

**AMENDMENT NUMBER TWO
TO AGREEMENT**

**Between the San Francisquito Creek Joint Powers Authority, the San Mateo County
Flood Control District, and the Santa Clara Valley Water District for Funding of the
Planning and Design of the Initial Capital Project on San Francisquito Creek
Between East Bayshore Road and San Francisco Bay**

This Amendment Number Two to that certain Agreement, dated November 3, 2009 (Agreement), and Amendment Number One thereto dated August 9, 2011, by and among the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY ("Authority"), a California joint powers authority, the SAN MATEO COUNTY FLOOD CONTROL DISTRICT ("Flood Control District"), a special district of the State of California, and the SANTA CLARA VALLEY WATER DISTRICT ("Water District"), a special district of the State of California, collectively referred to as Parties or individually as Party, is entered into this ____ day of _____ 2013.

WHEREAS, on July 23, 2009, the Authority's Board of Directors unanimously approved the staff's recommended Initial Capital Project on San Francisquito Creek (Project) and authorized its Executive Director to pursue funding opportunities and to contract on behalf of the Authority with qualified consultants to conduct: (1) design services and (2) environmental impact assessment and planning for the Project; and

WHEREAS, on November 3, 2009, the Authority and HDR (Consultant) entered into an agreement for Design Services (Agreement for Design Services) for Floodwater Conveyance Improvements on San Francisquito Creek from East Bayshore Road to San Francisco Bay and since its commencement, Consultant has been continuously performing design services for the Project; and

WHEREAS, on November 3, 2009, the Authority and Jones & Stokes Associates, Inc., now known as ICF International (ICF), entered into an agreement for Environmental Planning and preparation of an Initial Study and Environmental Impact Report and Permitting Assistance (Agreement for Environmental Planning) for a flood protection capital project on San Francisquito Creek and since its commencement, ICF has been continuously performing planning and environmental services for the Project; and

WHEREAS, the cost of the design for the Project has exceeded the original amount stated in the Agreement for Design Services and in Amendment Number One thereto, and the cost of the planning and environmental services in the Agreement for Environmental Planning has exceeded the original amount budgeted specifically for preparation of applications for environmental regulatory permits and support to various federal permitting agencies relating to preparation of biological opinions; and

WHEREAS, the Parties desire to continue with and finish the planning and design phases of the Project; and

WHEREAS, a further amendment to the Agreement is necessary to provide funds to compensate Consultant for performing additional design services benefitting the Water District and for other costs enumerated in Exhibit A, Task/Fee Table, attached hereto, as well as provide funds to compensate ICF for performing additional planning and environmental services

relating to applications for environmental regulatory permits and work to support preparation of biological opinions by certain federal agencies; and

WHEREAS, this Amendment Number Two provides for funding to pay for various engineering design costs included in and added to the original Agreement for Design Services and Amendment Number One thereto, as well as for funding to pay for various planning and environmental services in addition to those identified in the original Agreement for Planning Services.

The additional engineering design costs are as follows:

- A. Consultant will prepare a revised feasibility assessment for extending the fourth CalTrans bridge cell under Highway 101 to be constructed on the Santa Clara County side of San Francisquito Creek and under certain real property located in the Project area, commonly known as 2023 and 2025 East Bayshore Road, Palo Alto, California, 94303; and
- B. Provided it is determined feasible, and if it is recommended by Water District and authorized by Authority, Consultant will prepare design documents to implement extension of the fourth CalTrans bridge cell to be constructed under the real property as described in A. above; and
- C. A sub-consultant to Consultant will perform additional geotechnical field exploration and data analysis necessary to finalize the Project design, including modifications needed to existing underground utilities (i.e., geotechnical investigation in support of gas and sanitary sewer relocation beneath proposed Project levees) above the level anticipated when the Agreement and Amendment Number One were executed.
- D. The sum of \$50,000 is added to the existing Contingency Amount.

The additional planning and environmental services costs are as follows:

- E. Preparation of revised applications for environmental regulatory permits as a result of changes in Project design.
- F. Support to various federal permitting agencies (United States Army Corps of Engineers, United States Fish and Wildlife Service, and the United States National Marine Fisheries Service) relating to preparation of biological opinions that may be revised due to changes in Project design.

NOW, THEREFORE, for the consideration and upon the terms and conditions hereinafter specified, the Parties agree to further amend the Agreement and Amendment Number One as follows:

- 1. Provision 2, Funding Amounts: Provision 2 is deleted in its entirety and replaced with the following:
 - a. Funding Amounts

- (1) The amount of funding provided by this Agreement is two million, four hundred twenty seven - thousand, two hundred fifty-two dollars: \$2,427,252.00.
 - (2) Water District's contribution shall be one million, eight hundred forty-one thousand dollars (\$1,841,000.00) to fund the planning and design for the Project. The entire cost of Amendment Number Two shall be borne by the Water District.
 - (3) Flood Control District's contribution shall be five hundred eighty-six thousand, two hundred fifty-two dollars (\$586,252.00) to fund the planning and design of the Project.
 - (4) The Authority Board of Directors may authorize the Executive Director to approve task orders up to \$10,000 from the contingency amount. The Executive Director must provide a written report to the Board at its next regular meeting describing the approved task order. Any task orders over \$10,000 require approval of the Authority Board of Directors.
2. All terms and conditions of the Agreement and Amendment Number One thereto, not otherwise amended herein, shall remain in full force and effect.

a. Counterparts

This Amendment Number Two may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Authority, the Flood Control District, and Water District have executed this Agreement as of the date and year first above written.

Separate Signature pages are implemented individually for each Party as follows.

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EXHIBIT A
TASK/FEE TABLE

The maximum compensation limits for each additional Task are as stated in the Table below:

Tasks	Costs	Amendment Number Two
Funding Agreement among Authority, Flood Control District, and Water District including Amendment No. 1	\$2,052,252	
Revised feasibility assessment for extending the fourth CalTrans Highway 101 bridge cell to be constructed under 2023 and 2025 East Bayshore Road, Palo Alto, CA 94303		\$35,000
If determined feasible, recommended by Water District, and authorized by Authority, preparation of design documents to implement extension of the fourth CalTrans Highway 101 bridge cell to be constructed under 2023 and 2025 East Bayshore Road, Palo Alto, CA 94303		\$190,000
Additional geotechnical field exploration and data analysis		\$50,000
Additional environmental planning associated with permitting for changes in design		\$50,000
Additional Contingency Amount (added per this Amendment Number Two)		\$50,000
Amendment Number Two total increase amount (to be paid in full by Water District)	\$375,000	\$375,000
Total Funding Agreement between Authority, Flood Control District, and Water District with Amendment No. 2	\$2,427,252	

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have executed this Amendment Number Two to the Agreement as of the date and year first
above written.

Separate Signature pages were implemented individually for each Party.

APPROVED AS TO FORM:

SAN FRANCISQUITO CREEK JOINT
POWERS AUTHORITY

Signature

By: _____

Len Materman, Executive Director

Greg Stepanicich
Authority Counsel

Date: _____

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APPROVED AS TO FORM:

SAN MATEO COUNTY FLOOD CONTROL
DISTRICT

Signature

By: _____
President, Board of Supervisors

Print Name
County Counsel

Date: _____

ATTEST:

John L. Maltbie, County Manager /
Clerk of the Board of Supervisors

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APPROVED AS TO FORM:

SANTA CLARA VALLEY WATER DISTRICT

Signature

By: _____
Beau Goldie, Chief Executive Officer

Print Name
District Counsel

Date: _____