

**MEMORANDUM OF UNDERSTANDING**  
**by and between the**  
**COUNTY OF SAN MATEO**  
**and the**  
**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**  
**FOR THE FUNDING OF SECURITY IMPROVEMENTS**  
**related to the**  
**CRYSTAL SPRINGS REGIONAL TRAIL PROJECT**

This Memorandum of Understanding (MOU), by and between the County of San Mateo ("San Mateo County") and the City and County of San Francisco, by and through the San Francisco Public Utilities Commission ("City" or "SFPUC"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 for the purpose of memorializing the provision of funding by the SFPUC to San Mateo County for constructing security fencing for San Mateo County's Crystal Springs Regional Trail project on the SFPUC's San Francisco Peninsula Watershed lands.

WHEREAS, in 1993, San Mateo County and the SFPUC entered into a Memorandum of Understanding (the "1993 MOU") for the conveyance of trail easements on the San Francisco Peninsula Watershed from the SFPUC to San Mateo County as authorized by SFPUC Resolution No. 92-0303; and

WHEREAS, the San Francisco Board of Supervisors authorized the conveyance of trail easements to San Mateo County under ordinance No. 396-96, and said trail easements were recorded on January 17, 1997 in the official records of San Mateo County under Recorder's reference number 97-006566; and

WHEREAS, the recorded trail easements were subject to the terms and conditions of the 1993 MOU, which was attached to the recorded trail easements as Exhibit B and incorporated into the easements by reference in section 1.b thereof; and

WHEREAS, San Mateo County has completed the San Andreas Trail and the San Andreas Trail/Sawyer Camp Trail Connector contemplated in the 1993 MOU and subsequent conveyance of easements from the City to San Mateo County; and

WHEREAS, San Mateo County has not completed the remaining trail improvements south of Lower Crystal Springs Dam to Highway 92 and south of State Highway 92 to the existing Crystal Springs Trail Segment and the Ralston Bike Trail, and has requested a funding contribution by the SFPUC for the construction of trail fencing for security and watershed protection purposes along the trail segment from Lower Crystal Springs Dam south to Highway 92; and

WHEREAS, the SFPUC is willing to provide construction funding for security and watershed protection improvements to facilitate San Mateo County's completion of the Crystal Springs Regional Trail.

NOW, THEREFORE, it is mutually understood and agreed as follows:

**SECTION 1: AUTHORITY OF PARTIES**

- 1.1 The SFPUC is responsible for managing San Francisco's municipal utilities pursuant to the Charter of the City and County of San Francisco.
- 1.2 The San Mateo County Department of Parks is responsible for the management and operation of the San Mateo County park system, including trails authorized under the

1993 MOU and incorporated into the 1997 grant of easements from the City to San Mateo County.

## **SECTION 2: FUNDING FOR SECURITY IMPROVEMENTS**

- 2.1 **SFPUC Funding; Not to Exceed Amount.** The SFPUC's funding contribution towards security and watershed protection fencing included in the Crystal Springs Regional Trail project shall not exceed \$300,000.00 (**three hundred thousand dollars**). Prior to the provision of such funding by the SFPUC, San Mateo County shall present the 100% design plans for the Crystal Springs Regional Trail to the SFPUC Natural Resources and Lands Management Division for final approval.
- 2.2 **Administration of Contract.** San Mateo County shall serve as the project manager of the contract for construction of the Crystal Springs Regional Trail. San Mateo County's contract with the construction contractor shall contain language that deems the contractor to be an independent contractor of San Mateo County and not an agent or employee of the SFPUC.
- 2.3 **Relationship of Parties With Respect to Funding.** Each of the Parties shall be individually responsible for its own obligations under this MOU. Neither of the Parties shall be under the control of or shall be deemed to control the other party. No party shall be an agent of or have the right or power to bind any other party without such party's express written consent, except as specifically provided in this MOU.
- 2.4 **Fiscal Limitations.** THIS SECTION SUPERSEDES ANY CONFLICTING PROVISION OF THIS MOU. This MOU is subject to the fiscal provisions of the San Francisco charter and the budget decisions of its Mayor and Board of Supervisors. No SFPUC funds will be available hereunder without prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This MOU shall automatically terminate, without liability to the City, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. The SFPUC's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. The SFPUC, its employees and officers are not authorized to request services, materials, equipment or supplies that are beyond the scope of those expressly described herein, unless this MOU is amended in writing and approved as required by law. The SFPUC, its employees and officers are not authorized to offer or promise any additional funding that would exceed the maximum amount specified in Section 2.1. Such additional funding requires lawful approval and certification by the Controller. Without such lawful approval and certification, the SFPUC shall not be required to provide such additional funding.
- 2.5 **Indemnity.** San Mateo's contract with the construction contractor hired to build the Crystal Springs Regional Trail shall contain language requiring the contractor to indemnify, defend, and hold harmless the City and County of San Francisco and its officers, agents and employees for any and all claims for bodily injury or property damage arising out of the negligence or willful misconduct of the contractor.
- 2.6 **Cooperation Regarding Public Relations and Outreach.** The parties will jointly review and approve all press releases created for public consumption concerning the Crystal Springs Regional Trail project.

### SECTION 3: GENERAL PROVISIONS GOVERNING THE MOU

- 3.1 **Term.** The term of this MOU shall expire on December 1, 2016.
- 3.2 **Invalidity of Any Term Not to Invalidate Entire MOU.** In the event that any of the terms, covenants, or conditions of this MOU or the application of any such term, covenant, or condition shall be held invalid as to any party by any court of competent jurisdiction, all other terms, covenants, or conditions of this MOU and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this MOU.
- 3.3 **Construction of Terms.** This MOU is for the sole benefit of the parties and shall not be construed as granting rights to or imposing any obligations on any person or entity other than the parties.
- 3.4 **Conflict of Interest.** Through its execution of this MOU, San Mateo County acknowledges that it is familiar with the provisions of Section 15.103 and Appendix C 8.105 of the San Francisco Charter and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.
- 3.5 **Liability of San Francisco.** The SFPUC's obligations under this agreement shall be limited to the payment of the compensation provided for in sections 2.1 of this MOU. Notwithstanding any other provision of this MOU, in no event shall SFPUC be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this agreement or the services performed in connection with this agreement.
- 3.6 **Amendment.** The parties may agree to modify the terms of this MOU by written agreement authorized by the governing boards of both parties.
- 3.7 **MOU Does not Affect Terms of 1993 MOU or Recorded Trail Easements.** Nothing in this MOU shall be deemed to amend or supersede the 1993 MOU between the parties, or San Mateo County's obligations as holder of the trail easements granted by the City in 1997, specifically including but not limited to section 5 of the 1993 MOU regarding construction of fencing.
- 3.8 **Governing Law.** This MOA is made under and shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding by their duly authorized representatives as of the day and year indicated on the first page of this MOU.

CITY AND COUNTY OF SAN  
FRANCISCO PUBLIC UTILITIES  
COMMISSION

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
Harlan L. Kelly, Jr.  
General Manager

By: \_\_\_\_\_  
Marlene Finley  
Parks Director

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Authorized by San Francisco Public Utilities  
Commission, Resolution No. \_\_\_\_\_

Authorized by Board of Supervisors' Resolution  
No. \_\_\_\_\_

By: \_\_\_\_\_  
Donna Hood  
Commission Secretary

Adopted November \_\_\_\_\_, 2013

Adopted \_\_\_\_\_, 2013

**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

Dennis Herrera, City Attorney

John C. Beiers, County Counsel

By: \_\_\_\_\_  
Joshua Milstein  
Deputy City Attorney

By: \_\_\_\_\_  
Nirit Eriksson  
Deputy County Counsel