

**DRAFT POTENTIAL UPDATES AND REVISIONS**

Underline text represents additions / ~~strikethrough text represents deletions~~

JOINT POWERS AGREEMENT  
CREATING THE  
SAN FRANCISQUITO CREEK  
JOINT POWERS AUTHORITY

Dated  
as of

May 18, 1999

Amended and Restated  
as of

January 22, 2020

JOINT POWERS AGREEMENT

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SAN FRANCISQUITO CREEK  
JOINT POWERS AGREEMENT

This 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 Control 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 California Government Code sections 6500-6515, et. seq. (the “JPA Law”) permits ~~ing~~ two or more local public entities by agreement to jointly exercise any power common to them. ~~authorizes the Member Entities to enter in this San Francisquito Creek Joint Powers Agreement (“Agreement”).~~

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: San Francisquito Creek (“Creek”) and the San Francisco Bay shoreline. Each Member Entity desires to join together with the other Member Entities for the primary purpose of managing the joint contribution of services and providing policy direction on issues of mutual concern relating to the San Francisquito Creek (“Creek”), including bank stabilization, channel clearing and other Creek maintenance, planning of flood control measures, preserving and enhancing environmental values and instream uses, and emergency response coordination.

C. The governing board 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 reflect the current roles and responsibilities of the Authority and its Member Entities, 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, and that it is participating as a member of the public entity created by this Agreement.

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 ~~Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) (as amended from time to time,~~ 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. ~~The Authority shall require indemnification on behalf of itself and its members as determined by its Board of Directors from entities with which it enters into agreements.~~ 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, ~~city or county Member Entity specified in this Agreement~~ 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. Protect communities and agencies from losses resulting from storms, tides and projected sea level rise in and around the San Francisquito Creek watershed and floodplain and nearby areas of the San Francisco Bay shoreline. ~~To facilitate and perform bank stabilization, channel clearing and other Creek maintenance.~~

b. Within these areas, create recreational opportunities and utilize a watershed approach to maintain, restore, and enhance the environment. ~~To plan flood control measures for the San Francisquito Creek watershed.~~

c. Provide emergency response agencies, other agencies, and the general public with regional information that enhances their ability to communicate about and respond to threats. ~~To take actions necessary to preserve and enhance environmental values and instream uses of San Francisquito Creek.~~

d. Secure and administer financial and staff resources in a transparent manner to implement these purposes. ~~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. DEFINITIONS. In this Agreement unless the context otherwise requires:

a. ~~“Administrative Cost” means the amount charged to each Member Entity by the Authority for the Authority’s general operating costs and expenses.~~

b. ~~“Authority” means the San Francisquito Creek Joint Powers Authority.~~

e. ~~“Board” or “Board of Directors” means and is the governing body of the Authority constituted as set forth in Paragraph 10 of this Agreement.~~

d. ~~“JPA Law” means Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended from time to time.~~

e. ~~“Member Entity” means and shall include each public agency (as defined in Section 6500 of the JPA law), which is a party to this Agreement.~~

f. ~~“Creek” means and is the San Francisquito Creek.~~

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.

4. TERM OF AGREEMENT. This Agreement became effective as of May 18, 1999, and continues in full force until terminated in accordance with Paragraph ~~17~~20.

5. POWERS OF THE AUTHORITY. The Authority shall have all powers common to the Member Entities and such additional powers granted to it by law. 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 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. Establish financing districts and issue bonds and issue other forms and evidence of indebtedness and grant security interests, as provided by law; ~~Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;~~
- h. Acquire, real and personal property (including partial interests therein), including a public capital improvement, by purchase, gift, leases or eminent domain and to hold, own, manage, maintain and dispose of such property;
  - i. Hire staff, and aAssign, 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
  - j. Exercise all other powers and carry out other duties as 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.

~~7. 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 Paragraph 11.e by the Authority Board of Directors consistent with a budget approved by independent action of each Member Entity's governing body.~~

6. PROJECT PARTICIPATION APPROVAL AUTHORITY. Member Entities shall have the right to determine independently whether to participate in any capital improvement project. Authority approval of its No- capital improvement project shall be subject to it securing sufficient funding, as well as the necessary property rights and regulatory permits. ~~approved by the Authority unless and until Member Entities sufficient to fund the project fully have approved the project by independent action of each Member Entity's governing body.~~

7. MEMBERSHIP. New Member Entities may be added to the Authority by amending this Agreement, as described in Paragraph 20; and Member Entities may withdraw or be expelled, as described in Paragraphs 15 and 16.

a. ~~— Voting Members. All Member Entities shall be Voting Members.~~

b. ~~— Associate Membership.~~

~~(1) — Nonprofit corporations and academic and charitable organizations located or operating within the jurisdictional limits of a Member Entity shall be eligible to join the Authority as Associate Members, subject to the approval of the Board of Directors.~~

~~(2) — Associate Members shall be entitled to attend all meetings of the Board of Directors and participate in discussion of all items of business but shall not be entitled to vote or participate in formal debate of a motion on the floor. Further, no representative of an Associate Member may become an officer or director of the Authority.~~

~~(3) — For purposes of this Agreement, only Voting Members shall be referred to as "Member Entities."~~

8. BOARD OF DIRECTORS.

a. Directors. There shall be a Board of Directors 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 or participate in a closed session 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 ~~— Each director~~ shall be designated by its~~the~~ governing board of the respective Member Entity. The alternate directors shall be appointed by the Director designated by a Member Entity in the absence of designation of the alternates by that ~~a~~ Member Entity.

b. Compensation. Directors and alternate directors are not entitled to compensation. 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 of Directors as specified in Paragraph ~~810~~;

(2) Approval of an amendment to this Agreement as specified in Paragraph ~~2023~~;

~~(3) Approval of actions pursuant to Paragraph 7, above;~~

and (3) Approval of project participation as specified in Paragraph ~~68~~;

(4) Approval of the Member Entity's annual contribution to the operating budget of the Authority as specified in Paragraph ~~1214~~.

9. 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 10 ~~12~~. 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 a majority one-third of Board members. ~~the Member Entities.~~

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 Secretary shall draft ~~keep or have kept~~ minutes of each regular and special meeting of the Board, which shall be considered for approval by the Board at an upcoming regular meeting. ~~As soon as possible after each meeting, the Secretary shall have a copy of those minutes forwarded to each member of the Board.~~

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 Board. Any action of the Board shall require a vote of a majority of the ~~voting members of the~~ Board.

10. 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 year, unless that is delayed by an action of the Board. The term of office for Chair, Vice-Chair, and Secretary will be determined by a vote of the Board. ~~is one year.~~ The officers shall assume the duties of their offices upon formation of the Authority or as appropriate. If either the Chair, Vice-Chair, or Secretary ceases to be a member of the Board, the resulting vacancy shall be filled at the next regular meeting of the Board held after the vacancy occurs.

c. Compensation. Officers are not entitled to compensation. 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, including the appointment of a general counsel for the Authority, and other legal counsel to advise or represent the Authority, as appropriate.

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

12. BUDGET. The Board shall adopt an annual operating budget, which shall be separate from the Authority capital projects budget. The operating budget ~~which~~ shall include the proposed contribution by each Member Entity ~~'s proposed contribution~~ for the fiscal year and may include other sources of income. The operating budget shall not be effective unless and until ~~it is approved by~~ the governing body of each Member Entity ~~that~~ has approved that Member Entity's a 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.

13. 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 required by State law. The Authority shall pay the cost of the financial audit from its annual operating budget ~~and charge the cost against the Member Entities~~ in the same manner as other administrative costs.

14. ESTABLISHMENT AND ADMINISTRATION OF FUNDS.

a. Accountability. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the establishment and administration of funds, 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 ~~require the Board to~~ procure, carry, and maintain, in full force and effect at all times during the term of this Agreement, errors and omissions insurance ~~and or a fidelity~~ bonds as deemed appropriate to protect the Authority, its members of the Board, officers, employees and agents.

d. Depository and Auditor Controller. Fiscal Agent. The Board Authority shall designate one of its officers or employees to perform all acts required by Government Code Sections 6505 (regarding an annual audit), 6505.1 (regarding charge of and access to property), and 6505.5 (regarding the depository and custodian of money). ~~a fiscal agent who shall be responsible for the administration of all funds and accounts. The fiscal agent may be one of the Member Entities or an officer or employee of one of the Member Entities, subject to the approval of the selected Member Entity.~~

~~17. ADMINISTRATIVE COST. In connection with preparation of the Annual Budget pursuant to Paragraph 14, above, the Board may establish the Administrative Costs of the Authority, if any, for each fiscal year and shall propose a formula for allocating these Administrative Costs among Member Entities for each fiscal year, which shall be approved by the Member Entities as a part of the budget.~~

15. 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 ~~22~~25 with respect to any event or occurrence taking place before the Member Entity withdraws.

16. EXPULSION. The Authority may expel a Member Entity from the Authority by a ~~four-fifths (4/5) three-fourths (3/4)~~ four-fifths (4/5) vote of the Board of Directors 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. Any Member Entity that has been expelled shall remain subject to the provisions of Paragraph ~~22~~25 with respect to any event or occurrence taking place before the Member Entity was expelled.

17. TERMINATION AND DISTRIBUTION.

a. Termination. This Agreement shall continue until terminated. This Agreement may be terminated by the written consent of ~~four-fifths (4/5) two-thirds (2/3)~~ 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~~ ~~After completion of the Authority's purposes,~~ 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.

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

19. 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.

20. AMENDMENTS. This Agreement may be amended by approval of the Authority Board and approval by each and every ~~a unanimous vote of the~~ Member ~~Entities of the~~ Authority acting through ~~its~~ their governing ~~bodyies~~. 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.

21. 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.

22. 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 officer, and staff member 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.

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

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

25. 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.

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

DATED: \_\_\_\_\_, 2020

CITY OF MENLO PARK

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

ATTEST:

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

DATED: \_\_\_\_\_, 2020

CITY OF PALO ALTO

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

ATTEST:

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

DATED: \_\_\_\_\_, 2020

CITY OF EAST PALO ALTO

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

ATTEST:

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

DATED: \_\_\_\_\_, 2020

SANTA CLARA VALLEY WATER DISTRICT

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Title)

ATTEST:

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

DATED: \_\_\_\_\_, 2020

SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY CONTROL DISTRICT

By: \_\_\_\_\_  
Board Chair

ATTEST:

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