San Francisquito Creek Multi-Agency Operational Plan and Assistance Agreement (VERSION 12142015)

This San Francisquito Creek Multi-Agency Operational Plan and Assistance Agreement (Agreement) is made and entered into by those organizations who own or manage property or have jurisdictional responsibilities to provide pre-incident planning and mitigation, incident response, recovery and public information regarding flooding along the San Francisquito Creek (SFC).

All of said organizations may herein be referred to individually as "Party" or collectively as the "Parties."

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree to provide support to the Multi-Agency Coordination (MAC) Operational Plan and mutual assistance support in times of emergency along the SFC, as follows:

ARTICLE I.
PURPOSE

The Agreement outlines support, responsibilities and actions to develop and maintain an Operational Plan that identifies the actions required before, during, and after an incident along the SFC. Secondly the Agreement provides structure on how sharing resources in response and recovery can be a reimbursable expense. This Agreement pertains to resources such as public works or those not already covered by existing public safety (law, fire, emergency management, etc.) agreements.

ARTICLE II.
DEFINITIONS

A. Agency Representative – An employee or officer of a Stakeholder who is authorized to: (1) request assistance; (2) offer assistance; (3) refuse to offer assistance or (4) withdraw assistance under this Agreement.

B. Agency Coordinator – An employee of Stakeholder authorized to represent the agency in discussion of plans and procedures and has ability to affect Agency operations to support mitigation, preparedness and planning

C. Subject Matter Expert – An employee of a Stakeholder authorized to represent the agency in discussions related to evaluating risk that considers storm forecasts, tide levels, ground saturation, creek level trending, and other storm and/or flooding hazards.

D. Multi-Agency Coordination Group or MAC Group - A group of agencies convened to establish priorities among multiple competing incidents, provide coordinated decision making for resource allocation among cooperating agencies, harmonize agency policies, and offer strategic guidance and direction to support incident management activities. MAC Groups convene to prioritize incidents for the allocation of scarce resources.

E. Emergency – A natural or human caused event or circumstance causing, or imminently threatening to cause impact to the operations of a Party utility’s system, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, flood, severe weather, earthquake, civil disturbance, riot, explosion, drought, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, intentional acts, sabotage, declaration of war, or other conditions which are , or are likely to be
beyond the control of the services, personnel, equipment, and facilities of a Party and requires
mutual assistance.

F. **Stakeholder** – Cities, counties and other responding organizations that border the SFC and are
subject to the impacts of flooding along the creek, including the City of East Palo Alto, the City of
Menlo Park, City of Palo Alto, County of San Mateo, County of Santa Clara, Menlo Park Fire
Protection District, Santa Clara Valley Water District (SCWWD), San Francisco Creek Joint
Powers Authority (SFCJPA), and Stanford University.

G. **Non-Assisting Party** - A Stakeholder that does not provide assistance during a Period of
Assistance under this agreement and plan.

H. **Requesting Party**– A Stakeholder who requests assistance under this agreement and plan.

I. **Assisting Party** – A Stakeholder that responds to a request for assistance under this agreement
and plan.

J. **Operational Plan** - An Operational Plan will be established to describe the actions prescribed by
the Parties of this agreement on actions taken before, during and after an emergency to carryout
coordinated emergency preparedness, response and recovery. The plan will be reviewed annually
by the Party’s and updates made as required. See Article IV for more details.

K. **Period of Assistance** – A specified period of time when an Assisting Party assists a Requesting
Party. The period commences when personnel, equipment, or supplies depart from Assisting
Party’s facility and ends when the resources return to their home facility (portal to portal). All
protections identified in the Agreement apply during this period. The specified Period of Assistance
may occur during response to or recovery from an Emergency.

L. **National Incident Management System** (NIMS) - A national, standardized approach to incident
management and response that sets uniform processes and procedures for emergency response
operations.

M. **Standardized Emergency Management System** (SEMS) - A standardized approach to field
command and jurisdictional management and response set forth by State of California Code of
Regulations for multi-agency or multi-jurisdictional response to an emergency.

**ARTICLE III.**

**ADMINISTRATION**

The administration of maintaining this Agreement and the Operational Plan will be provided by the City
of Palo Alto with input and recommendations of the Parties. Annually the Agreement and Operational
Plan will be reviewed prior to the onset of winter storms, after response to an incident, or following
exercises that test the Agreement and Operational Plan. Modifications for changes will be identified
through consensus of the Authorized Representatives of the Parties.

**ARTICLE IV.**

**OPERATIONAL PLAN**

A. During non-emergency times, preparedness activities will include review and update of the
Operational Plan. This can be accomplished through discussion based activities, such as
workshops, seminars, tabletop exercises, and other Homeland Security Exercise and Evaluation Program methods.

B. The purpose of the Operational Plan is to: (i) provide overarching guidance on how and when to activate a MAC for coordination purposes; (ii) suggest levels of activation of the MAC Group; (iii) suggest participants in each level of MAC activation and their decision authority, means and methods of collaborative planning, preparedness, and response activities; and (iv) recognize that it is a document that will change over time, from experience and updates post incident. Changes can be approved among the designated Agency Coordinators.

C. Consistent with SEMS and NIMS, the Operational Plan supports the concepts and operations identified in guidance to form and integrate the use of a MAC Group.

D. Each Party will provide contact information for each position identified in the Operational Plan, including Agency Representative, Agency Coordinator, Subject Matter Expert and public information officer.

ARTICLE V.
REQUESTS FOR ASSISTANCE

In general, assistance will be in the form of resources, such as equipment, supplies, and personnel. Assistance shall be given only when Assisting Party determines that its own needs can be met while rendering assistance. The execution of this Agreement shall not create any duty to respond on the part of any Party hereto. A potential Assisting Party shall not be held liable for failing to provide assistance. A potential Assisting Party has the absolute discretion to decline to provide any requested assistance.

A. Party Responsibility - Each Party shall identify an Agency Representative, Agency Coordinator, and alternates; provide contact information to ensure each Party can be contacted at all times. Such information shall be updated annually or as changes occur.

B. Request - In the event of an Emergency, each Party’s Agency Representative may request mutual aid and assistance from other Parties. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies shall also be memorialized in writing and submitted to the participating Party as soon as practicable. Requests for assistance shall be directed to the Agency Representative of the Assisting Party.

C. Response to a Request for Assistance – The Parties are not obligated to respond to a request. After a Party receives a request for assistance, the Agency Representative evaluates whether or not to respond, whether resources are available to respond, or if the request does not compromise any ability or capacity to respond to calls for service within its own jurisdiction. When request for assistance is received, the Agency Representative will promptly advise of the extent of response, provide whatever personnel, equipment, and facilities are available without jeopardizing the safety of persons or property within its jurisdiction.

D. Discretion of Assisting Party’s Agency Representative – Execution of this Agreement does not create any duty to respond to a request for assistance. When a Party receives a request for assistance, the Agency Representative shall have sole and absolute discretion as to whether or not to respond, or the availability of resources to be used in such response. A Party's decisions on the availability of resources shall be final.
ARTICLE VI.
MUTUAL ASSISTANCE RESPONSE COORDINATION

When providing mutual assistance under this Agreement, the Requesting Party and Assisting Party shall be organized and shall function under the Standard Emergency Management System and National Incident Management System protocols and procedures.

A. **Personnel** – Assisting Party retains right to identify its personnel who will participate and the resources that will be made available, if any.

B. **Employment Status** - The Assisting Party’s personnel shall not be deemed employees of Requesting Party and vice versa.

C. **Control** – The Assisting Party will provide a supervisor to oversee deployed personnel. Consistent with the NIMS Incident Command System the supervisor shall coordinate response activities and follow direction with the designated supervisor(s) of the Requesting Party(s). The Assisting Party’s designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.

D. **Safekeeping of Resources** - The Requesting Party shall be responsible for the safekeeping of the resources provided by the Assisting Party. Whenever practical, the Requesting Party shall make arrangements for feeding and/or assisting all personnel, and for fueling, servicing, and repair of equipment unless the Assisting Party agrees in writing that these arrangements are not necessary. As a measure of personal preparedness, Assisting Party personnel will deploy to be self-sufficient for up to 72 hours.

E. **Insurance** - Each Party shall be responsible to provide at its sole expense sufficient insurance for its entity.

F. **Worker’s Compensation** - Each Party shall provide, at its sole expense, the required worker’s compensation insurance coverage necessary for its own employees. It is recognized that at such times as one Party provides aid to another Party under the terms of this Agreement, the employees of the Assisting Party may claim to have become special employees on a temporary basis of the Requesting Party. Should any such claim result in any worker’s compensation claim being asserted, it is hereby agreed that each such claim shall be the responsibility and liability of the Assisting Party as general employer to process, defend, and pay, if necessary.

G. **Return of Resources** – When the Assisting Party’s personnel, equipment, or facilities are no longer required, or when the Assisting Party advises that the resources are required within their own jurisdiction, the Requesting Party shall immediately arrange for the return of those resources within 24 hours.

H. **Right to Withdraw Resources** - The Assisting Party’s Agency Representative retains the right to withdraw some or all of its resources at any time for any reason in the Assisting Party’s sole and absolute discretion. Notice of intention to withdraw must be communicated to the Requesting Party’s Agency Representative as soon as is practicable under the circumstances.

ARTICLE VII.
COST REIMBURSEMENT
Unless otherwise mutually agreed in whole or in part by both the Requesting and Assisting Parties in the form of a separate written agreement, the Requesting Party shall reimburse the Assisting Party for all reasonable direct, indirect, administrative and contracted costs of that the Assisting Party incurred during the specified Period of Assistance. Costs for personnel, equipment, material, and other expenses shall be based upon standard rates applicable to Assisting Party’s internal operations. Payment shall be made within sixty (60) days after receipt of a detailed invoice. Payment may be delayed if agreed upon by the Requesting and Assisting Parties.

A. Personnel – Requesting Party shall reimburse the Assisting Party full costs equal to the employee’s applicable salary or hourly wage plus fringe benefits and overhead, and consistent with Assisting Party’s collective bargaining agreements or other conditions of employment.

B. Equipment - Requesting Party shall be responsible for costs for use of equipment, such as construction equipment, vehicles, tools, pumps, and generators at the Assisting Party’s current equipment rate, including, but not limited to, rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Assisting Party as soon as is practicable.

C. Supplies - Requesting Party shall reimburse the Assisting Party in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. Other supplies and reusable items that are returned to the Assisting Party in a clean, damage-free condition shall not be charged to Requesting Party; otherwise, they shall be treated as expendable supplies. Requesting Party shall fully reimburse the Assisting Party for the repair cost resulting from any damage to the supplies, equipment and materials up to their replacement costs.

D. Payment Period – The Assisting Party shall provide an itemized bill to the Requesting Party for all expenses incurred by the Assisting Party while providing assistance under this Agreement. The Requesting Party shall send the itemized bill not later than (90) ninety dates following the end of the Period of Assistance. The Assisting Party may request additional periods of time within which to submit the itemized bill, and Requesting Party shall not unreasonably withhold consent to such request. The Requesting Party agrees to reimburse the Assisting Party within 60 days from receipt of an invoice for assistance provided under this Agreement. The Requesting Party may request additional periods of time within which to pay the itemized bill, and Assisting Party shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one-year after the date a final itemized bill is submitted to the Requesting Party.

E. Records - When mutual assistance is provided, the Requesting and Assisting Parties will keep account records of the personnel, equipment, mileage, and materials provided as required by Federal and State law, the California Disaster Assistance Act, and FEMA guidelines. The Requesting and Assisting Parties shall have access to the other’s records for this purpose.

ARTICLE VIII.
ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, those Parties may seek a judgment and award consistent with such comparative fault. The Parties expressly waive pro rata allocation of liability under Government Code Section 895.6.

ARTICLE X.
SIGNATORY INDEMNIFICATION AND IMMUNITIES

This Agreement shall in no way abrogate or waive any of the immunities available under Federal, State, and local law and regulations, including but not limited to the California Emergency Services Act, Government Code sections 8655 et seq.

Requesting Member shall assume the defense of, fully indemnify and hold harmless the Assisting Member, its elected and appointed officials of the Assisting Member, officers, employees, agents or contractors from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from the Assisting Member’s work hereunder, including, but not limited to, negligent or wrongful use of equipment, supplies or personnel provided to the Requesting Member or faulty workmanship or other negligent acts, errors or omissions by the Assisting Member, or by personnel provided to Requesting Member, except for those claims, loss, damage, injury and liability that arise from gross negligence of the Assisting Party.

Notwithstanding paragraph above, in cases where Parties agree in writing to a joint defense, Parties may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of Parties. Joint defense counsel shall be selected by mutual agreement of said Parties. Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts. Parties further agree that no Party may bind the others to a settlement agreement without the written consent of the others.

To the maximum extent permitted by law, Requesting Member waives and releases the Assisting Member, its governing body members, officers, employees, agents or contractors from any and all liability to the Requesting Member, its officers, employees or agents for any loss, damage, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, and whether or not known or suspected, which may arise out of any assistance provided to Requesting Member under this Agreement, except for those claims, loss, damage, injury and liability that arise from gross negligence of the Assisting Party.

ARTICLE XI.
NOTICE

Each Party hereto shall give to the others prompt and timely written notice of any claim made or any suit instituted coming to its knowledge, which in any way, directly or indirectly, contingently or otherwise, affects or might affect them, and each Party shall have the right to participate in the defense of the same, as it considers necessary to protect its own interests.

ARTICLE XII.
WITHDRAWAL

Any Party may withdraw from this Agreement, with or without cause, upon delivery of one-hundred twenty (120) days prior written notice to the City of Palo Alto.
ARTICLE XIII.
MODIFICATION

No provision of this Agreement may be modified, altered or rescinded by individual Parties to the Agreement. Modifications to this Agreement require a consensus among the Parties in the form of a written amendment.

ARTICLE XIV.
SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

ARTICLE XV.
PRIOR AGREEMENTS

To the extent that prior agreements among signatories to this Agreement for mutual assistance are inconsistent with this Agreement, such agreements are hereby superseded.

ARTICLE XVI.
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the stated Parties and no other person or entity has rights under this Agreement as a third party beneficiary. Assignment of benefits or delegation of duties created by this Agreement to third parties that are not Party to this Agreement is prohibited and without effect.

ARTICLE XVII.
TORT CLAIMS

This Agreement in no way abrogates or waives any immunity or defense available under California law.
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WHEREAS, the State of California Office of Emergency Services (Cal OES) has identified that floods are the second most frequent cause of disaster declarations in California (after wildfires) and account for the second highest combined losses (after earthquakes); and

WHEREAS, San Francisquito Creek represents the boundary between cities, counties and other responding agencies, and is a flooding hazard to properties within the cities of East Palo Alto, Menlo Park, and Palo Alto, and counties of San Mateo and Santa Clara; and

WHEREAS, the flooding along the San Francisquito Creek has historically caused damages in each of the pre-noted agencies with direct and indirect impacts to transportation infrastructure like bridges and roads, traffic control and signals, communications systems, utilities, public health, and the environment; and

WHEREAS, the City of East Palo Alto, the City of Menlo Park, City of Palo Alto, County of San Mateo, County of Santa Clara, Menlo Park Fire Protection District, Santa Clara Valley Water District (SCVWD), San Francisquito Creek Joint Powers Authority (SFCJPA), and Stanford University (the “Parties”) can more effectively reduce the likelihood of, prepare for, and respond to disasters by together in collaboration; and

WHEREAS, consistent with the CalOES and the Federal Emergency Management Agency (FEMA) guidance on establishing a MAC Group to address multi-agency emergencies and planning needs when presented with the planning, response and recovery conditions posed by San Francisquito Creek; and

WHEREAS, the Parties have determined that it would be in their best interests to develop a Multi-Agency Coordination Group, an Operational Plan, and San Francisquito Creek Multi-Agency Operational Plan and Assistance Agreement; and

WHEREAS, no Party should be in a position of unreasonably depleting its own resources, facilities, or services providing such mutual aid and assistance; and

WHEREAS, such an agreement is in accord with the California Emergency Services Act (“Act”) set forth in Title 2, Division 1, Chapter 7 (Section 8550 et. seq.) of the Government Code and specifically with Article 17 (Section 8630 et seq.) of the Act; and

WHEREAS, all Parties must use protocols established in the CalOES Standardized Emergency Management System and the FEMA National Incident Management System to be eligible for possible state or federal reimbursement of response-related personnel and resource costs.

In consideration of the conditions and covenants contained therein, the
City of Menlo Park
(Stakeholder agency)

Agrees to become a Party to the San Francisquito Creek Multi-Agency Operational Plan and Assistance Agreement.

Jan. 25, 2016

Date:

Alex D. McIntyre, City Manager

Name and Title: (printed)

Upon approved signature, submit this page to the City of Palo Alto, Office of Emergency Services, which maintains the San Francisquito Creek Multi-Agency Operational Plan and Assistance Agreement.