



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Department of Public Works



DATE: October 11, 2011
BOARD MEETING DATE: November 1, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: James C. Porter, Director of Public Works

SUBJECT: Memorandum of Understanding Regarding the Establishment, Maintenance and Utilization of an Expenditure Account for the Bay Area Flood Protection Agencies Association

RECOMMENDATION:

Acting as the Governing Board of the San Mateo County Flood Control District, adopt a Resolution authorizing the President of the Board of Supervisors to execute a Memorandum of Understanding to define the roles and responsibilities of each member agency of the Bay Area Flood Protection Agencies Association in establishing, maintaining, and utilizing an expenditure account for the term of twenty-five years.

BACKGROUND:

In November 2002, California voters approved Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act (Act). The intent of the Act and subsequent implementing legislation is to encourage regional cooperation in various aspects of water resources planning, flood protection and stormwater management, and habitat protection and restoration. Chapter 8 of the Act provides grant funding for projects identified in an Integrated Regional Water Management Plan (IRWMP).

In November 2006, California voters approved the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act (Proposition 84) and the Disaster Preparedness and Flood Protection Bond Act of 2006 (Proposition 1E). Propositions 84 and 1E continued the IRWMP approach of the Act as a requirement for funding water resource related projects throughout the State.

On December 18, 2007, your Board adopted Resolution No. 069197, which approved and authorized the San Mateo County Flood Control District (District) to sign the Bay Area Flood Protection Agencies Association (BAFPAA) Charter. Your Board also designated the Director of Public Works or his duly authorized representative to be the designated representative to BAFPAA on behalf of the District and authorized the Director of Public Works to approve voluntary contributions, not to exceed \$25,000 per fiscal year, for future BAFPAA projects.

BAFPAA was established to provide a forum to develop and implement regional plans and flood protection services, and to partner in applying for future grant funding. BAFPAA also provides a unified voice for the ten member agencies to incorporate flood protection issues into the development and implementation of regional plans, working with State and Federal agencies, and participating in the Bay Area IRWMP. BAFPAA has also provided important outreach to watershed and creek groups that member agencies work with to help them understand and be involved in the Bay Area IRWMP process.

DISCUSSION:

The BAFPAA members have determined that it would be beneficial to formalize the financial management of member agency contributions and BAFPAA expenditures through a Memorandum of Understanding (MOU). As the designated representative to BAFPAA, the Department has worked with the member agencies to develop the terms set forth in the MOU. The MOU defines the roles and responsibilities of each agency in establishing, maintaining and utilizing an expenditure account, and the rules for the Treasurer Agency in holding and managing the account of monies collected from the agencies to support BAFPAA efforts.

All ten BAFPAA member agencies intend to execute the MOU.

County Counsel has reviewed and approved the Resolution and MOU as to form.

Approval of this action contributes to the Shared Vision 2025 outcome of a Collaborative Community by providing a forum for the District to work in partnership with other regional flood protection agencies and actively participate in the Bay Area IRWMP process.

FISCAL IMPACT:

The MOU does not establish annual dues or specific cost share amounts. The District will continue to make voluntary contributions not to exceed \$25,000 per fiscal year as previously authorized by your Board, on an as-needed basis.

There is no impact to the General Fund.

RESOLUTION NO. _____

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA
ACTING AS THE GOVERNING BOARD OF THE SAN MATEO COUNTY FLOOD
CONTROL DISTRICT**

* * * * *

**RESOLUTION
AUTHORIZING THE PRESIDENT OF THE BOARD OF SUPERVISORS TO
EXECUTE A MEMORANDUM OF UNDERSTANDING TO DEFINE THE
ROLES AND RESPONSIBILITIES OF EACH MEMBER AGENCY OF THE
BAY AREA FLOOD PROTECTION AGENCIES ASSOCIATION IN
ESTABLISHING, MAINTAINING AND UTILIZING
AN EXPENDITURE ACCOUNT FOR THE TERM OF TWENTY-FIVE YEARS**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, acting as the governing board of the San Mateo County Flood Control District (District), that

WHEREAS, this Board of Supervisors did, on December 18, 2007, adopt Resolution No. 069197, which Resolution authorized the District's participation in the Bay Area Flood Protection Agencies Association (BAFPAA) for the primary purpose of regional collaboration regarding flood protection issues and effective participation in the Bay Area Integrated Regional Water Management Plan (IRWMP) process; and

WHEREAS, as the designated representative to BAFPAA, the District has worked with BAFPAA Member Agencies in developing the terms set forth in the Memorandum of Understanding (MOU). The MOU defines the roles and responsibilities of each agency in establishing, maintaining and utilizing an expenditure account, and the rules for the Treasurer Agency in holding and managing the account of monies collected from the agencies to support BAFPAA efforts; and

WHEREAS, all ten BAFPAA member agencies intend to execute the MOU; and

WHEREAS, it is appropriate for the District to execute the MOU.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED as follows:

The President of the Board of Supervisors is hereby authorized to execute a Memorandum of Understanding between the San Mateo County Flood Control District and the Bay Area Flood Protection Agencies Association defining the roles and responsibilities of each agency in establishing, maintaining and utilizing an expenditure account, and the rules for the Treasurer Agency in holding and managing the account of monies collected from the agencies to support BAFPAA efforts and the Clerk of this Board shall attest the President's signature thereto.

* * * * *

**Memorandum of Understanding
for the
Bay Area Flood Protection Agencies Association**

September 2011

1. Recitals

Whereas, the Bay Area Flood Protection Agencies Association (Association) was established to coordinate and provide mutual support in planning and implementing flood protection services amongst the flood protection agencies in the Bay Area; and

Whereas, the Association also provides a unified voice for Bay Area Flood Protection Agencies in developing and implementing regional plans and working with other regional agencies at the State and Federal level and participates in the Integrated Regional Water Management Planning efforts in the Bay Area to integrate projects and programs across all functional service areas; and

Whereas, the Association members desire to establish an expenditure account to pay for or procure agreed-upon services or supplies; and

Whereas, this Memorandum of Understanding (MOU) is undertaken for the purpose of defining the roles and responsibilities of each of these entities in establishing, maintaining and utilizing an expenditure account (Association Account).

2. Parties and Effective Date

Effective as specified in Paragraph 8 below, this Memorandum of Understanding is entered into by and between the following Member Agencies:

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district (ACFCWCD);

ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a zone formed by a California special district (Zone 7);

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (CCCFCWCD);

MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (MCFCWCD);

NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (NCFCWCD);

SAN MATEO COUNTY FLOOD CONTROL DISTRICT, a California special district,
(SMCFCD);

CITY AND COUNTY OF SAN FRANCISCO, a California chartered city and county;

SANTA CLARA VALLEY WATER DISTRICT, a California special district, (SCVWD);

SOLANO COUNTY WATER AGENCY, a California special district, (SOLCWA); and

SONOMA COUNTY WATER AGENCY, a California special district, (SCWA).

3. Association Account and Role of Treasurer Agency

The Member Agencies agree to the following provisions to establish and maintain an expenditure account:

- a. Association Account – The Association hereby establishes an expenditure account (Association Account) in which the Member Agencies will place funds for the sole purpose of paying for activities that the Association deems appropriate.
- b. Account Amount – The maximum amount in the Association Account will be determined, as necessary, by a unanimous vote of the Member Agencies, as warranted by the planned expenses in the near future.
- c. Account Deposits
 1. At the beginning of each calendar year, the Association, by a unanimous vote of Member Agencies, will identify the anticipated activities for the year that the Association will fund and the Association Account balance needed to pay for those activities. This information will be made available for Member Agencies to set their annual budget (Fiscal Year beginning July 1). At any time during the year, the Association, by unanimous vote of Member Agencies, may identify a need for an increase in the Association Account balance to respond to required or desired needs.
 2. The Treasurer Agency may accept funds from any Member Agency. The Treasurer Agency may also accept funds from an entity that is not a Member Agency, provided the Association agrees by unanimous vote of Member Agencies.
 3. Whenever the Association approves an Association Account balance or an increase, each Member Agency shall forward its pro rata share to the Treasurer

Agency within thirty days of such approval.

4. Notwithstanding the above provisions, a Member Agency may elect in advance to not contribute to funding the Association Account, in which case the Member Agency will not be entitled to vote on matters affecting the Association Account or activities funded from the Association Account.
- d. Treasurer Agency – Any Member Agency may act as the Treasurer Agency, which shall have the duty to invoice, collect, and otherwise manage and maintain the Association Account.
- e. Treasurer Agency Duties
1. The Treasurer Agency shall collect, be the depository of, and have custody of, all Association Account funds from whatever source.
 2. The Treasurer Agency shall be accountable for all funds and for reporting all receipts and disbursements.
 3. The Treasurer Agency shall perform all duties required to be performed by an auditor.
 4. The Treasurer Agency agrees to hold the Association Account funds in one or more separate, interest-bearing accounts.
 5. Except as otherwise provided in Subsection e.6 (grant or subgroup funds), the costs to the Treasurer Agency to maintain, monitor and report on the Association Account will be covered by the Treasurer Agency.
 6. If the Treasurer Agency is holding funds from a grant to the whole Association or is holding funds for a subgroup of Member Agencies, which funds are from a grant or are for a project or program for the benefit of the subgroup, then the costs to the Treasurer Agency to maintain, monitor, and report on those grant or project/program funds will be paid to the Treasurer Agency directly from the grant or project/program funds.
 7. The Treasurer Agency may return all funds to the Member Agencies pro rata if the balance of the Association Account is less than \$500.
- f. Expenditure Approval – Any disbursement of Association funds from the Association Account by the Treasurer Agency must be approved by a unanimous vote of Member Agencies.

- g. Regional Expenditure Activities – Expenditures from the Association Account should be for activities of a regional nature that will benefit all Member Agencies, except as otherwise provided in Subsection h (Subgroup Expenditure Activities).
- h. Subgroup Expenditure Activities - A subgroup of Member Agencies may want to utilize the Association Account as a means to facilitate funding activities that only benefit a subgroup of Member Agencies. All costs associated with these subgroup activities, including the Treasurer Agency's administrative costs, will be funded by the subgroup. The subgroup must first submit a written proposal and proposed terms for use of the Association Account for any subgroup purpose. A unanimous vote of the Member Agencies is required to approve this type of use of the Association Account.
- i. Account Reporting – The Treasurer Agency will report on the Association Account balance, expenditures, encumbrances, and accounts receivable once a quarter at a regularly-scheduled Association meeting.
- j. Association Duties - Once each year, or more often if needed, the Association shall designate one of the Member Agencies to be the Treasurer Agency. This designation shall require unanimous approval of the Member Agencies. Member Agencies shall hold the Treasurer Agency harmless from all claims and liability arising from the reasonable performance of its duties in accordance with generally-accepted governmental procedures and accounting practices.

4. Voting

Voting on matters related to the Association Account shall be conducted in accordance with the Association's Rules of Governance, with each Member Agency entitled to one vote, except as provided otherwise in Section 3.c.4 (non-contributing Member Agencies).

5. Amendments

This MOU may be amended only with the written approval of all Member Agencies. Any Member Agency may propose amendments that it considers desirable or necessary.

6. Limitations

Performance under this MOU is subject to the availability of resources to the parties to

this MOU for the described purposes, and is subject to revised administrative and personnel policies, which may affect the terms of this MOU. Each party shall assume full control and sole responsibility only for its respective personnel and activities incident to the performance of this MOU consistent with its law(s).

7. Incurring Debt

Except as authorized by unanimous vote of the Member Agencies under Section 3.f (Expenditure Approval) or Section 3.h (Subgroup Expenditure Activities), neither the Association nor the Treasurer Agency shall have the power to incur debt or enter into contracts on behalf of the Association, any Member Agency, or any subgroup of Member Agencies.

8. Exercise of Power

The powers to be exercised under this MOU shall be subject to those restrictions upon the manner of exercising powers that pertain to the Member Agency then serving as Treasurer Agency in accordance with Paragraph 3.

9. Term

This MOU becomes effective upon full execution by all parties and expires at the end of 25 years after full execution.

10. Withdrawal

Any Member Agency may withdraw from this MOU or the Association upon 90 days' written notice to the Association, notice to begin with the date of mailing. Withdrawal of a Member Agency shall comply with Section 8 of the Association's Rules of Governance. A withdrawing Member Agency shall remain responsible for funding its pro rata share of any contracts, expenditures, or activities previously approved by the withdrawing Member Agency, except to the extent such previously-approved contracts, expenditures, or activities can be legally terminated or amended without adversely affecting the remaining Member Agencies.

11. Termination

Termination of this MOU shall require written approval of all Member Agencies. Upon termination, any surplus money on hand or property acquired with collected funds shall be divided and distributed to the Member Agencies in accordance with the formula for collection of funds that is in place at the time of termination. Termination of this MOU will not affect the Association's Charter or Rules of Governance, which

shall continue in effect until terminated by all Member Agencies.

12. Miscellaneous Provisions

- a. **Compliance:** All Member Agencies will comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.
- b. **Waiver:** The waiver by any Member Agency of a breach of any provision of this Agreement shall not be deemed a continuing waiver of any subsequent breach of that or any other provision of this Agreement. The Member Agencies' waiver of any term, condition or covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition of covenant or breach of any other term, condition or covenant.
- c. **Integration:** This Agreement, including all exhibits attached hereto, represents the entire understanding of the Member Agencies as to those matters contained herein. No prior oral or written understanding, promises, negotiations or representations shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be amended by written unanimous agreement by all Member Agencies.
- d. **Severability:** If any term, condition, covenant or provision of this Agreement, or the application thereof, to any person or circumstance, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and shall be valid and binding on the Member Agencies.
- e. **Third Parties:** This Agreement is entered into only for the benefit of the Member Agencies executing this Agreement and not for the benefit of any other individual, entity, or person.

APPROVED AS TO FORM:

Richard R. Karlsson,
Interim County Counsel

By: _____

ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a
California special district

By: _____

Chair, Board of Supervisors

ATTEST: Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM:

County Counsel

By: _____

ZONE 7 OF ALAMEDA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT, a zone formed by a California
special district

By: _____

Chair, Board of Directors

ATTEST: Clerk of the Board of Directors

By: _____

APPROVED AS TO FORM:
Sharon L. Anderson, County Counsel

By: 
David F. Schmidt, Deputy County Counsel

CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT, a California special district

By: 
Chair, Board of Supervisors

ATTEST: David Twa, Clerk of the Board of
Supervisors and County Administrator

By: 

APPROVED AS TO FORM:
County Counsel

By: _____

MARIN COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a
California special district

By: _____
Chair, Board of Supervisors

ATTEST: Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM:
County Counsel

By: _____

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a
California special district

By: _____
Jill Techel, Chair, Board of Directors

ATTEST: Clerk of the Board of Directors

By: _____

APPROVED AS TO FORM:
County Counsel

By:  _____

SAN MATEO COUNTY FLOOD CONTROL
DISTRICT, a California special district

By: _____
President, Board of Supervisors

ATTEST: Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM:
City Attorney

By: _____

CITY AND COUNTY OF SAN FRANCISCO, a
California chartered city and county

By: _____
Chair, Board of Supervisors

ATTEST: Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM:
District Counsel

By: _____

SANTA CLARA VALLEY WATER DISTRICT,
a California special district

By: _____
General Manager

APPROVED AS TO FORM:
Agency Counsel

By: _____

SOLANO COUNTY WATER AGENCY, a
California special district

By: _____
Chair, Board of Directors

ATTEST: Secretary

By: _____

APPROVED AS TO FORM:
County Counsel

By: _____

SONOMA COUNTY WATER AGENCY, a
California special district

By: _____
Chair, Board of Directors

ATTEST: Clerk of the Board of Directors

By: _____
