

**Amendment One
To Agreement
San Francisquito Creek Joint Powers Authority and its Member Agencies
Roles and Responsibilities Regarding
The Army Corps of Engineers Feasibility Cost Share Agreement**

This Amendment One is made and entered into as of _____, 2009, 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), the SANTA CLARA VALLEY WATER DISTRICT, a special district of the State of California (Water District), the CITY OF EAST PALO ALTO, a municipal corporation (East Palo Alto), the CITY OF MENLO PARK, a municipal corporation (Menlo Park), and the CITY OF PALO ALTO, a California charter city (Palo Alto), collectively referred to as Parties or individually as Party.

WHEREAS, the Parties in 2007 entered into an Agreement concerning Roles and Responsibilities Regarding the Army Corps of Engineers' Feasibility Cost Share Agreement (Agreement) concerning the San Francisquito Creek Flood Damage Reduction and Ecosystem Restoration Project Feasibility Study (Study); and

WHEREAS, the progress of the Study is inconsistent due to the variability of funding from the U.S. Congress to the U.S. Army Corps of Engineers (Corps) ; and

WHEREAS, flexibility in funding is not available to the Authority, the local sponsor for the Study, and the other Parties, which are member agencies of the Authority, to address the variability of funding from the U.S. Congress due to funding constraints in the Agreement; and

WHEREAS the Parties desire to streamline the process for approving additional or advance funding proposals and in-kind contributions by any of the Parties; and

WHEREAS, Water District is the local sponsor for the Corps South San Francisco Bay Shoreline Project which shall cover the same area as Tidal Option 2 as defined in the Project Management Plan and shown in *Exhibit A*.

NOW, THEREFORE, for the consideration and upon the terms and conditions hereinafter specified, the PARTIES agree to amend the Agreement as follows:

1) Section II Specific Provisions, Subsection B of the Agreement is deleted in its entirety and replaced with Section II Specific Provisions, Subsection B as follows:

II Specific Provisions

B. Contributions

Neither East Palo Alto nor Menlo Park shall receive any credit or reimbursement for their financial contribution to the inclusion of Tidal Option 1 in the Study as described in Recitals G and H.

2) Section III General Provisions, Subsection A of the Agreement is deleted in its entirety and replaced with Section III General Provisions, Subsection A as follows:

III General Provisions

A. Additional or Advance Funding or In-Kind Contributions

Additional or advance funding or in-kind contributions for the Study, in addition to what is stipulated within this Agreement or the Funding Agreement, may be advanced by any Party or Parties to the Corps on behalf of the Authority. The source, timing, manner of transaction, and administration of contributions for future credit or reimbursement for any additional or advanced funding or in-kind contributions shall be subject to the provisions of this Agreement or the Funding Agreement.

Additional or advance funding or in-kind contributions may be proposed by any of the Parties. A request to the Authority to make additional or advance funding or in-kind contributions (Funding/In-Kind Request) towards tasks for the Study shall be approved in the following manner:

1. The proposing Party shall prepare a written Funding/In-Kind Request proposal to the Authority's Executive Director that may include multiple tasks and that describes the following:

a. The scope of work or the list of tasks identified in the Project Management Plan to be accelerated by the Funding/In-Kind Request.

b. The schedule for the additional services or in-kind contributions to be performed.

c. The amount or value in dollars of additional or advance funding that will be contributed or in-kind services to be performed.

d. The method of credit or reimbursement to the proposing Party.

2. The Authority's Management Team shall review the Funding/In-Kind Request and provide comments on it to the Authority's Executive Director, who will take it to the Board of the Authority for approval. If the Funding/In-Kind Request is approved by the Board, the Executive Director shall request approval of the proposed Funding/In-Kind Request by the CEO or City Manager of each of the remaining Parties. Upon approval by the remaining Parties, Authority shall request approval in writing by the Corps project manager.

3. An approved Funding/In-Kind Request will not obligate any Party, other than the Party proposing the Funding/In-Kind Request, to any task, additional or advanced funding or in-kind contribution to which the Party has not already agreed. An approved Funding/In-Kind Request will not change any provision of the Agreement or any other agreement between the Parties.

3) Section III General Provisions Subsection E of the Agreement is amended by revising the identification of persons to receive notice on behalf of certain Parties and the address of Authority as follows:

For the Authority: Len Materman, Executive Director
For the Water District: Marc Klemencic, Chief Operating Officer, Watersheds
For San Mateo: Jim Porter, Director of Public Works
For Menlo Park: Glen Rojas, City Manager
For East Palo Alto: Alvin James, City Manager
For Palo Alto: Glenn Roberts, Director of Public Works

Authority Address: San Francisquito Creek Joint Powers Authority
1231 Hoover Street,
Menlo Park, CA 94025

All other terms and conditions of this Agreement shall remain in force and effect.

This Amendment One 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.

[Signatures begin on the next page]

IN WITNESS WHEREOF, the Authority, San Mateo, Water District, East Palo Alto, Menlo Park, and Palo Alto have duly executed this Agreement as of the date and year first above written.

APPROVED AS TO FORM:

**SAN FRANCISQUITO CREEK JOINT
POWERS AUTHORITY**

General Counsel

By:

Len Materman
Executive Director

Date:

APPROVED AS TO FORM:

County Counsel

**SAN MATEO COUNTY FLOOD
CONTROL DISTRICT**

By: _____

David Boesch
County Manager

Date: _____

APPROVED AS TO FORM:

**SANTA CLARA VALLEY WATER
DISTRICT**

District Counsel

By: _____
Sharon Judkins
Interim Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

CITY OF MENLO PARK

City Attorney

By: _____

Glen Rojas
City Manager

Date: _____

APPROVED AS TO FORM:

CITY OF EAST PALO ALTO

City Attorney

By: _____

Alvin James
City Manager

Date: _____

APPROVED AS TO FORM:

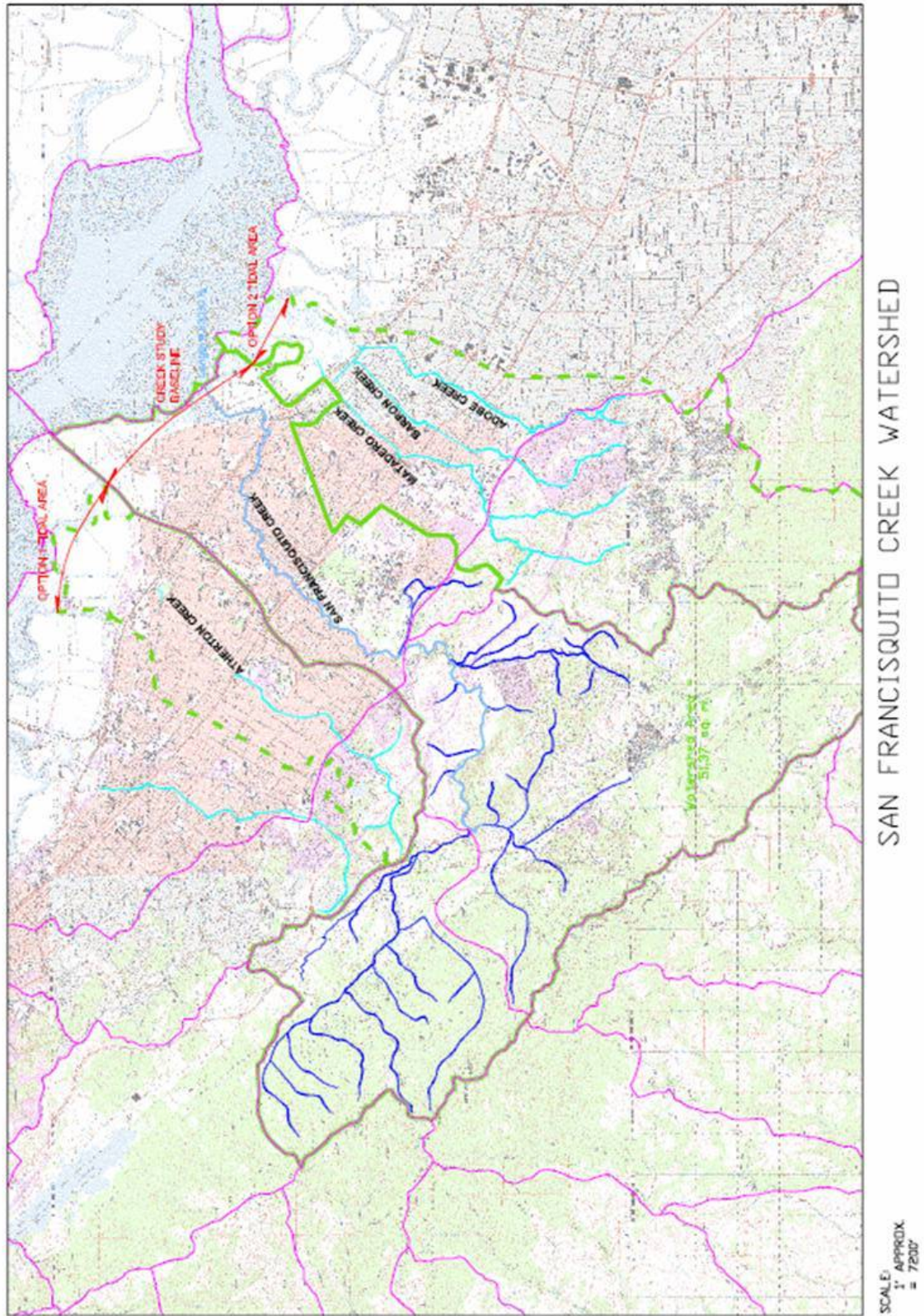
CITY OF PALO ALTO

Senior Assistant City Attorney

By: _____

James Keene
City Manager

Date: _____



SAN FRANCISCO CREEK WATERSHED