-person board meetings, following Brown Act compliant meeting requirements, beginning March 2023. The meeting dates are provisional until we can confirm venues with our member agencies for these dates. We will bring updates to the Board as venues are confirmed.

The proposed regular meeting schedule for calendar year 2023 is as follows:

Meeting Date	Meeting Location
January 26, 2023	Via Zoom
February 23, 2023	Via Zoom
March 23, 2023 (provisional)	tbd
April 27, 2023 (provisional)	tbd
May 25, 2023 (provisional)	tbd
June 22, 2023 (provisional)	tbd
July 27, 2023 (provisional)	tbd
August 24, 2023	PROPOSED SUMMER RECESS
September 28, 2023 (provisional)	tbd
October 26, 2023 (provisional)	tbd
November 16, 2023 (provisional)	tbd
December 21, 2023 (provisional)	tbd

Agenda Item 8.A.

Executive Director’s Report, December 15, 2022

Project Updates

Reach 2 Project -

Updated Project Costs and Funding

Together with our project partners at Valley Water and the Army Corps, we are updating the anticipated Reach 2 project costs and project funding tables. Staff suggests a Board Study Session in February where staff and project partners can present comprehensive updated project costs and funding information.

Good News!

Prop. 1 IRWM grant program - On December 6 we were notified our request for Bay Area Bay Area Integrated Regional Water Management Plan (IRWM) Proposition 1, Round 2 solicitation was recommended for funding in the amount of \$3.7M. The amount is provisional and may change based on eligibility of the final project list. See details at: <http://bayareairwmp.org/list-of-prop-1-round-2-recommended-projects/>

The request for funding was submitted on October 10, 2022, to the San Francisco Bay Estuary Partnership (SFEP), grant manager for Bay Area IRWM, and included updated costs, schedule, information about benefits to disadvantaged communities, tribal outreach, and archaeological testing. This and other information will be provided in more detail in February.

Summary of Reach 2 Project Elements and Status (new details in red)

Reach 2 Elements	Design	Permitting	Rights of Way	Utility Relocations	Construction Funding/costs
Status	50% - 90%	Work on potential optimization of widening sites to minimize impacts to trees, creek channel and property owners has been completed and recommendations have been reviewed and	Coordination ongoing between SFCJPA and Valley Water re. rights of way process. Additional right-of-way work will be necessary for future repair/replacement	Utility mapping underway.	We will bring a comprehensive update to the Board in February.

San Francisquito Creek Joint Powers Authority
December 15, 2022, Executive Director’s Report

Reach 2 Elements	Design	Permitting	Rights of Way	Utility Relocations	Construction Funding/costs
		accepted by Valley Water.	of existing top-of-bank features in Palo Alto. Letters to property owners have been mailed, and follow-up calls, and visits are underway.		
This Month’s Update	No new design updates	Draft permit documents submitted on July 13. RWQCB has provided comments on the draft materials. Otherwise, no new information on Permits. We are now in contract with EMC, Inc. who will begin SEIR field investigations in January.	32 PTES out of 47 needed (widening sites and top of bank) Valley Water real estate team has completed valuation of PTES and are offering property owners some monetary incentives for PTES. Will be mailed out before the end of the year.	No new information	The round 2 DWR Prop 1 grant was awarded for channel widening work in the amount of \$3.7M.
For Next Month (Jan. 2023)	Top of bank 30% design to be prepared. Widening design to be finalized if Site 3 wall type is decided.	Initiate field investigations for SEIR	VW will continue easement acquisition legal process for Santa Clara County parcels. JPA will initiate easement acquisition process (research, outreach and identifying next steps) for R2 parcels in SM Co.		Staff will continue to explore new funding opportunities, including plans for coordinated outreach to the offices of federal and state elected officials.
Potential Issues (& opp’s)	Exploring Site 5 designs w/ smaller	Addition of fish features (as part of the option to	Negotiating with many private property owners	Overhead power lines – or other	Addition of fish features and potential wall

Reach 2 Elements	Design	Permitting	Rights of Way	Utility Relocations	Construction Funding/costs
	<p>project footprint. Widening on both sides at Site 3 being considered at request of property owners.</p> <p>USACE analysis of the additional engineering options will delay the overall process and add costs.</p>	<p>widen on both sides at Site 3) could increase project footprint and costs</p>	<p>for top of bank as well as for channel widening sites.</p>	<p>utilities - could impact construction methods and costs. Underground utilities may limit design options.</p>	<p>change may cause the need for USACE to rerun hydraulic modeling and economics.</p>

Project Elements Schedule

Four different, but compounding events have resulted in a forward shift in the project schedule:

- 1) The addition of the Top-of-Bank element to both sides of the channel in Palo Alto and East Palo Alto,
- 2) The channel widening design considerations at Site 3,
- 3) As a consequence of site 3 design considerations, changes to the USACE project schedule, and
- 4) Palo Alto’s change in the Newel Road bridge schedule due to the timing of funding.

We now envision the project construction to be as follows:

- Newell Road Bridge replacement in summer 2024
- Channel widening and top-of-bank work in summer 2024
- Pope/Chaucer Bridge replacement in summer 2025

San Francisquito Creek Joint Powers Authority
December 15, 2022, Executive Director’s Report

Milestone	By Dec '22	By Jan '23	By Mar '23	Calendar year Construction/ Completion
Determination of Site 5 action (in progress)	done			
USACE FSCA and Feasibility Study				
Acquire land easements				
Permits acquired				
Funding agreement				
O&M agreement				
Final Design				
Bid and Award				
Construction of Newell Bridge				2024
Construction of Widening Sites				2024
Construction of Pope Chaucer Bridge				2025

SAFER Bay

Our contracted Community-based Organization partners, Climate Resilient Communities and Nuestra Casa, convened the initial citizen’s advisory committee on December 6, 2022. This event was well-attended, with approximately 35 people attending in person or submitting comments by email. A meeting summary will be prepared by our community-based partners.

On December 5 we were notified that our application to the National Fish and Wildlife Foundation was not successful. There were over 450 applications for this nationally competitive grant.

Forward view of upcoming agendas

January 2023 (26 th)	Comprehensive Plan Presentation by Stanford University Annual Board Calendar Board Officer Appointments
February	Reach 2 Cost & Funding Study Session Updates to JPA Members Agreement (tentative)
March- Return to in person	
April	Draft SFCJPA operations budget for FY2023-2024

SFCJPA REGULAR BOARD MEETING

DECEMBER 15, 2022



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

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 MEETING MINUTES: NOVEMBER 17, 2022.

4. PUBLIC COMMENT: INDIVIDUALS MAY SPEAK ON A NON-AGENDIZED TOPIC FOR UP TO THREE MINUTES ON A TOPIC WITHIN THE SFCJPA'S JURISDICTION.

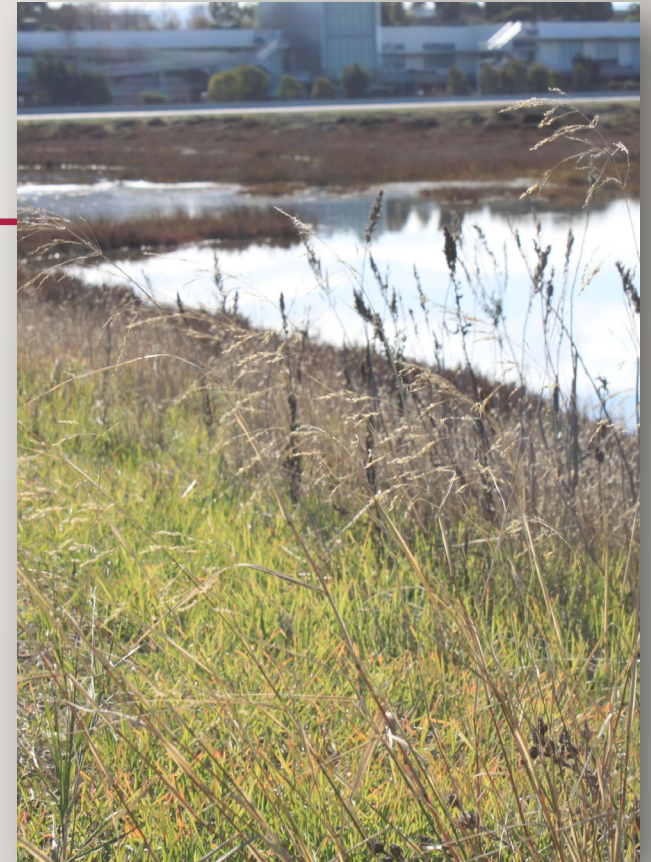


AGENDA ITEM 5 – CONSENT AGENDA

5.A. Consider adopting a resolution (22-12-15-A) reconsidering the circumstances of the COVID-19 state of emergency and making findings to authorize public meetings to be held via teleconferencing pursuant to Government Code Section 54953(e).

5.B. 2022 Updates to Employee Handbook

5.C. 2022 Updates to Board Handbook



AGENDA ITEM 6

STUDY SESSION ON SAFER BAY PROJECT

DISCUSSION AND POSSIBLE ACTION OR DIRECTION TO STAFF

AGENDA ITEM 7 – ACTION ITEMS

7.A. CONSIDER RESOLUTION 22-12-15-B

RECOGNITION OF AND APPRECIATION FOR
DIRECTOR GARY KREMEN'S SERVICE TO THE
SFCJPA BOARD OF DIRECTORS



AGENDA ITEM 7 – ACTION ITEMS

**7.B. CONSIDER ADOPTING RESOLUTION
22-12-15-C AUTHORIZING THE
EXECUTIVE DIRECTOR TO NEGOTIATE
AND SIGN TASK ORDER #4 WITH HDR.**

AGENDA ITEM 8 – INFORMATION ITEMS

8.A. UPDATE ON BROWN ACT AND COVID
STATE OF EMERGENCY



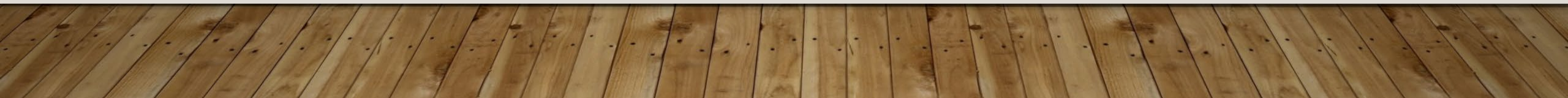
AGENDA ITEM 7 – ACTION ITEMS

7.B. ADVICE OF PROVISIONAL REGULAR MEETING SCHEDULE FOR CALENDAR YEAR 2023

PROPOSED 2023 MEETING SCHEDULE

JANUARY 26	JULY 20
FEBRUARY 16	AUGUST 24 (RECESS – NO MEETING)
MARCH 16	SEPTEMBER 21
APRIL 20	OCTOBER 19
MAY 18	NOVEMBER 16
JUNE 15	DECEMBER 14* (SECOND THURSDAY)

PLEASE NOTE: DATES ARE PROVISIONAL UNTIL VENUES ARE CONFIRMED FOR MEETINGS BEGINNING IN MARCH 2023. WE WILL UPDATE THE BOARD WHEN VENUES ARE CONFIRMED.



AGENDA ITEM 8 – INFORMATION ITEMS

8.C. EXECUTIVE DIRECTOR'S REPORT

PROJECT UPDATES:

- REACH 2
- SAFER Bay

EMERGENCY PREPAREDNESS



AGENDA ITEM 9.

BOARD MEMBER COMMENTS

and ANNOUNCEMENTS

Board members may share news, updates, and announcements and may request items for future agendas.





SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

Agenda Item 10

Adjournment

Thank you, everyone.