

**Agreement for Funding a Feasibility Study for San Francisquito Creek Among the
San Francisquito Creek Joint Powers Authority, the San Mateo County Flood Control
District and the Santa Clara Valley Water District**

This Agreement ("Agreement") is made and entered into as of _____, 2005, by and among the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, a California joint powers authority ("Authority"), the SAN MATEO COUNTY FLOOD CONTROL DISTRICT, a special district of the State of California ("San Mateo"), and the SANTA CLARA VALLEY WATER DISTRICT, a special district of the State of California ("Santa Clara"), 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 latest and 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 formed the San Francisquito Creek Joint Powers Authority on May 18, 1999. These entities are full members of the Authority. The Authority was authorized to represent its member agencies as the sponsor for a U.S. Corps of Engineers' ("Corps") flood control project on May 23, 2002.

C. The Corps, working with the Authority, which is considered the local sponsor, has completed a reconnaissance study for San Francisquito Creek. The reconnaissance study results indicated a Federal Interest in developing a flood control project for San Francisquito Creek. Therefore, the Corps plans to progress to the feasibility study (the "Study") phase of the San Francisquito Creek Flood Damage Reduction and Ecosystem Project (the "Project") which requires a cost sharing agreement with a local sponsor.

D. The Authority is proposing to enter into a Feasibility Cost Share Agreement (FCSA) with the U.S. Department of the Army, San Francisco District of the Corps for a flood control project feasibility study of San Francisquito Creek. The Corps, pursuant to the FCSA, has agreed to initiate a project to evaluate flood protection within the San Francisquito Creek Watershed in Santa Clara and San Mateo Counties.

E. The FCSA requires the Authority, as the project sponsor, to contribute to the Corps, in cash or in-kind services, fifty percent (50%) of the cost of the Corps' evaluation of flood control protection as the local share of the Study Costs as defined in the FCSA (the "Study Costs").

F. San Mateo and Santa Clara, on behalf of themselves and the other members of the Authority within their respective jurisdictions, on July 23, 2001, agreed to provide up to \$1.5 million each as the local share to fund the Study Costs and the Authority Costs.

G. The Parties understand that there will be an implementation agreement between all members of the JPA that will identify roles and responsibilities for the members during the feasibility phase of the Project (the "Implementation Agreement").

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

A G R E E M E N T

1. Funding Payment and Amount

San Mateo and Santa Clara agree to contribute up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) each to fund the Authority's contribution to the Study Costs.

In connection with the Study Costs, San Mateo and Santa Clara shall each deposit into an escrow account as described in Section 2 of this Agreement, the amount requested, within twenty (20) days of receiving a request for payment from the Authority. Authority will make requests for payment in accordance with estimated costs provided by the Corps to meet the sponsor's share of Corps' costs for the succeeding fiscal year. Requests for payment from San Mateo and Santa Clara shall be in equal amounts and at the same time. Requests for payments, however, shall not be issued until an escrow account has been established as described in Section 2.

The amount, method and timing of any credit for any approved in-kind services provided by either San Mateo or Santa Clara shall be as provided for in the Implementation Agreement that will be entered into after the FCSA is approved and executed by the Authority and the Corps.

2. Escrow Account

The Authority shall establish an independent interest bearing escrow account to receive the cash contributions required for Study Costs. The escrow account shall be segregated from any Authority accounts. Escrow instructions for the escrow account must be approved by both San Mateo and Santa Clara before the escrow account is established. Any escrow account fees or charges shall be deducted equally from the cash contribution amount deposited by San Mateo and Santa Clara. The escrow account shall be overseen by the Authority subject to disbursement as herein provided.

Interest shall accrue and be held for the benefit of San Mateo and Santa Clara and shall be paid annually to San Mateo and Santa Clara.

3. Disbursement of Funds.

The Authority shall review all requests for payment under the FCSA submitted by the Corps. Upon determining that a request for payment or portion of a request for payment is deemed appropriate and justified by Authority's Executive Director, Authority shall promptly issue escrow instructions to disburse funds from the escrow account to the payee. The Authority shall not disburse funds from the escrow account except in accordance with this Section.

The Authority shall provide semi-annual reports to the participating JPA members of receipts and expenditures made to and from the escrow account.

4. Management of FCSA and Study.

The Authority, in its sole discretion, shall be responsible for the performance of the Authority's obligations under the FCSA related to conducting and overseeing the Study. San Mateo and Santa Clara shall have no rights or obligations under the FCSA to conduct or oversee the Study, except as provided in this Agreement or as may be provided in the Implementation Agreement. San Mateo and Santa Clara are members of the Authority's project management team that will consult with and provide advice to the Executive Director on the implementation of the FCSA.

5. Mutual Hold Harmless.

A. The Authority shall defend, hold harmless and indemnify San Mateo and Santa Clara, their officers, directors and employees from any and all claims for injuries or damages which arise out of the terms and conditions of this Agreement and which result from the intentional or unintentional misconduct, negligent acts or omissions of Authority, its officers, directors and/or employees.

B. San Mateo shall defend, hold harmless, and indemnify Santa Clara and the Authority, its officers, directors and employees from any and all claims for injuries or damages to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the intentional or unintentional misconduct, negligent acts or omissions of San Mateo, their officers, directors and/or employees.

C. Santa Clara shall defend, hold harmless, and indemnify San Mateo and the Authority, its officers, directors and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the intentional or unintentional misconduct, negligent acts or omissions of Santa Clara, their officers, directors and/or employees.

D. In the event of concurrent intentional or unintentional misconduct, negligent acts or omissions by San Mateo, Santa Clara and the Authority (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 terms and conditions of this Agreement shall be apportioned according to the California law of comparative negligence.

E. The duties and obligations of this Section 5 shall survive and continue in full force and effect after the termination of the FCSA and this Agreement.

6. Retention of Records, Right to Monitor and Audit

The Authority shall maintain all records for three (3) years after the Study is terminated or completed. The records shall be subject to the examination and/or audit of San Mateo and Santa Clara. Each year on January 2, or on a date mutually agreed to by the Parties and prior to termination and upon termination, the Authority shall submit to San Mateo and Santa Clara a

statement of activities and balances for the escrow account to each party. The Authority shall comply with all program and fiscal reporting requirements set forth under the FCSA and as required by this Agreement.

7. Termination of Agreement.

This Agreement shall automatically terminate one hundred and eighty (180) days after the completion of the Study or termination of the FCSA.

8. Refund of Undisbursed Funds.

Undisbursed funds and interest shall be returned to San Mateo and Santa Clara within ninety (90) days of the completion of the Study or the termination of the FCSA and payment of all financial obligations of the Authority to the Corps under the FCSA. All undisbursed funds in the escrow account, including any interest earned thereon, shall be divided equally between San Mateo and Santa Clara.

9. Notices.

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 facsimile, 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 parties in writing:

Authority: San Francisquito Creek Joint Powers Authority
701 Laurel Street
Menlo Park, California 94025
Attention: Cynthia D'Agosta, Executive Director
Facsimile No.: (650) 328-7935

San Mateo: San Mateo County Flood Control District
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Director of Public Works
Facsimile No.: (650) 361-8220

Santa Clara: Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118-3614
Attention: Stanley Williams, Chief Executive Officer
Facsimile No.: (408) 445-1435

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 answerback if by facsimile (provided that if any notice or other communication to be delivered

by facsimile is unable to be transmitted because of a problem affecting the receiving party's facsimile machine, the deadline for receiving such notice or other communication shall be extended through the next business day), b) as shown by the addressee's return receipt if by certified mail, and 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.

10. 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.

11. 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.

12. 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 Court, Northern District of California, in either Redwood City or San Jose, California.

13. 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 parties. Notwithstanding, Authority may contract with an accounting firm or an escrow company to fulfill its obligations under Section 2.

14. Ownership of Materials

All reports, documents, or other materials developed or discovered by any 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 all Parties without restriction or limitation upon their use.

15. Entire Agreement

This Agreement constitutes the entire agreement between the Authority, San Mateo and

Santa Clara 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 the Authority, San Mateo and Santa Clara.

16. Further Actions.

The Authority, San Mateo and Santa Clara 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. This agreement shall be in full force and effect only upon execution of the FCSA by the Authority.

17. 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.

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IN WITNESS WHEREOF, the Authority, San Mateo and Santa Clara have executed this Funding Agreement as of the date and year first above written.

Authority:

APPROVED AS TO FORM:

General Counsel

**SAN FRANCISQUITO CREEK JOINT POWERS
AUTHORITY, a California joint powers authority**

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

General Counsel

**SAN MATEO COUNTY FLOOD
CONTROL DISTRICT**

By: _____

Richard Gordon
President, Board of Supervisors

Date: _____

APPROVED AS TO FORM:

District Counsel

**SANTA CLARA VALLEY WATER
CONTROL DISTRICT**

By: _____

Stanley M. Williams
Chief Executive Officer

Date: _____

ATTEST:

County Clerk