FIRST AMENDED AGREEMENT AMONG
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, AND
THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101

This First Amended Agreement ("Agreement") amends the terms and conditions of the original Agreement dated August 11, 2014, is made and entered into as of the date it is fully executed by and between the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY ("Authority"), a California joint powers authority, the SANTA CLARA VALLEY WATER DISTRICT ("Water District"), a special district of the State of California, the San Mateo County Flood Control District, a special district of the State of California ("Flood District"), the CITY OF PALO ALTO ("Palo Alto"), the CITY OF EAST PALO ALTO ("East Palo Alto"), and the CITY OF MENLO PARK ("Menlo Park"), collectively referred to as "the Parties" or individually as "Party." The effective date of this Agreement will be the last date that this Agreement is executed by the Parties.

The purpose of this Agreement is to define the roles and responsibilities of the Parties for funding construction and mitigation activities of the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101 ("Project").

RECITALS

A. San Francisquito Creek ("Creek") has a history of flooding the communities in and around East Palo Alto, Menlo Park and Palo Alto, most recently in December 2012, impacting residential properties adjacent to the Creek.

B. Following the severe flood in February 1998, East Palo Alto, Menlo Park, and Palo Alto along with the Flood District and the Water District formed the Authority on May 18, 1999. These entities are all full members of the Authority. The Authority was authorized to represent its member agencies as the local sponsor for a U.S. Army Corps of Engineers' ("USACE") San Francisquito Creek flood control project on May 23, 2002.

C. In March 2005 the USACE, working with the Authority, completed a reconnaissance study for the Creek. The reconnaissance study results indicated a Federal Interest in developing a flood control project for San Francisquito Creek. Therefore, the USACE has engaged in the feasibility study ("Study") phase of the San Francisquito Creek Flood Damage Reduction and Ecosystem Restoration Project ("FDRER") which requires a Feasibility Cost Share Agreement with a local sponsor.

D. The Authority entered into a Feasibility Cost Share Agreement ("FCSA") with the San Francisco District of the USACE for the Study on the Creek. The USACE, pursuant to the FCSA, is developing a project to evaluate flood protection and ecosystem restoration
O. The City of East Palo Alto will contribute $1,260,000 towards Project costs.

P. The City of Menlo Park will contribute $800,000 towards Project costs.

Q. The City of Palo Alto will contribute $400,000 towards Project costs.

R. The Project directly benefits the City of Menlo Park as its completion is necessary to accommodate future flood protection measures located in Menlo Park, upstream of the Project, which may be constructed in the future. In addition, Palo Alto is impacted by the Project because realignment of a portion of its municipal golf course is necessary to accommodate various flood protection construction elements of the Project.

S. For the purpose of this Agreement, funding from Menlo Park, East Palo Alto, Palo Alto, the Flood District, the Authority, and any future funds from grants or other sources, contributed toward Project costs, shall be referred to as “Non Water District Funds.”

T. On December 22, 2015, the Water District and the Authority entered into a Construction Management Agreement designating the Water District as the entity responsible for managing construction of the Project.

U. The Parties desire to enter into this Agreement to provide for reimbursement of Water District expenditures towards construction of the Project from funding that may become available through Non Water District Funds.

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions in the paragraphs contained herein below, the Parties agree as follows:

PROVISIONS

1. Project Purposes

The Project’s purposes are to improve flood protection, restore the ecosystem, and provide recreational opportunities within the Project’s reach, with the following specific objectives: (1) protect properties and infrastructure between Highway 101 and the San Francisco Bay from San Francisquito Creek flows resulting from 100-year flood events in conjunction with a 100-year tide, including projected Sea Level Rise; (2) accommodate future flood protection measures upstream of the Project that may be constructed; (3) enhance habitat along the Project reach, particularly habitat for threatened and endangered species; (4) enhance recreational uses; and (5) minimize operational and maintenance requirements.

2. Identified Project Costs and Funding Amounts

Construction of the Project, including finalization of the design, is currently estimated to cost approximately $41.32 million (Table 1), not including internal Project management costs incurred by the Water District or contingency costs for utility relocation expenses above the stated contract estimates.
1) $3,000,000 to the City of Palo Alto to mitigate for impacts to the City of Palo Alto Municipal Golf Course;

2) $300,000 for other mitigation activities;

3) $4,408,000 to Pacific Gas and Electric Company to relocate gas and electric transmission lines;

4) $848,000 to the East Palo Alto Sanitary District to relocate a sewer line;

5) $85,000 for property acquisition within East Palo Alto;

6) $230,000 to HDR for completed design services; and

7) $853,000 to HDR for construction support services.

B. Flood District agrees to fund $2,060,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: $800,000 (Year 1); $630,000 (Year 2); and $630,000 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted to the Water District within 180 days of the beginning of each respective fiscal year.

C. East Palo Alto agrees to fund $1,260,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: $420,000 (Year 1); $420,000 (Year 2); and $420,000 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted within 180 days of the beginning of each respective fiscal year.

D. Menlo Park agrees to fund $800,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: $300,000 (Year 1); $250,000 (Year 2); and $250,000 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted within 180 days of the beginning of each respective fiscal year.

E. Palo Alto agrees to fund $400,000 of Project costs, payable to the Water District during three consecutive years. The payments will be made as follows: $133,334 (Year 1); $133,333 (Year 2); and $133,333 (Year 3). The Year 1 payment will be remitted to the Water District within 180 days after a construction contract is awarded. The Year 2 and Year 3 payments will be remitted within 180 days of the beginning of each respective fiscal year.

F. Through Water District funds and funds remitted to the Water District by Palo Alto, Flood District, East Palo Alto and Menlo Park, the Water District agrees to pay the currently estimated Project costs as stated below.

1) $2,565,000 for Construction Management Consultant; and
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.

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 Water District’s construction contract will require the construction contractor to secure and maintain in full force and effect all times during construction of the Project and until the Project is accepted by the Parties, general liability and property damage insurance, business automobile insurance and such other insurance as the Parties deem appropriate, in forms and limits of liability acceptable to the Parties, naming Water District, Authority and each of its Member Agencies and their respective directors, council members, officers, employees and agents as additional insureds from and against all damages and claims, losses, liabilities, costs or expenses arising out of or in any way connected to the construction of the Project.

D. The duties and obligations of paragraph #6, Indemnification, will survive and continue in full force and effect after the termination, completion, suspension, and expiration of this Agreement.

7. 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, the Parties shall maintain all financial records related to this Agreement and/or the Project for five (5) years after the Agreement expires or is terminated earlier pursuant to paragraph #9, Termination, of this Agreement. The records shall be subject to the examination and/or audit of either Party.

8. Agreement Term

This Agreement shall commence on the Effective Date and remain in place until the construction of the Project is completed and accepted by the Parties, or this Agreement is terminated earlier by the Parties in the manner authorized by paragraph #9, Termination.

9. Termination

A. If any Party fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, any other Party may terminate this Agreement but only after giving written notice of the failure of performance to the Party committing the failure with a copy of such notice given to all other Parties. Such notice shall explain the alleged failure of performance and provide a reasonable opportunity for the failure to be cured which in no case will be less
East Palo Alto  City of East Palo Alto
2415 University Avenue
East Palo Alto, CA  94303
Attention:  Carlos Martinez, City Manager
cmartinez@cityofepa.org

Menlo Park  City of Menlo Park
701 Laurel Street
Menlo Park, CA  94025
Attention:  Alex McIntyre, City Manager
admcktyre@menlopark.org

Flood Control District  Department of Public Works
555 County Center, 5th Floor
Redwood City, CA  94063
Attention:  James Porter, Director
jporter@smcgov.org

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 in-person delivery by the addressee or other representative of the Party
authorized to accept delivery on behalf of the addressee, (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.  No communications via electronic mail shall be effective to give any
notice, request, direction, demand, consent, waiver, approval or other communications
hereunder.

11.  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.

12.  Governing Law and Compliance With Laws

The parties agree that California law governs this Agreement.  In the performance of this
Agreement each Party will comply with all applicable laws, ordinances, codes and
regulations of the federal, state, and applicable local government.

13.  Venue

In the event that suit shall be brought by any party to this contract, 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 District Court, Northern District of California.
FIRST AMENDED AGREEMENT AMONG
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, AND
THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101

IN WITNESS WHEREOF, the San Francisquito Creek Joint Powers Authority has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:  

San Francisquito Creek Joint Powers Authority

By:  

By:

Greg Stepanich  Len Materman  
SFCJPA General Counsel  Executive Director  

Date: 6/8/16  Date: 6/8/16
FIRST AMENDED AGREEMENT AMONG
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, AND
THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101

IN WITNESS WHEREOF, the Santa Clara Valley Water District has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM: Santa Clara Valley Water District

By: ________________
By: __________________
Leslie Orta
Barbara Keegan
Senior Assistant District Counsel
Chair/Board of Directors

By: __________________
By: __________________

Date: 6-9-16
Date: 06/14/2016

ATTEST: MICHELE L. KING, CMC

____________________________
Clerk/Board of Directors
FIRST AMENDED AGREEMENT AMONG
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, AND
THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101

IN WITNESS WHEREOF, the City of Palo Alto has executed this Funding Agreement as of the
date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:  
City of Palo Alto

By:  
Molly Stump  
City Attorney

By:  
James Keene  
City Manager

Date:  4/9/16  
Date:  6/10/16
FIRST AMENDED AGREEMENT AMONG
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, AND
THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101

IN WITNESS WHEREOF, the City of East Palo Alto has executed this Funding Agreement as of
the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:

By: __________________________
Print Name: Marc Huar
Title: MUNICIPAL UTILITIES
Date: 6/7/16

City of East Palo Alto

By: __________________________
Print Name: Carlos Martinez
Title: City Manager
Date: 6/7/16
FIRST AMENDED AGREEMENT AMONG
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, AND
THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101

IN WITNESS WHEREOF, the City of Menlo Park has executed this Funding Agreement as of
the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:

By: ____________________________
    William L. McClure
    City Attorney

City of Menlo Park

By: ____________________________
    Alex D. McIntyre
    City Manager

Date: 6/3/16

Date: 6/3/16
FIRST AMENDED AGREEMENT AMONG
THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY,
THE SANTA CLARA VALLEY WATER DISTRICT,
THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT,
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, AND
THE CITY OF EAST PALO ALTO
FOR FUNDING CONSTRUCTION OF
THE SAN FRANCISQUITO CREEK FLOOD REDUCTION,
ECOSYSTEM RESTORATION, AND RECREATION PROJECT
SAN FRANCISCO BAY TO HIGHWAY 101

IN WITNESS WHEREOF, the San Mateo Flood Control District has executed this Funding Agreement as of the date and year stated below.

Each Party has executed a separate signature page.

APPROVED AS TO FORM:

By: 
John Beiers
County Counsel

Date: 6/7/16

San Mateo County Flood Control District

By: Warren Slocum
President, Board of Supervisors, San Mateo

Date: June 7, 2016