

**SAN MATEO COUNTY
FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT**

Board of Directors

Supervisors:

District 3 Don Horsley
At-Large: Dave Pine - **Chair**

City Representatives:

North: Donna Colson
Central: Diane Papan
South: Lisa Gauthier
Coast: Debbie Ruddock – **Vice Chair**
At-Large Maryann Moise Derwin

Due to the risk of COVID-19 transmission, as well as recent State Executive Orders allowing local government bodies to conduct their meetings remotely and national, state, and local guidelines around social distancing at this time, this meeting **will only be held remotely. To join the meeting:**

click on <https://zoom.us/j/388913501> Meeting ID: 388 913 501

or call by phone: 669-900-6833,388913501#

Public Comment can be submitted via Zoom Chat, by raising your hand while participating via video, or by speaking up at the appropriate time if joining by phone. Alternatively, public comment can be submitted via email to cboland@onshoreline.org prior to 2:00 pm on the day of the Board meeting; please indicate the specific agenda item to which your comment applies. All written public comments received by this deadline will be read into the record or summarized by the Clerk of the Board.

AGENDA

April 13, 2020

4:00 PM

1. Roll Call

2. Public Comment

This item is reserved for persons wishing to address the Board for up to two minutes on any District-related matters that are not listed on this agenda. Public comments for up to two minutes on matters listed on the agenda shall be heard at the time the matter is called.

3. Action to Set the Agenda

4. Approval of Consent Agenda

4.1 Approve Minutes of the February 24, 2020 District Board Meeting (ACTION)

5. Regular Agenda

- 5.1 Adopt a Resolution approving the Conflict of Interest Code and Reporting Requirements (ACTION)
- 5.2 Approve an Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority (ACTION)

6. Chair's Report*

7. Interim CEO & Incoming CEO Reports*

8. Flood Zones Report* (no report this meeting)

9. Board Member Reports*

10. Items for Future Agenda*

11. Adjournment

* Indicates that reports are verbal only.

Meeting Rules and Procedures

Please contact the Clerk of the Board, Christine Boland, by 10:00 am on the day of the Board of Directors meeting at cboland@OneShoreline.org or at 650-623-5934 if you require auxiliary aids or services to attend or participate in the meeting or if you wish to submit written communication or materials to all Board Members. Public records that relate to any open session item on the agenda of a Regular Board meeting are available for public inspection at least 72 hours prior to the meeting, at the same time records are distributed to members of the Board. Public records related to a Special Board meeting are available at least 24 hours prior to that meeting. Such public records will be available for inspection at the San Mateo County Flood and Sea Level Rise Resiliency District office, 1700 El Camino Real, Suite 502, San Mateo, CA 94402 and at www.oneshoreline.org. Should you wish to have such documents sent to you by email, please email cboland@OneShoreline.org.

SAN MATEO COUNTY
FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT
1700 S. El Camino Real, Miller Ream Hall
San Mateo, CA
February 24, 2020
MINUTES

1. Roll Call

Chair Pine called the meeting to order at 4:02 p.m. Interim Clerk Boland took the roll call and confirmed a quorum was present.

Directors Present:

Dave Pine, Representing Board of Supervisors, At Large (Chair)
Donna Colson, Representing Northern San Mateo County cities
Maryann Moise Derwin, Representing San Mateo County cities at-large
Lisa Gauthier, Representing Southern San Mateo County cities
Don Horsley, Representing Board of Supervisors, District 3
Diane Papan, Representing Central San Mateo County cities

Directors Absent:

Debbie Ruddock, Representing Coastside (Vice Chair)

Staff Present:

Larry Patterson, Interim Chief Executive Officer
Brian Kulich, Esq., County Counsel
Jim Porter, County of San Mateo Director of Public Works
Rochelle Kiner, Interim Director, Revenue Services
Erika Powell, Flood Resiliency Program Manager
Colin Martorana, Associate Engineer
Christine Boland, Interim Clerk of the Board

2. Public Comment

None.

3. Action to Set the Agenda

Motion/Second: Horsley/Gauthier moved to set the agenda as posted.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Pine

Noes: None

Absent: Ruddock

Vote: 6-0-1

4. Approval of Consent Agenda

Motion/Second: Gauthier/Horsley moved to approve the Consent Agenda.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Pine

Noes: None

Absent: Ruddock

Vote: 6-0-1

- 4.1 Approved Minutes of February 10, 2020 District Board Meeting
- 4.2 Approved Amendment No. 2 to the Agreement with Erika Powell

5. Regular Agenda

- 5.1 Approve Employment Agreement for Chief Executive Officer

Chair Pine summarized the terms of the employment agreement with Len Materman, for the position of Chief Executive Officer. He noted that details were contained in the agenda packet, as follows: contract is for four years and two months, beginning on May 1, 2020, with a salary of \$235,000. He discussed benefits, vacation and reimbursements.

Motion/Second: Papan/Gauthier moved approval of the Employment Agreement with Len Materman, as outlined and contained in the agenda packet.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Pine
Noes: None
Absent: Ruddock
Vote: 6-0-1

- 5.2 Review Initial Employee Benefit Recommendations

Interim CEO Larry Patterson combined agenda items 5.2 and 5.3. He stated the Ordinance No. 1, Setting Rules, Standards and Procedures for Appointment, Suspension and Termination of Employment, would become effective March 12, 2020, at which time employee offer letters could be drafted with initial discussions regarding salaries according to the new salary schedule and benefits. The employees are currently County and/or contract employees.

Director Gauthier inquired about resetting vacation balances. Responding, Mr. Patterson stated the conversations with employees could only begin following the effective date of the Ordinance and adjustments made accordingly. He noted that the CEO has the authority to make salary adjustments within the ranges.

- 5.3 Adopt a Resolution establishing the FY 2019-20 Salary Schedule

Motion/Second: Horsley/Gauthier moved approval of Resolution 2020-6, Adopting the San Mateo County Flood and Sea Level Rise Resiliency District Salary Schedule.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Pine
Noes: None
Absent: Ruddock
Vote: 6-0-1

- 5.4 Approve Resolution Certifying Bayfront Canal Initial Study and Mitigated Negative Declaration

Erika Powell, Manager of the Flood Resiliency Program, provided a brief summary of the project entitled "Bayfront Canal Atherton Restoration

Channel.” She discussed the public noticing and readvertising that took place announcing that the project is now under the jurisdiction of the Flood and Sea Level Rise Resiliency District. She recommended adoption of a Resolution certifying the Initial Study/Mitigated Negative Declaration (IS/MND). County Counsel Kulich reviewed the findings contained in the Resolution as well as in the Mitigated Monitoring Report Program (MMRP).

Motion/Second: Horsley/Papan moved approval of Resolution No. 2020-8, Adopting the Initial Study/Mitigated Negative Declaration, dated July 29, 2019, for the Bayfront Canal and Atherton Channel Flood Management and Restoration project.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Pine

Noes: None

Absent: Ruddock

Vote: 6-0-1

5.5 Amend Agreement with Paychex for Employee Medical and Pension Benefits

Rochelle Kiner, Interim Director, Revenue Services, stated that amendment to the agreement with Paychex, already the vendor for Human Resources, Payroll and Workers Compensation services, would be amended to add medical, dental and vision benefits (75 percent paid by District; 25 percent paid by the employee). She recommended contracting with Massachusetts Mutual through the County’s contract for the 401(a) or 457(b) retirement plan, with six percent as the employee contribution and nine percent matching District contribution. She noted the CEO would be authorized to make administrative and other changes under the contract. County Counsel Kulich noted that 401(a) or 457(b) government retirement plans were not offered through Paychex.

Motion/Second: Gauthier/Horsley moved approval of Resolution 2020-8, Authorizing a) the Chief Executive Officer to execute an amendment with Paychex to Add Employee Medical Benefits, For a Term of Two Years, Increasing the Not-To-Exceed Amount By An Additional \$311,000, For a Total Estimated Cost Not-To-Exceed \$331,000; and b) The Chief Executive Officer To Negotiate and Execute an Agreement to Provide and Administer a 401(a) Retirement Plan and 457(b) Deferred Compensation Plan To Employees, For a Term of Two Years, In An Amount Not-To-Exceed \$253,000; and c) The Chief Executive Officer to Execute Contract Amendments Which Modify the District’s Maximum Fiscal Obligation By No More Than \$25,000 (In Aggregate) and/or Modify the Contract Term and/or Service So Long as the Modified Term or Services Is/Are Within the Current or Revised Fiscal Obligation.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Pine

Noes: None

Absent: Ruddock

Vote: 6-0-1

6. **Chair's Report**

Chair Pine reported on several issues:

- Received the "Mayor's Award" plaque from the San Mateo Chamber of Commerce on Thursday, February 13, and presented it to staff;
- Updated the board on Assemblymember Mullin's office regarding a resiliency bond for the November 2020 ballot;

7. **Interim CEO Report**

Mr. Patterson provided several brief reports:

- Bayfront Canal discussion with Redwood City regarding levy de-certification;
- Start-up revenue has been received from the local agencies;

8. **Flood Zones Report**

Jim Porter, Director of Public Works, provided an update on the Colma Creek Advisory Committee and the San Francisquito Creek upstream project. County Counsel Kulich added that the amendments to the San Francisquito Creek joint powers agreement would be handled in two parts.

9. **Board Member Reports**

None.

10. **Items for Future Agenda**

- Discussion of Woodside discounted contribution of start-up funding.

11. **Adjournment**

Prior to adjournment, Ms. Powell announced Twin Pines park received a grant from the Urban Streams Restoration Program.

The meeting adjourned at 5:58 p.m.

**SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT
AGENDA REPORT**

Date: April 13, 2020
To: San Mateo County Flood and Sea Level Rise Resiliency District Board of Directors
From: Larry Patterson, Interim CEO
Subject: Resolution Adopting Conflict of Interest Code

RECOMMENDATION:

That the Board of Directors (the "Board") adopt a resolution adopting the Conflict of Interest Code for the San Mateo County Flood and Sea Level Rise Resiliency District (the "District").

BACKGROUND:

The Political Reform Act (the "Act"), which is set forth in Government Code Sections 81000-91014, prohibits a public official from using his or her official position to influence a governmental decision in which he or she has a financial interest. Every state and local agency must adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. The individuals in the designed positions must disclose their financial interests as specified in the agency's conflict of interest code.

To help identify potential conflicts of interest, the law requires public officials and employees in positions designated by their agency's conflict of interest code to report their financial interests on a form called Statement of Economic Interests ("Form 700"). An agency's conflict of interest code and Form 700s are fundamental tools in ensuring that officials are acting in the public's best interest and not their own.

As a newly formed public agency, the District must adopt a conflict of interest code.

DISCUSSION:

Staff recommends that the Board adopt the proposed resolution adopting the District's Conflict of Interest Code (the "Code"), a copy of which is attached as Attachment 1 and incorporated by this reference. There are three components of the Code.

1. Incorporation Section (Terms of the Code). 2 Cal. Code of Regulations Section 18730 provides that "[i]ncorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code..." Thus, the first component of the Code incorporates by reference Section 18730, which provides the rules for disqualification procedures, reporting financial interests, and references the current gift limit.

2. List of Designated Positions. The second component of the Code lists all agency positions involving the making or participation in making of decisions that “may foreseeably have a material effect on economic interests.”
3. Detailed Disclosure Categories. The final component of the Code describes the types of financial interests’ officials in one or more job classifications must disclose on their Form 700s. As required by law, the categories are tailored to the financial interests affected and do not require public officials to disclose private financial information unrelated to their public employment.

Once the Code is adopted, it must be submitted for approval to the County Board of Supervisors as the code reviewing body pursuant to Government Code Section 82011(b).

District Counsel has reviewed the Code and resolution.

FISCAL IMPACT:

There is no fiscal impact associated with adoption of the resolution adopting the Code.

ATTACHMENT:

1. Conflict of Interest Code

**CONFLICT OF INTEREST CODE
SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT
State of California**

The Political Reform Act (Government Code Section 81000, *et seq.*) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (specifically, 2 California Code of Regulations Section 18730 (“Section 18730”)) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency’s code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. Section 18730 and the attached Appendix designating positions and establishing disclosure categories shall constitute the conflict of interest code of the San Mateo County Flood and Sea Level Rise Resiliency District (the “Code”).

As directed by Government Code Section 82011, the Code reviewing body for all districts within the County of San Mateo is the Board of Supervisors. Pursuant to 2 Cal. Code of Regs. Section 18227 and Government Code Section 87500, the County Clerk is responsible for reviewing and retaining statements of economic interests and making the statements available for public inspection and reproduction.

Individuals holding designated positions shall file their Statements of Economic Interests with the Clerk of the Board of the Flood and Sea Level Rise Resiliency District (the “District”), which will make the statements available for public inspection and reproduction (Gov. Code Sec. 81008). Upon receipt of the statements, the District shall make and retain copies and forward the originals to the County Clerk.

**SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT
CONFLICT OF INTEREST CODE**

List of Designated Positions and Financial Disclosure Categories

Each person holding any position listed below must file statements disclosing the kinds of financial interest shown for the designated employee’s position. Statements must be filed at the times and on the forms prescribed by law. Failure to file statements on time may result in penalties including but not limited to late fines.

Designated Employees	Disclosure Category
Principal Engineer	1,2,3,4
Senior Accountant	1,2,3,4
Attorney	1,2,3,4
Consultants*	1,2,3,4
New Positions*	1,2,3,4

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The CEO may determine in writing that a particular consultant or new position, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant or new position’s duties and, based upon that description, a statement of the extent of disclosure requirements. The CEO determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

Officials Who Manage Public Investments

The following positions are NOT covered by the conflict-of-interest code because they must file under Government Code Section 87200 and, therefore, are listed for informational purposes only:

Designated Employees	Disclosure Category
Member, Board of Directors	1,2,3,4
Chief Executive Officer	1,2,3,4

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the determination whether a position is covered by Section 87200.

2020 DISCLOSURE CATEGORIES

Category 1: Interests in real property located within the jurisdiction of the agency and/or within a two-mile radius of any land owned or used by the agency.

Category 2: Investments, and business positions in business entities and income (including receipt of gifts, loans, and travel payments) from sources of the type that provide products, services, supplies, materials, machinery, or equipment utilized by the agency or in projects funded by the agency. Such sources include, but are not limited to insurance, information technology, telecommunications, public utilities, consultants, transportation companies, and manufacturers.

Category 3: Investments, and business positions in business entities and income (including receipt of gifts, loans, and travel payments) from sources that have filed a claim with or against the agency within the last two years or have a claim pending with or against the agency.

Category 4: Investments, and business positions in business entities and income (including receipt of gifts, loans, and travel payments) from sources of the type that provide products, services, supplies, materials, machinery, or equipment utilized by the designated position's division.

RESOLUTION NO. 2020 - __

BOARD OF DIRECTORS OF THE SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE
RESILIENCY DISTRICT

* * * * *

RESOLUTION ADOPTING DISTRICT CONFLICT OF INTEREST CODE

WHEREAS, pursuant to the Political Reform Act of 1974, the San Mateo County Flood and Sea Level Rise Resiliency District (“District”) is required by law to adopt an initial Conflict of Interest Code (“Code”); and

WHEREAS, the District’s Board of Directors has determined that, consistent with the Political Reform Act and current Fair Political Practices Commission regulations and advice, the Code properly lists the designated positions who must disclose their economic interests on an annual basis and the disclosure categories for such positions; and

WHEREAS, one adopted, the Code must be submitted for approval by the San Mateo County Board of Supervisors as the code reviewing body pursuant to Government Code Section 82011(b).

NOW, THEREFORE, BE IT RESOLVED by the District Board of Directors that the attached Code is hereby adopted, in the form presented to the Board of Directors; and

BE IT FURTHER RESOLVED that the Clerk of the Board is directed to transmit a copy of the Code to the Board of Supervisors of the County of San Mateo for its review and adoption.

* * * * *

Regularly passed and adopted this 13th day of April 2020 by the following vote:

AYES:

NOES:

ABSENT:

Chair of the San Mateo County Flood and
Sea Level Rise Resiliency District

ATTEST:

Clerk of the Board

San Mateo County Flood and Sea Level Rise Resiliency District Agenda Report

Date: April 13, 2020

To: San Mateo County Flood and Sea Level Rise Resiliency District Board of Directors

From: Brian E. Kulich, District Counsel

Subject: Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority

RECOMMENDATION:

That the San Mateo County Flood and Sea Level Rise Resiliency District (the “District”) Board of Directors (the “Board”) adopt a resolution approving the Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority (the “JPA”), a copy of which is **Attachment A** to this Report.

BACKGROUND:

In 1998, the San Francisquito Creek flooded and damaged approximately 1,700 properties. The following year, the City of Menlo Park, the City of Palo Alto, the City of East Palo Alto, the Santa Clara Valley Water District, and the San Mateo Flood Control District (the “Member Entities”) established the JPA, the purpose of which was to collectively contribute resources and implement policies and projects of mutual interest relating to the San Francisquito Creek.

Since its formation, the JPA has led, or is leading, five major capital projects: San Francisco Bay to Highway 101 Project; Caltrans Highway 101 Project; Upstream of Highway 101 Project; the U.S. Army Corps of Engineers Feasibility Study; and the Strategy to Advance Flood-protection, Ecosystems and Recreation along the Bay (SAFER Bay Project).

Pursuant to Assembly Bill 825 (“AB 825”), the San Mateo Flood Control District was renamed as the San Mateo County Flood and Sea Level Rise Resiliency District, its mission was expanded, and, effective January 1, 2020, its governing board was changed from the San Mateo County Board of Supervisors to this independent Board. Although the legislative history of AB 825 makes clear that the District is not a new entity, the JPA Board of Directors recommended updating the JPA Agreement to reflect the District’s new name.

In addition, the JPA recommended other updates to the JPA Agreement, which is now over 20 years old. Many of these updates involved minor language changes to reflect current practices

of the JPA or updates to State law related to joint power authorities generally. Other updates involved larger policy issues relative to expanding the JPA's enumerated purposes and powers.

The Member Entities requested that these updates be divided into two phases—the first phase would address the administrative amendments and the second phase would address the more substantive policy-based updates. This phased process would allow the JPA to move forward with the administrative amendments while giving it and the Member Entities more time to work through the substantive amendments.

DISCUSSION:

An attorney working group consisting of attorneys from the JPA and Member Entities reviewed updates to the JPA Agreement. The attorney group agreed to a series of administrative amendments that could be adopted before the more substantive policy-based updates.

The administrative amendments addressed in this first phase are shown in track changes on **Attachment B** and include clarifications and modifications regarding:

- The District's name change;
- Who can serve as a JPA Board member;
- The timing of Board elections;
- Adoption of both operating and capital budgets;
- Designation of fiscal year;
- Updated insurance and bonding provisions;
- Expanded options for audits and other financial controls;
- Modification of JPA expulsion and termination voting provisions;
- The process for future amendments to the JPA agreement; and
- Inclusion of a standard "no third party beneficiaries" provision (which prevents non-parties from asserting rights under the contract).

Staff recommends that the Board adopt a resolution approving these amendments to the JPA Agreement.

FISCAL IMPACT:

There is no known fiscal impact associated with adoption of a resolution approving the Amended and Restated JPA Agreement.

ATTACHMENTS:

1. Amended and Restated JPA Agreement
2. Redlined Amended and Restated JPA Agreement with Tracked Changes from the original JPA Agreement

RESOLUTION NO.
**BOARD OF DIRECTORS OF THE SAN MATEO COUNTY FLOOD AND SEA LEVEL
RISE RESILIENCY DISTRICT**

**RESOLUTION APPROVING AMENDED AND RESTATED AGREEMENT OF THE
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY**

RESOLVED, by the Board of Directors (the “Board”) of the San Mateo County Flood and Sea Level Rise Resiliency District (“District”), that

WHEREAS, in 1999, the City of Menlo Park, the City of Palo Alto, the City of East Palo Alto, the Santa Clara Valley Water District, and the San Mateo Flood Control District (the “Member Entities”) established the San Francisquito Creek Joint Powers Authority (the “JPA”), the purpose of which is to collectively contribute resources and implement policies and projects of mutual interest relating to the San Francisquito Creek; and

WHEREAS, pursuant to Assembly Bill 825, the San Mateo Flood Control District was renamed as the San Mateo County Flood and Sea Level Rise Resiliency District, its mission was expanded, and, effective January 1, 2020, its governing board was changed from the San Mateo County Board of Supervisors to this independent Board; and

WHEREAS, the Member Entities and the JPA have agreed to amend and restate the JPA Agreement to reflect the District’s name change and to make other administrative, non-substantive changes to the JPA Agreement (the “Amended and Restated JPA Agreement”); and

WHEREAS, the Board has reviewed the proposed Amended and Restated JPA Agreement; and

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the Amended and Restated JPA Agreement and authorizes the District’s Chief Executive Officer to execute the Amended and Restated JPA Agreement and take any other steps necessary to effectuate it on behalf of the District.

Regularly passed and adopted this 13th day of April 2020 by the following vote:

AYES:

NOES:

ABSENT:

Chair of the San Mateo County Flood and
Sea Level Rise Resiliency District

ATTEST:

Clerk of the Board

JOINT POWERS AGREEMENT
FOR THE
SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

AMENDED AND RESTATED
as of

January 1, 2020

JOINT POWERS AGREEMENT

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SAN FRANCISQUITO CREEK
JOINT POWERS AGREEMENT

This Amended and Restated Agreement (“Agreement”) is made by and among the City of Menlo Park, the City of Palo Alto, the City of East Palo Alto, the Santa Clara Valley Water District, and the San Mateo County Flood and Sea Level Rise Resiliency District (“Member Entities”), all of which are public entities organized and operating under the laws of the State of California and each of which is a public agency as defined in California Government Code section 6500.

RECITALS

A. The Joint Exercise of Powers Act, being Government Code sections 6500 et seq. (the “JPA Law”), permits two or more local public entities by agreement to jointly exercise any power common to them.

B. Following years of effort to address environmental and flooding concerns related to the watershed and floodplain of San Francisquito Creek (encompassing approximately 50 square miles from the Santa Cruz Mountains to San Francisco Bay), and soon after the flood of record in 1998 damaged approximately 1,700 properties, the Member Entities established the San Francisquito Creek Joint Powers Authority pursuant to that certain “Joint Exercise Agreement Creating the San Francisquito Creek Joint Powers Authority,” dated as of May 18, 1999, to collectively contribute resources and implement policies and projects of mutual interest relating to the primary natural features that unite them, including the San Francisquito Creek (“Creek”).

C. The governing body of each Member Entity has determined that it is in the Member Entity’s best interest and in the public interest that this Amended and Restated Agreement be executed to make minor procedural updates, including the change on January 1, 2020 of the San Mateo County Flood Control District to the San Mateo County Flood and Sea Level Rise Resiliency District.

NOW, THEREFORE, the Member Entities, by, between and among themselves, in consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

1. CREATION OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY. Pursuant to the JPA Law, the Member Entities create a public agency, separate and apart from the Member Entities to be known as the San Francisquito Creek Joint Powers Authority (the “Authority”). Pursuant to Government Code section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this Agreement. A Member Entity may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. For purposes of, and to the extent required by, Government Code section 6509, in exercising its powers, the Authority shall be

subject to the restrictions upon the manner of exercising the powers of the City of Menlo Park, except as otherwise authorized or permitted by the JPA Law.

2. PURPOSES. This Agreement is entered into by Member Entities under the JPA Law for the following purposes:

- a. To facilitate and perform bank stabilization, channel clearing and other Creek maintenance.
- b. To plan flood control measures for the San Francisquito Creek watershed.
- c. To take actions necessary to preserve and enhance environmental values and instream uses of San Francisquito Creek.
- d. To coordinate emergency mitigation and response activities relating to San Francisquito Creek.
- e. To make recommendations to Member Entities for funding and alternatives for long term flood control for Member Entity consideration.

3. PARTIES TO AGREEMENT. Each Member Entity certifies that it intends to and does contract with every other Member Entity which is a signatory to this Agreement. Each Member Entity also certifies that the deletion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining. Pursuant to Assembly Bill 825 (Chapter 292, Statutes of 2019), which amended the San Mateo County Flood Control District Act to provide for the San Mateo County Flood and Sea Level Rise Resiliency District, the Member Entities agree that the San Mateo County Flood and Sea Level Rise Resiliency District is the entity formerly known as the San Mateo County Flood Control District, and as such is subject to the terms and conditions of this Agreement.

4. TERM OF AGREEMENT. This Agreement became effective as of May 18, 1999, and continues in full force until terminated in accordance with Paragraph 18 (Termination and Distribution).

5. POWERS OF THE AUTHORITY. The Authority through its Board of Directors is authorized, in its own name and subject to the limitations set forth below, to do all acts necessary to fulfill the purposes of this Agreement referred to in Paragraph 2 (Purposes) including, but not limited to, each of the following:

- a. Make and enter into contracts;
- b. Incur debts, liabilities, and obligations, provided that no debt, liability, or obligation of the Authority shall be a debt, liability, or obligation of a Member Entity except as separately agreed to by a Member Entity;
- c. Receive contributions and donations of property, funds, services, and other forms of assistance from any source;

- d. Sue and be sued in its own name;
- e. Contract with independent consultants and/or contractors;
- f. Receive, collect, and disburse monies;
- g. Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;
- h. Assign, delegate, or contract with a Member Entity or third party to perform any of the duties of the Board including, but not limited to, acting as administrator for the Authority; and
- i. Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

6. MEMBER ENTITY APPROVALS AND RESPONSIBILITIES. Each Member Entity has the approval authority, obligations and responsibilities set forth in this Agreement. No action of the Authority shall be effective or binding unless and until such action has been approved in accordance with Subparagraph “e” (Action of the Board) of Paragraph 10 (Board Members) by the Board of Directors consistent with a budget approved by independent action of each Member Entity’s governing body.

7. PROJECT PARTICIPATION APPROVAL AUTHORITY. Member Entities shall have the right to determine independently whether to participate in any capital improvement project. No capital improvement project shall be approved by the Authority unless and until Member Entities sufficient to fund the project fully have approved the project by independent action of each such funding Member Entity’s governing body.

8. MEMBERSHIP. New Member Entities may be added to the Authority by amending this Agreement, as described in Paragraph 21 (Amendments); and Member Entities may withdraw or be expelled, as described in Paragraph 16 (Withdrawal) and Paragraph 17 (Expulsion).

9. BOARD OF DIRECTORS.

a. Directors. There shall be a Board of Directors (the “Board”) to govern the affairs of the Authority. The Board shall be comprised of one director, and one alternate director, from each Member Entity. Each director has one vote. An alternate director may cast a vote as a member of the Board of Directors only in the absence of the director from that same Member Entity. Each director and alternate director shall be a member of the governing body of the Member Entity and shall be designated by its governing body; provided, however, that no two directors and no two alternate directors shall be from the same governing body of any Member Entity.

b. Compensation. Directors and alternate directors are not entitled to compensation by the Authority. The Board may authorize reimbursement of expenses incurred by directors or alternate directors.

c. Powers. The powers of the Board are each of the powers of the Authority not specifically reserved to the Member Entities by this Agreement. The Member Entities retain the following powers:

(1) The designation of the Board as specified in Subparagraph “a” of Paragraph 9 (Board of Directors);

(2) Approval of an amendment to this Agreement as specified in Paragraph 21 (Amendments);

(3) Approval of actions pursuant to Paragraph 6 (Member Entity Approvals and Responsibilities);

(4) Approval of project participation as specified in paragraph 7 (Project Participation Approval Authority); and

(5) Approval of the annual budget of the Authority as specified in Paragraph 13 (Budget).

10. BOARD MEMBERS.

a. Meetings. The Board shall hold at least one regular meeting each year, at which time the Board shall elect its officers as appropriate to comply with Paragraph 11 (Officers). The Board shall fix the date, hour, and place at which each regular meeting is to be held. To the extent practicable, each Board meeting shall be held in Northern Santa Clara County or Southern San Mateo County. The Chair presides at all meetings. A special meeting may be called upon written request by the Chair or at least two directors.

b. Brown Act. Each regular, adjourned regular, or special meeting of the Board shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Sections 54950, et seq., of the Government Code).

c. Minutes. The Clerk of the Board shall draft minutes of each regular and special meeting of the Board, which shall be considered for approval by the Board at a subsequent regular meeting.

d. Quorum. No business may be transacted by the Board without a quorum of members of the Board being present except that less than a quorum may adjourn from time to time. A quorum consists of a majority of the members of the Board.

e. Action of Board. Except as otherwise specified in this Agreement, any action of the Board shall require a vote of a majority of the Board.

11. OFFICERS.

a. Officers. The officers of the Authority are the Chair, Vice-Chair, and Secretary.

b. Election/Term/Duties. The officers shall be elected or appointed by the Board at its first meeting of the calendar year, unless that is delayed by an action of the Board. The term of office for Chair, Vice-Chair, and Secretary is one year. The officers shall assume the duties of their offices upon being elected or appointed, as appropriate. If any of the Chair, Vice-Chair, or Secretary ceases to be a member of the Board, the Board shall elect or appoint a new officer at the next regular meeting of the Board held after the vacancy occurs.

c. Compensation. Officers are not entitled to compensation by the Authority. The Board may authorize reimbursement of expenses incurred by officers.

d. Appointment/Contract. The Board may appoint such officers and may hire or contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.

12. FISCAL YEAR. The first fiscal year of the Authority is July 1, 1999, through June 30, 2000. Each subsequent fiscal year of the Authority shall begin on July 1st and end on June 30th.

13. BUDGET. The Board shall adopt an annual operating budget, which shall be separate from the Authority's capital projects budget. The operating budget shall include the proposed contribution from each Member Entity for the fiscal year and other sources of income. The operating budget shall not be effective unless and until the governing body of each Member Entity has approved that Member Entity's contribution to the budget. Member Entity contributions shall become immediately due and payable to the Authority upon adoption of the budget, unless expressly provided otherwise in the budget.

14. ANNUAL AUDIT AND AUDIT REPORTS. The Board shall cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions, and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be filed no later than as required by State law. The Authority shall pay the cost of the financial audit from its annual operating budget in the same manner as other administrative costs.

15. ESTABLISHMENT AND ADMINISTRATION OF FUNDS.

a. Accountability. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code. The funds shall be accounted for on a full accrual basis.

b. Investment/Disbursement. The Authority shall receive and disburse funds only in accordance with policies and procedures established by the Board and in conformity with applicable law.

c. Insurance/Bond. The Authority shall procure, carry and maintain, in full force and effect, at all times during the term of this Agreement, such insurance and bonds to protect the Authority and its members of the Board, officers, employees, agents and Member Entities, as deemed appropriate by the Board.

d. Depository and Auditor Controller. The Board shall designate one of its officers, employees or a third party to perform all acts required by Government Code Sections 6505 (regarding an annual audit), 6505.1 (regarding charge of and access to property), 6505.5 (regarding the depository and custodian of money), and 6505.6 (regarding independent audit where an officer or employee acts as treasurer, auditor or both), as such laws are amended from time to time.

16. WITHDRAWAL. Member Entities may withdraw from the Authority for subsequent fiscal years by providing written notice to the Authority and each Member Entity on or before May 1 of any fiscal year. Withdrawal shall be effective on July 1 of the next fiscal year. This shall be the exclusive means by which a Member Entity may withdraw from the Authority. Any Member Entity that withdraws shall remain liable for any budget contributions or capital improvement project participation approved before withdrawal. Any Member Entity that withdraws shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity withdraws from this Agreement. Any Member Entity that withdraws shall remain subject to the provisions of Paragraph 23 (Liability of the Authority; Release and Indemnity) with respect to any event or occurrence taking place before the Member Entity withdraws.

17. EXPULSION. The Authority may expel a Member Entity from the Authority by a four-fifths (4/5) vote of the Board for a breach of this Agreement determined by the Board to be a material breach. Any Member Entity that has been expelled pursuant to this paragraph shall have no further liability or obligation pursuant to this Agreement after the effective date of such expulsion; except such Member Entity shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity was expelled, including any budget contributions or capital improvement project participation approved before expulsion. Any Member Entity that has been expelled shall remain subject to the provisions of Paragraph 23 (Liability of the Authority; Release and Indemnity) with respect to any event or occurrence taking place before the Member Entity was expelled.

18. TERMINATION AND DISTRIBUTION.

a. Termination. This Agreement shall continue until terminated. This Agreement may be terminated by the written consent of four-fifths (4/5) of the Member Entities; provided, however, this Agreement and the Authority shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligation and affairs of the Authority.

b. Surplus. In the event that the Authority is terminated, any surplus money on deposit in any fund or account of the Authority shall be returned in proportion to the contributions made as required by Section 6512 of the California Government Code. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority, including for the disposition, division, or distribution of any property acquired as a result of the joint exercise of powers.

19. NOTICES. Notices to each Member Entity under this Agreement are sufficient if mailed to its respective address on file with the Authority.

20. PROHIBITION AGAINST ASSIGNMENT. No Member Entity may assign a right, claim, or interest it may have under this Agreement, and any such assignment shall be void. No creditor, assignee, or third-party beneficiary of a Member Entity has a right, claim, or title to any part, share, interest, fund, or asset of the Authority.

21. AMENDMENTS. This Agreement may be amended by approval by the governing body for each and every Member Entity. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date when the Member Entity considers it. An amendment is to be effective immediately unless otherwise designated.

22. SEVERABILITY. If a portion, term, condition, or provision of this Agreement is determined by a court to be illegal or in conflict with the law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

23. LIABILITY OF THE AUTHORITY; RELEASE AND INDEMNITY. Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, any Member Entity, any member of the Board, and each officer, employee and agent of the Authority for their actions taken within the scope of their duties while acting on behalf of the Authority. The parties to this Agreement release each other and agree to hold each other harmless, as well as their officers and employees, for any loss or liability arising from their respective activities pursuant to this Agreement. Except as otherwise provided herein, each party agrees to indemnify, defend and hold harmless the other parties, their officers, agents, and employees from any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed under this Agreement. Each Member Entity agrees that legal counsel for any Member Entity may be designated by the Board to represent the Authority by performing legal services, including litigation, and that any potential conflict of interest arising from such representation shall be deemed waived by the Authority and Member Entity, unless an actual adverse relationship exists between the Member Entity and the Authority with respect to the particular matter. The designation of legal counsel from a Member Entity shall be with the approval of that Member Entity.

24. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

25. COUNTERPART. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

26. AGREEMENT COMPLETE. The foregoing constitutes the full and complete Agreement of the Member Entities. There are no oral understandings or agreements not set forth in writing herein.

27. NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity, other than the parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

DATED: _____, 2020

CITY OF MENLO PARK

By: _____
Cecilia Taylor, Mayor

ATTEST:

By: _____
Judi Herren, City Clerk

DATED: _____, 2020

CITY OF PALO ALTO

By: _____
Adrian Fine, Mayor

ATTEST:

By: _____
Beth Minor, City Clerk

DATED: _____, 2020

CITY OF EAST PALO ALTO

By: _____
Regina Wallace-Jones, Mayor

ATTEST:

By: _____
Walfred Solorzano, City Clerk

DATED: _____, 2020

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Nai Hsueh, Chair

ATTEST:

By: _____
Michele L King, CMC, Board Clerk

DATED: _____, 2020

SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT

By: _____
Dave Pine, Chair

ATTEST:

By: _____
Christine Boland, Interim Board Clerk

JOINT POWERS AGREEMENT
~~CREATING~~FOR THE
SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

~~Dated~~
AMENDED AND RESTATED
as of

~~May 18, 1999~~
January 1, 2020

JOINT POWERS AGREEMENT

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SAN FRANCISQUITO CREEK
JOINT POWERS AGREEMENT

This Amended and Restated Agreement (“Agreement”) is made by and among the City of Menlo Park, the City of Palo Alto, the City of East Palo Alto, the Santa Clara Valley Water District, and the San Mateo County Flood Control and Sea Level Rise Resiliency District (“Member Entities”), all of which are public entities organized and operating under the laws of the State of California and each of which is a public agency as defined in California Government Code section 6500.

RECITALS

A. The Joint Exercise of Powers Act, being Government Code sections 6500-6515, permitting et seq. (the “JPA Law”), permits two or more local public entities by agreement to jointly exercise any power common to them, ~~authorizes the Member Entities to enter in this San Francisquito Creek Joint Powers Agreement (“Agreement”).~~

B. ~~Each Member Entity desires to join together with the other Member Entities for the primary purpose of managing the joint contribution of services and providing policy direction on issues of mutual concern relating to the San Francisquito Creek (“Creek”), including bank stabilization, channel clearing and other Creek maintenance, planning of flood control measures, preserving and enhancing environmental values and instream uses, and emergency response coordination. Following years of effort to address environmental and flooding concerns related to the watershed and floodplain of San Francisquito Creek (encompassing approximately 50 square miles from the Santa Cruz Mountains to San Francisco Bay), and soon after the flood of record in 1998 damaged approximately 1,700 properties, the Member Entities established the San Francisquito Creek Joint Powers Authority pursuant to that certain “Joint Exercise Agreement Creating the San Francisquito Creek Joint Powers Authority,” dated as of May 18, 1999, to collectively contribute resources and implement policies and projects of mutual interest relating to the primary natural features that unite them, including the San Francisquito Creek (“Creek”).~~

C. The governing ~~board~~body of each Member Entity has determined that it is in the Member Entity’s best interest and in the public interest that this Amended and Restated Agreement be executed ~~and that it is participating as a member of the public entity created by this Agreement. to make minor procedural updates, including the change on January 1, 2020 of the San Mateo County Flood Control District to the San Mateo County Flood and Sea Level Rise Resiliency District.~~

NOW, THEREFORE, the Member Entities, by, between and among themselves, in consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

1. CREATION OF THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY. Pursuant to ~~Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) (as amended from time to time, the “JPA Law”)~~the

JPA Law, the Member Entities create a public agency, separate and apart from the Member Entities to be known as the San Francisquito Creek Joint Powers Authority (the “Authority”). Pursuant to Government Code section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this Agreement. A Member Entity may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. ~~The Authority shall require indemnification on behalf of itself and its members as determined by its Board of Directors from entities with which it enters into agreements.~~ For purposes of, and to the extent required by, Government Code section 6509, in exercising its powers, the Authority shall be subject to the restrictions upon the manner of exercising the powers of the ~~city or county Member Entity specified in this Agreement~~City of Menlo Park, except as otherwise authorized or permitted by the JPA Law.

2. PURPOSES. This Agreement is entered into by Member Entities under the JPA Law for the following purposes:

- a. To facilitate and perform bank stabilization, channel clearing and other Creek maintenance.
- b. To plan flood control measures for the San Francisquito Creek watershed.
- c. To take actions necessary to preserve and enhance environmental values and instream uses of San Francisquito Creek.
- d. To coordinate emergency mitigation and response activities relating to San Francisquito Creek.
- e. To make recommendations to Member Entities for funding and alternatives for long term flood control for Member Entity consideration.

3. DEFINITIONS. ~~In this Agreement unless the context otherwise requires:~~

- a. ~~“Administrative Cost” means the amount charged to each Member Entity by the Authority for the Authority’s general operating costs and expenses.~~
- b. ~~“Authority” means the San Francisquito Creek Joint Powers Authority.~~
- c. ~~“Board” or “Board of Directors” means and is the governing body of the Authority constituted as set forth in Paragraph 10 of this Agreement.~~
- d. ~~“JPA Law” means Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended from time to time.~~
- e. ~~“Member Entity” means and shall include each public agency (as defined in Section 6500 of the JPA law), which is a party to this Agreement.~~
- f. ~~“Creek” means and is the San Francisquito Creek.~~

4. PARTIES TO AGREEMENT. Each Member Entity certifies that it intends to and does contract with every other Member Entity which is a signatory to this Agreement. Each Member Entity also certifies that the

deletion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining. Pursuant to Assembly Bill 825 (Chapter 292, Statutes of 2019), which amended the San Mateo County Flood Control District Act to provide for the San Mateo County Flood and Sea Level Rise Resiliency District, the Member Entities agree that the San Mateo County Flood and Sea Level Rise Resiliency District is the entity formerly known as the San Mateo County Flood Control District, and as such is subject to the terms and conditions of this Agreement.

5.4. TERM OF AGREEMENT. This Agreement became effective as of May 18, 1999, and continues in full force until terminated in accordance with Paragraph 20.18 (Termination and Distribution).

6.5. POWERS OF THE AUTHORITY. The Authority through its Board of Directors is authorized, in its own name and subject to the limitations set forth below, to do all acts necessary to fulfill the purposes of this Agreement referred to in Paragraph 2. (Purposes) including, but not limited to, each of the following:

- a. Make and enter into contracts;
- b. Incur debts, liabilities, and obligations, provided that no debt, liability, or obligation of the Authority shall be a debt, liability, or obligation of a Member Entity except as separately agreed to by a Member Entity;
- c. Receive contributions and donations of property, funds, services, and other forms of assistance from any source;
- d. Sue and be sued in its own name;
- e. Contract with independent consultants and/or contractors;
- f. Receive, collect, and disburse monies;
- g. Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;
- h. Assign, delegate, or contract with a Member Entity or third party to perform any of the duties of the Board including, but not limited to, acting as administrator for the Authority; and
- i. Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

7.6. MEMBER ENTITY APPROVALS AND RESPONSIBILITIES. Each Member Entity has the approval authority, obligations and responsibilities set forth in this Agreement. No action of the Authority shall be effective or binding unless and until such action has been approved

in accordance with Subparagraph “e” (Action of the Board) of Paragraph 11-e10 (Board Members) by the ~~Authority~~ Board of Directors consistent with a budget approved by independent action of each Member Entity’s governing body.

~~8.7.~~ PROJECT PARTICIPATION APPROVAL AUTHORITY. Member Entities shall have the right to determine independently whether to participate in any capital improvement project. No capital improvement project shall be approved by the Authority unless and until Member Entities sufficient to fund the project fully have approved the project by independent action of each such funding Member Entity’s governing body.

~~9.~~ ~~MEMBERSHIP.~~ 8.MEMBERSHIP. New Member Entities may be added to the Authority by amending this Agreement, as described in Paragraph 21 (Amendments); and Member Entities may withdraw or be expelled, as described in Paragraph 16 (Withdrawal) and Paragraph 17 (Expulsion).

~~a. — Voting Members. All Member Entities shall be Voting Members.~~

~~b. — Associate Membership.~~

~~(1) — Nonprofit corporations and academic and charitable organizations located or operating within the jurisdictional limits of a Member Entity shall be eligible to join the Authority as Associate Members, subject to the approval of the Board of Directors.~~

~~(2) — Associate Members shall be entitled to attend all meetings of the Board of Directors and participate in discussion of all items of business but shall not be entitled to vote or participate in formal debate of a motion on the floor. Further, no representative of an Associate Member may become an officer or director of the Authority.~~

~~(3) — For purposes of this Agreement, only Voting Members shall be referred to as “Member Entities.”~~

~~10.9.~~ BOARD OF DIRECTORS.

a. Directors. There shall be a Board of Directors (the “Board”) to govern the affairs of the Authority. The Board shall be comprised of one director, and one alternate director, from each Member Entity. Each director has one vote. An alternate director may cast a vote as a member of the Board of Directors only in the absence of the director from that same Member Entity. Each director and alternate director shall be a member of the governing body of the Member Entity. ~~Each director and~~ shall be designated by ~~the~~its governing ~~board of the respective Member Entity. The~~body; provided, however, that no two directors and no two alternate directors shall be ~~appointed by the Director designated by a Member Entity in the absence of designation of alternates by a~~from the same governing body of any Member Entity.

b. Compensation. Directors and alternate directors are not entitled to compensation from the Authority. The Board may authorize reimbursement of expenses incurred by directors or alternate directors.

c. Powers. The powers of the Board are each of the powers of the Authority not specifically reserved to the Member Entities by this Agreement. The Member Entities retain the following powers:

(1) The designation of the Board as specified in Subparagraph “a” of Paragraph 9 (Board of Directors ~~as specified in Paragraph 10)~~;

(2) Approval of an amendment to this Agreement as specified in Paragraph ~~23~~21 (Amendments);

(3) Approval of actions pursuant to Paragraph ~~7, above~~6 (Member Entity Approvals and Responsibilities);

(4) Approval of project participation as specified in paragraph ~~8~~7 (Project Participation Approval Authority); and

(5) Approval of the annual budget of the Authority as specified in Paragraph ~~14.~~13 (Budget).

~~11.~~10. BOARD MEMBERS.

a. Meetings. The Board shall hold at least one regular meeting each year, at which time the Board shall elect its officers as appropriate to comply with Paragraph ~~12.11~~11 (Officers). The Board shall fix the date, hour, and place at which each regular meeting is to be held. To the extent practicable, each Board meeting shall be held in Northern Santa Clara County or Southern San Mateo County. The Chair presides at all meetings. A special meeting may be called upon written request by the Chair or at least ~~one-third of the Member Entities~~two directors.

b. Brown Act. Each regular, adjourned regular, or special meeting of the Board shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Sections 54950, et seq., of the Government Code).

c. Minutes. The ~~Secretary~~Clerk of the Board shall ~~keep or have kept~~draft minutes of each regular and special meeting of the Board. ~~As soon as possible after each meeting, the Secretary shall have a copy of those minutes forwarded to each member of the Board, which shall be considered for approval by the Board at a subsequent regular meeting.~~

d. Quorum. No business may be transacted by the Board without a quorum of members of the Board being present except that less than a quorum may adjourn from time to time. A quorum consists of a majority of the members of the Board.

e. Action of Board. ~~Any~~Except as otherwise specified in this Agreement, any action of the Board shall require a vote of a majority ~~of the voting members~~ of the Board.

12.11. OFFICERS.

a. Officers. The officers of the Authority are the Chair, Vice-Chair, and Secretary.

b. Election/Term/Duties. The officers shall be elected or appointed by the Board at its first meeting of the calendar year, unless that is delayed by an action of the Board. The term of office for Chair, Vice-Chair, and Secretary is one year. The officers shall assume the duties of their offices upon ~~formation of the Authority or~~ being elected or appointed, as appropriate. If ~~either any of~~ the Chair, Vice-Chair, or Secretary ceases to be a member of the Board, the ~~resulting vacancy~~ Board shall be filled elect or appoint a new officer at the next regular meeting of the Board held after the vacancy occurs.

c. Compensation. Officers are not entitled to compensation by the Authority. The Board may authorize reimbursement of expenses incurred by officers.

d. Appointment/Contract. The Board may appoint such officers and may hire or contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.

13.12. FISCAL YEAR. The first fiscal year of the Authority is July 1, 1999, through June 30, 2000. Each subsequent fiscal year of the Authority shall begin on July 1st and end on June 30th.

14.13. BUDGET. The Board shall adopt an annual operating budget, which shall ~~include each Member Entity's~~ be separate from the Authority's capital projects budget. The operating budget shall include the proposed contribution from each Member Entity for the fiscal year and other sources of income. The operating budget shall not be effective unless and until ~~it is approved by~~ the governing body of each Member Entity has approved that ~~has a~~ Member Entity's contribution to the budget. Member Entity contributions shall become immediately due and payable to the Authority upon adoption of the budget, unless expressly provided otherwise in the budget.

15.14. ANNUAL AUDIT AND AUDIT REPORTS. The Board shall cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions, and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be filed no later than as required by State law. The Authority shall pay the cost of the financial audit ~~and charge the cost against the Member Entities~~ from its annual operating budget in the same manner as other administrative costs.

16.15. ESTABLISHMENT AND ADMINISTRATION OF FUNDS.

a. Accountability. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code. The funds shall be accounted for on a full accrual basis.

b. Investment/Disbursement. The Authority shall receive and disburse funds only in accordance with policies and procedures established by the Board and in conformity with applicable law.

c. Insurance/Bond. The Authority shall ~~require the Board to procure errors and omissions insurance or a fidelity bond~~ procure, carry and maintain, in full force and effect, at all times during the term of this Agreement, such insurance and bonds to protect the Authority and its members of the Board, officers, employees, agents and Member Entities, as deemed appropriate by the Board.

d. ~~Fiscal Agent.~~ ~~The Authority shall designate a fiscal agent who shall be responsible for the administration of all funds and accounts. The fiscal agent may be one of the Member Entities or an officer or employee of one of the Member Entities, subject to the approval of the selected Member Entity.~~ Depository and Auditor Controller. The Board shall designate one of its officers, employees or a third party to perform all acts required by Government Code Sections 6505 (regarding an annual audit), 6505.1 (regarding charge of and access to property), 6505.5 (regarding the depository and custodian of money), and 6505.6 (regarding independent audit where an officer or employee acts as treasurer, auditor or both), as such laws are amended from time to time.

~~17. — ADMINISTRATIVE COST. In connection with preparation of the Annual Budget pursuant to Paragraph 14, above, the Board may establish the Administrative Costs of the Authority, if any, for each fiscal year and shall propose a formula for allocating these Administrative Costs among Member Entities for each fiscal year, which shall be approved by the Member Entities as a part of the budget.~~

~~18.~~ 16. WITHDRAWAL. Member Entities may withdraw from the Authority for subsequent fiscal years by providing written notice to the Authority and each Member Entity on or before May 1 of any fiscal year. Withdrawal shall be effective on July 1 of the next fiscal year. This shall be the exclusive means by which a Member Entity may withdraw from the Authority. Any Member Entity that withdraws shall remain liable for any budget contributions or capital improvement project participation approved before withdrawal. Any Member Entity that withdraws shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity withdraws from this Agreement. Any Member Entity that withdraws shall remain subject to the provisions of Paragraph ~~25~~ 23 (Liability of the Authority; Release and Indemnity) with respect to any event or occurrence taking place before the Member Entity withdraws.

~~19.~~ 17. EXPULSION. The Authority may expel a Member Entity from the Authority by a ~~three-fourths (3/4)~~ four-fifths (4/5) vote of the Board ~~of Directors~~ for a breach of this Agreement determined by the Board to be a material breach. Any Member Entity that has been expelled pursuant to this paragraph shall have no further liability or obligation pursuant to this Agreement after the effective date of such expulsion; except such Member Entity shall remain liable for any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed before the Member Entity was expelled, including any budget

contributions or capital improvement project participation approved before expulsion. Any Member Entity that has been expelled shall remain subject to the provisions of Paragraph ~~25~~23 (Liability of the Authority; Release and Indemnity) with respect to any event or occurrence taking place before the Member Entity was expelled.

~~20~~18. TERMINATION AND DISTRIBUTION.

a. Termination. This Agreement shall continue until terminated. This Agreement may be terminated by the written consent of ~~two-thirds~~four-fifths (~~24~~35) of the Member Entities; provided, however, this Agreement and the Authority shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligation and affairs of the ~~authority~~Authority.

b. Surplus. ~~After completion of~~In the event that the Authority's ~~purposes is terminated~~, any surplus money on deposit in any fund or account of the Authority shall be returned in proportion to the contributions made as required by Section 6512 of the California Government Code. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority, including for the disposition, division, or distribution of any property acquired as a result of the joint exercise of powers.

~~21~~19. NOTICES. Notices to each Member Entity under this Agreement are sufficient if mailed to its respective address on file with the Authority.

~~22~~20. PROHIBITION AGAINST ASSIGNMENT. No Member Entity may assign a right, claim, or interest it may have under this Agreement, and any such assignment shall be void. No creditor, assignee, or third party beneficiary of a Member Entity has a right, claim, or title to any part, share, interest, fund, or asset of the Authority.

~~23~~21. AMENDMENTS. This Agreement may be amended by ~~a unanimous vote of the Member Entities of the Authority acting through their~~approval by the governing ~~bodies~~body for each and every Member Entity. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date when the Member Entity considers it. An amendment is to be effective immediately unless otherwise designated.

~~24~~22. SEVERABILITY. If a portion, term, condition, or provision of this Agreement is determined by a court to be illegal or in conflict with the law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

~~25~~23. LIABILITY OF THE AUTHORITY; RELEASE AND INDEMNITY. Funds of the Authority may be used to defend, ~~indemnity~~indemnify, and hold harmless the Authority, any Member Entity, any member of the Board, and each officer, employee and agent of the Authority for their actions taken within the scope of their duties while acting on behalf of the Authority. The parties to this Agreement release each other and agree to hold each other harmless, as well as their officers and employees, for any loss or liability arising from their respective activities pursuant to this Agreement. Except as otherwise provided herein, each party agrees to indemnify, defend and hold harmless the other parties, their officers, agents, and employees from any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage, or

any other loss caused by or arising out of that party's performance or failure to perform the obligations assumed under this Agreement. Each Member Entity agrees that legal counsel for any Member Entity may be designated by the Board to represent the Authority by performing legal services, including litigation, and that any potential conflict of interest arising from such representation shall be deemed waived by the Authority and Member Entity, unless an actual adverse relationship exists between the Member Entity and the Authority with respect to the particular matter. The designation of legal counsel from a Member Entity shall be with the approval of that Member Entity.

~~26.24.~~ GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

~~27.25.~~ COUNTERPART. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

~~28.26.~~ AGREEMENT COMPLETE. The foregoing constitutes the full and complete Agreement of the Member Entities. There are no oral understandings or agreements not set forth in writing herein.

27. NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity, other than the parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

DATED: _____, ~~2004~~2020

CITY OF MENLO PARK

By: _____
Cecilia Taylor, Mayor

ATTEST:

By: _____
Judi Herren, City Clerk

DATED: _____, ~~2004~~2020

CITY OF PALO ALTO

By: _____
Adrian Fine, Mayor

ATTEST:

By: _____
[Beth Minor](#), City Clerk

DATED: _____, ~~2004~~2020

CITY OF EAST PALO ALTO

By: _____
Regina Wallace-Jones, Mayor

ATTEST:

By: _____
Walfred Solorzano, City Clerk

DATED: _____, ~~2004~~2020

SANTA CLARA VALLEY WATER DISTRICT

By: _____
~~(Signature)~~Nai Hsueh, Chair

~~(Print Title)~~

ATTEST:

By: _____
~~Secretary~~Michele L King, CMC, Board

Clerk

DATED: _____, ~~2004~~2020

SAN MATEO COUNTY FLOOD
~~CONTROL~~AND SEA LEVEL RISE
RESILIENCY DISTRICT

By: _____
~~Board~~Dave Pine, Chair

ATTEST:

By: _____
~~Secretary~~Christine Boland, Interim

Board Clerk