

**MEMORANDUM OF UNDERSTANDING AMONG
THE CITY OF REDWOOD CITY, CITY OF MENLO PARK,
TOWN OF ATHERTON, AND COUNTY OF SAN MATEO
(BAYFRONT CANAL AND ATHERTON CHANNEL
FLOOD MANAGEMENT AND RESTORATION PROJECT)**

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of _____, 2017 by and between the City of Redwood City, the City of Menlo Park, and the Town of Atherton (“Cities”), municipal corporations of the State of California, and the County of San Mateo (“County”), collectively referred to as Bayfront Canal/Atherton Channel Collaborative (“Collaborative”).

1. Purpose. The purpose of this MOU is to establish the terms and conditions for the cost sharing and responsibilities for the design phase of the Bayfront Canal and Atherton Channel Flood Management and Restoration Project (hereinafter referred to as “PROJECT”), which will include the engineering planning, design drawings, technical specifications, and cost estimates; environmental compliance and construction permitting; and securing property access rights necessary to initiate construction bidding. This includes initial site surveys, hydraulic analysis, environmental and construction permitting approval, design drawings, specifications and engineering design estimates for the Bayfront Canal and Atherton Channel Flood Management and Restoration Project, as listed in the “Scope” section of Exhibit A to this MOU titled, Bayfront Canal and Atherton Channel Flood Management and Restoration Project. This MOU does not include construction and operation and maintenance activities, but it will serve as a template for future agreements with the Collaborative.

This MOU outlines responsibilities for the first of a series of projects that will provide a regional approach for flood risk management. The Collaborative will maintain a comprehensive list of the current known flood risk reduction projects in the Bayfront Canal and Atherton Channel watersheds. Flow contribution percentages, as shown in Exhibit A, pending review by the initial task of consulting engineers, will be used to determine the initial expected financial contribution of each member in the Collaborative. The flow contributions will be reviewed and confirmed by the Collaborative. This initial engineering Task will be performed on behalf of all parties as part of the first task of the consulting engineers. Exhibit A addresses the process to modify contribution percentages following the consultant review. Additional projects that could impact flow contributions, including but not limited to the projects described in Table 2 of Exhibit A, will not be included until significant design and funding of those projects is completed.

PROJECT construction, operation, and maintenance cost responsibilities will be addressed in future Agreements, or MOUs, subject to the agreement of all parties.

2. Term of MOU and Termination. This MOU is effective upon the day and date last signed and executed by the duly authorized representatives of the Collaborative to this MOU and the governing bodies of the Collaborative’s respective jurisdictions and shall remain in full force and effect until the completion of the PROJECT. This MOU includes all

consultant costs to complete this PROJECT incurred as of the Notice to Proceed to the Consultant(s) executed on or after September 26, 2017. This MOU may be terminated, without cause, by any of the parties in the Collaborative upon 30 days written notice to all members of the Collaborative. If a party terminates the MOU, they will be responsible for their share of the cost of work performed up to the effective date of the termination. The remaining Collaborative parties will stop work temporarily to address this change and may continue the Project if agreed upon through an amendment to the MOU. A final invoice will be sent to all Collaborative parties for costs incurred through the term of the MOU. All members in the Collaborative will have 30 days from the date of the final invoice to remit payment for services to the County.

3. Authorizations. The City Managers of the City of Redwood City, the City of Menlo Park, and the Town of Atherton, are authorized to approve extensions to the term of this MOU, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of the Cities, provided such approvals are not vested in the authority of the Cities' Council, and provided that any approval requiring payment of funds in excess of appropriated funds shall require Cities' Council approval of the appropriations of those funds.

The San Mateo County Manager, serving as the County Board of Supervisors' designee, is authorized to approve extensions to the term of this MOU, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of the County, provided that any approval requiring payment of funds in excess of appropriated funds requires the County Board of Supervisors' approval of the appropriation of those funds.

4. Responsibilities of the Collaborative. The County will serve as the lead and contracting agency for the PROJECT's design and environmental consultants. Consultants will be selected from the County's On-Call Engineering Service Agreements by a Collaborative Selection Committee. The County will manage the day to day work of the consultants as it relates to the objectives of the PROJECT, handle official communications regarding the contract, and reimburse the consultants under contract with the County for the work performed. Temporary and permanent land and easement negotiations with Caltrans, Cargill, West Bay Sanitary District, and other organizations will be facilitated by the County. The County of San Mateo Real Property Division will provide support for right of way acquisition services and real property expertise if the Collaborative needs these services. Each jurisdiction may be party to negotiating and securing easements or access for construction activities within their jurisdiction, and will be responsible for purchasing these easements, with the cost to be borne by the Collaborative. Land rights resulting from legal transfer and holding of easements will belong to the jurisdiction in which the land exists.

A designated staff member from each party in the Collaborative will participate in a working committee to ensure that the project direction and guidance needed from the Collaborative is communicated to the County. The working committee will update their respective jurisdictions as progress is made to obtain feedback that will form the final design.

5. Payment. Up to \$1,000,000 (depending on final cost of PROJECT) of the PROJECT outlined in this MOU will be paid for by the Collaborative. The costs will be allocated based on the contributing percentages of the Cities and the County in the Atherton

Channel and Bayfront Canal watershed boundaries. A description of the contribution percentages is outlined in Exhibit A. The Town of Woodside has decided not to participate and the 3.5% (up to \$35,000) financial responsibility will be split by flow contribution across the Collaborative. The updated MOU financial contribution percentages are as follows: Town of Atherton 39.8% (up to \$398,000); City of Redwood City 26.1% (up to \$261,000); County of San Mateo 22.6% (up to \$226,000); City of Menlo Park 11.5% (up to \$115,000), and Town of Woodside 0.0% (\$0). The flow contributions may be amended through the term of this MOU pending initial consultant review and review of additional projects in the watershed area that reduce or alter flow contributions. Any modifications to the contributing percentages will require approval of each party in the Collaborative and an Amendment to this MOU.

The intent of this MOU is to cover consulting costs for planning, design, environmental permitting and land acquisition. This MOU includes all consultant costs to complete this PROJECT incurred as of the Notice to Proceed to the Consultant(s). This Agreement and terms can be amended at a future date to include construction, operations, and maintenance. Any funding opportunities, including but not limited to grants and co-op agreements, that are awarded for planning, design, and environmental permitting throughout the duration of this MOU will be prorated by the same contribution percentage of each Collaborative member at the date of the execution of that funding agreement. This is intended to decrease the overall Project project cost to the Collaborative. Funding opportunities for construction will be assessed in a subsequent Agreement or Agreements.

The County will serve as the Project Manager and as such will coordinate with the consultant teams and manage the consultant contracts. The County will invoice the Collaborative for payment to the On-Call Engineering Service Agreements as described in Exhibit A. Project Management Support by the County will include invoicing the Collaborative, managing the consultant contracts, and project coordination. Each of the Cities in the Collaborative will be invoiced for the Consultant services on a quarterly basis and will remit a check payable to the County of San Mateo within 30 days of the invoice date. A table that illustrates how the financial responsibilities of each member of the Collaborative will be tracked and invoiced by the County is included as Attachment 1 to Exhibit A.

6. General Provisions

A. Indemnification. Pursuant to Government Code Section 895.4, each party agrees to fully indemnify, defend, and hold the other party (including its appointed and elected officials, officers, employees, and agents) harmless from any damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its appointed or elected officials, officers, employees, or agents, under or in connection with any work, authority, or jurisdiction delegated to such party under this MOU. No party, nor any appointed or elected official, officer or employee, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its appointed or elected officials, officers, employees, or agents, under or in connection, with any work, authority, or jurisdiction delegated to such other party under this MOU.

B. Amendments. Each party in the Collaborative may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU including contribution limits by parties, which are mutually agreed upon by and between the Collaborative to this MOU, shall be incorporated by written instrument, and effective when executed and signed by all parties in the Collaborative to this MOU.

C. Severability. If any provision of this MOU shall be held to be invalid, void, or unenforceable, the validity, legality, or enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

D. Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of California. The courts of the State of California shall have jurisdiction over any action arising out of this MOU and over the Collaborative.

E. Notices. Any and all notices required to be given hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to each party in the Collaborative at the following address or such other address as is provided by such party in writing:

To City: City of Redwood City Melissa Stevenson Diaz City Hall 1017 Middlefield Road Redwood City, CA 94063 Attn: City Manager	To City: City of Menlo Park Alex McIntyre Admin Bldg /City Hall, 2nd Floor 701 Laurel St Menlo Park, CA 94025 Attn: City Manager	To Town: Town of Atherton George Rodericks 91 Ashfield Drive Atherton, CA 94027 Attn: City Manager	To County: County of San Mateo John Maltbie 400 County Center, 1 st Floor Redwood City, CA 94063 Attn: County Manager
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F. Entirety of Agreement. This MOU, consisting of five pages, signature pages, one Exhibit A represents the entire and complete MOU between each party in the Collaborative and supersedes any prior negotiations, representations and agreements, whether written or oral.

G. Debt Limitation. The Collaborative is subject to laws or policies which limit their ability to incur debt in future years. Nothing in this MOU shall constitute an obligation of future legislative bodies of the Cities or County to appropriate funds for the purpose of this MOU.

H. Conflict of Interest. The Collaborative shall avoid all conflicts of interest in the performance of this MOU and shall immediately notify the Collaborative should a conflict of interest arise that would prohibit or impair the Collaborative's ability to perform under this MOU.

I. Disputes. The Collaborative agrees that, with regard to all disputes or disagreements arising under this MOU that are not resolved informally at the staff level after a good faith attempt by the Collaborative, the Collaborative may, at their sole and mutual discretion, agree to engage in mediation. The costs of the mediation shall be divided equally between the parties of the Collaborative, unless otherwise agreed.

J. Non-Discrimination. Neither the Cities nor County will discriminate, in any way, against any person based on sex, pregnancy, childbirth or related medical conditions, race, veteran status, religion, color, national origin or ancestry, physical or mental disability, medical condition, marital status, age, gender (including gender identity and gender perception), sexual orientation, use of family medical leave, genetic testing, or any other basis protected by federal or state law. This policy shall apply to all employment practices.

K. Counterparts. This Agreement 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.

7. Signatures. In witness whereof, the Collaborative to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

Exhibit A - Bayfront Canal and Atherton Channel Flood Management and Restoration Project, September 12, 2017.

[SIGNATURES ON FOLLOWING PAGES]

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TOWN OF ATHERTON, AND COUNTY OF SAN MATEO
FOR THE BAYFRONT CANAL AND ATHERTON CHANNEL
FLOOD MANAGEMENT AND RESTORATION PROJECT**

IN WITNESS WHEREOF, the Collaborative hereto, by their duly authorized representatives, have executed this Memorandum of Understanding.

Each party in the Collaborative has executed a separate signature page.

APPROVED AS TO FORM:

City of Redwood City, a California
Municipal Corporation

By: _____
Veronica Ramirez
City Attorney

By: _____
Melissa Stevenson Diaz
City Manager

Date: _____

Date: _____

cc: Aaron Aknin, Redwood City; Ramana Chinnakotla, P.E., Redwood City; Justin Murphy, P.E., Menlo Park; Marty Hanneman, Town of Atherton; Jim Porter, P.E. County of San Mateo

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APPROVED AS TO FORM:

City of Menlo Park, a California
Municipal Corporation

By: _____
William L. McClure
City Attorney

By: _____
Alex D. McIntyre
City Manager

Date: _____

Date: _____

cc: Aaron Akin, Redwood City; Ramana Chinnakotla, P.E., Redwood City; Justin Murphy, P.E., Menlo Park; Marty Hanneman, Town of Atherton; Jim C. Porter, P.E. County of San Mateo

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APPROVED AS TO FORM:

Town of Atherton, a California
Municipal Corporation

By: _____
William B. Conners
City Attorney

By: _____
George Rodericks
City Manager

Date: _____

Date: _____

cc: Aaron Akin, Redwood City; Ramana Chinnakotla, P.E., Redwood City; Justin Murphy, P.E., Menlo Park; Marty Hanneman, Town of Atherton; Jim Porter, P.E. County of San Mateo

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APPROVED AS TO FORM:

County of San Mateo, a California
Municipal Corporation

By: _____
Brian Wong
Deputy County Council

By: _____
John Maltbie
County Manager

Date: _____

Date: _____

cc: Aaron Akin, Redwood City; Ramana Chinnakotla, P.E., Redwood City; Justin Murphy, P.E., Menlo Park; Marty Hanneman, Town of Atherton; Jim Porter, P.E. County of San Mateo