Notice of Regular Meeting of the
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY BOARD
City of East Palo Alto Council Chambers
2415 University Avenue, East Palo Alto, California
Thursday, November 15, 2012 at 4:00 p.m.

AGENDA

1) ROLL CALL

2) APPROVAL OF MEETING MINUTES – October 25, 2012 Board Meeting

3) APPROVAL OF AGENDA

4) PUBLIC COMMENT – Members of the public may speak for up to three minutes on items not on the Agenda. They may address the Board on any Agenda item when that item is considered by the Board.

5) REGULAR BUSINESS – EXECUTIVE DIRECTOR’S REPORT
   a) Discuss the plan for San Francisquito Creek projects in light of voter approval of the Santa Clara Valley Water District’s November 6, 2012 special tax measure
   b) Receive and discuss a consultant’s report on the feasibility of a new SFCJPA Special Finance District to fund the construction of capital projects
   c) Authorize the Executive Director to sign an agreement with the East Palo Alto Sanitary District to fund the cost of modifying the portion of the main sewer line impacted by the S.F. Bay-Highway 101 project

6) BOARD MEMBER MATTERS - Non-agendized comments, requests, or announcements by Board members; no action may be taken.

7) ADJOURNMENT

PLEASE NOTE: This Board meeting Agenda can be viewed online by 4:00 p.m. on November 12, 2012 at www.sfcjpa.org -- click on the “Meetings” tab near the top. Supporting documents related to the Agenda items listed above will be available at the same online location by 4:00 p.m. on November 13, 2012.

NEXT MEETING: Regular Board meeting, December 13, 2012 at 4:00 p.m., Palo Alto City Council Chambers.
San Francisquito Creek Joint Powers Authority
November 15, 2012 Board Meeting
Agenda Item 2
October 25, 2012 Board Meeting Minutes

Director Keith called the meeting to order at 4:04 p.m. at the City of Menlo Park Council Chambers, Menlo Park, CA.

DRAFT

1) ROLL CALL
Members Present:  Director Burt, City of Palo Alto, not present at role call arrived at 5:20
Director Pine, San Mateo County Flood Control District
Director Keith, City of Menlo Park
Director Schmidt, Santa Clara Valley Water District
Director Abrica, City of East Palo Alto

Alternates Present:  None

JPA Staff Present:  Len Materman, Executive Director
Kevin Murray, Staff
Miyko Harris-Parker, Staff

Legal Counsel Present:  Greg Stepanicich

Others Present:  Jerry Hearn, Portola Valley resident; Art Kraemer, Palo Alto resident; Eileen McLaughlin, Citizen’s Committee to Complete the Refuge; Libby Lucas, Los Altos resident; Matthew Jones, ICF Jones & Stokes; Joe Teresi, City of Palo Alto; Ann Stillman, San Mateo County Flood Control District; Chris Elias, Santa Clara Valley Water District; Saied Hosseini, Santa Clara Valley Water District, James Kogan, PG&E; Tom Zlatunich, PG&E; Rick Lodwick, PG&E

2) APPROVAL OF MEETING MINUTES – October 18, 2012 Board Meetings
Director Keith motioned to approve the October 18, 2012 Board meeting minutes. Director Abrica seconded. October 18, 2012 Board meeting minutes passed unanimously 5-0.

3) APPROVAL OF AGENDA
Director Pine moved approval of the agenda. Director Schmidt seconded. Agenda approved unanimously 5-0.

4) PUBLIC COMMENT
Bernado Huerta, City of East Palo Alto resident, addressed the Board saying that he came before the Board last month to see if the SFCJPA would not remove the levee on the East Palo Alto side of the Friendship Bridge out to the Bay and that he has been trying to learn more about why this is happening and he just can’t get enough information from the SFCJPA. Mr. Huerta said that he has asked around why and that Mr. Materman spoke at the last meeting about some kind of restoration or trading restoration parts whether the agency is going to build a levee than have to build a levee elsewhere. Mr. Huerta stated that he has looked around for maps of the levee restoration evaluation and feasibility study and that he could not find maps on where they want to for example put a levee around Menlo Park. Mr. Huerta said that this has to do with planning for your city and what are you going to dry up. Mr. Huerta continued saying that he did not find any maps and that he is still trying to save the levee for future use for the residents of East Palo Alto as we are down 80 acres and that maybe we can make a trail out of it in the future but what he
heard last time was that 400 feet was needed or some kind of exchange for ecological restoration and he questioned where that work was going to be done asking if it is in East Palo Alto, Santa Clara County or is it in Menlo Park. Mr. Huerta reiterated that he still cannot get why the levee on the East Palo Alto side of the Friendship Bridge out to the Bay had to be removed and that he is going to keep looking and that he is finding more information about Matt Stoeker and Searsville Lake and seeing if they are really doing something to hold back storm waters up there. Mr. Huerta said that when he asks around for information for this he just cannot get enough information and asked where he should get it from.

Chairperson Burt thanked Mr. Huerta for his comments and said that the Board is not permitted to address the public on items that are not on the agenda, but that the subsequent items on agenda item number 5 are related to Mr. Huerta’s concerns and that the SFCJPA staff can help with some of the additional information that is publicly available.

5) **REGULAR BUSINESS EXECUTIVE DIRECTOR’S REPORT**

From the November 3, 2009 SFCJPA-Santa Clara Valley Water District-San Mateo County Flood Control District funding agreement, authorize the Executive Director to provide a payment to Pacific Gas & Electric of $147,000 to complete design engineering and cost estimation to modify natural gas and electrical transmission lines and electrical poles for the S.F. Bay-Highway 101 project.

Mr. Materman acknowledged and thanked the Board Clerk for her efforts with the monthly meeting minutes.

Mr. Materman opened agenda item 5 with a brief presentation on PG&E’s role in this area, and an explanation of the request to authorize him to provide payment to Pacific Gas & Electric in the amount of $147,000 to complete design and engineering and cost estimation to modify natural gas and electrical transmission lines and electrical poles for the S.F. Bay-Highway 101 project. Mr. Materman highlighted the gas lines and electrical transmission poles that have to be moved. Mr. Materman continued saying that in regards to the gas transmission line PG&E needs to alter it when we move the levee from its current location to the new location and when that happens and the new much larger structure is built we are told by PG&E that we need to alter the gas transmission line and what he is calling the baseline project is the minimal project to achieve that and that would go outside the new levee, cross the creek perpendicular to the creek and then continues on to connect to the existing line. Mr. Materman said that PG&E is doing the design and estimation of that project and they are also doing the cost estimation of construction and they are also doing design and construction cost estimation of a larger project which Mr. Materman is calling the PG&E gas improvement project which would result in a betterment for PG&E. Mr. Materman said that this line and this project are much larger and that the project would extend the line onto the Palo Alto side of the Friendship Bridge. Mr. Materman noted that the conceptual alignments were given by PG&E. Mr. Materman said that in addition to the gas pipeline efforts PG&E is working on a project related to electrical transmission towers and that we have two towers; one is currently outside the levee on the golf course side, and when we build the new levee the tower will be inside the channel and in order to have that tower perform during high flow events PG&E tells us that they need to build a new foundation for it and a tower that will be right next to the existing tower. Mr. Materman said that the other tower that is in the project area is in and will be outside of the channel when the project is done. Mr. Materman stated that the third element are wooden electrical poles and PG&E
needs to move some of their poles and need to reconfigure the line of the electrical transmission through the poles and place three new poles which is a part of their design and cost estimation work right now. Mr. Materman showed the Board a summary and explained it saying that PG&E design cost estimation expenses billed to the SFCJPA include electrical of $210,000, $150,000 for towers, $60,000 for electrical poles, as well as $112,000 for the gas line. Mr. Materman stated that of the $322,000 amount we have paid $175,000 and that was paid about a year ago to PG&E. Mr. Materman said that in August PG&E came to him and asked for an additional $147,000 and that we have gone back and forth in terms of getting some of the details about the request and about how the previous money was spent. Mr. Materman said that the SFCJPA’s financial responsibilities will include design, permitting and construction cost for all of the electrical components and the design, permitting and construction of what is referred to as the baseline project which is essentially reconfiguring the 20-inch gas line because of the new levee. Mr. Materman stated that PG&E’s financial responsibility will include design, construction and permitting costs to upgrade the baseline project to a 24-inch gas line or the cost of the new gas line to the Friendship Bridge beyond the baseline project. Mr. Materman said that essentially PG&E would be responsible for the betterment of the gas line for the baseline project from 20inch to 24inches which is what PG&E is going for, from what he understands, in all of their gas transmission line projects. Mr. Materman explained that PG&E would be responsible for either the upgrade from 20 – 24inches or they choose the larger project for the entirety of the larger project minus the cost of the baseline project. Mr. Materman said that PG&E is now designing and estimating cost to construct both the baseline project and the larger gas line project and they are asking us to reimburse them, actually provide advanced funding to them, for just the design and the cost estimation of the baseline project. Mr. Materman told the Board that the SFCJPA is not paying for PG&E to design the larger project, saying that was what PG&E reported.

Mr. Materman explained that the Bay-HWY 101 contract is a three party contract between the SFCJPA, the SCVWD, and the SMCFCD that funds the design and environmental documentation of the Bay –HWY 101 project. Mr. Materman said that the total amount of the consultant contracts is $2,052,252 and included $175,000 for PG&E, $150,000 for Palo Alto Golf Course design and a contingency of $100,000. Mr. Materman said with PG&E’s request of an additional $147,000 and the fact that we have completed our work with the Palo Alto Golf Course design firm we have a remaining amount in that design contract that we can apply towards PG&E. Mr. Materman proposed that the SFCJPA use the $65, 891 left from the Palo Alto Golf Course design and take $81,109 from the contingency to fund the PG&E work which would mean that between June of 2011 and October 2012, if this is approved, the HDR and ICF contracts remain the same and this includes HDR’s contract amendment, PG&E would go from $175,000 to $322,000, Palo Alto Golf Course design would stop at $84,109 which is where we are today with the golf course design and we are not intending to provide any more funding for that and the contingency would drop to $18,891. Mr. Materman said that given that we are at ninety-five percent design and we are at the very end stages of our EIR process we are comfortable with a contingency of about $19,000. Mr. Materman said that the total of the funding agreement would not change and as part of the funding agreement, any changes to it beyond $10,000 are required for Board approval.

Director Schmidt asked if this is going to be the last adjustment we will need for the PG&E contract. Mr. Materman responded saying that PG&E says that this is the last request for funding related to design and cost estimation and it is indicated in their October 24th letter,
but he believes that the letter is not explicit enough in that regard and so we will ask for
something in writing that explicitly states that with this funding no more money for design and
cost estimation will be requested. Director Schmidt asked if we have some sense from
PG&E that that is going to be ok. Mr. Materman responded saying yes, that PG&E has said
so verbally and the letter seems to say it and he invited PG&E to comment on it.

Jim Kogan, PG&E Government Relations Representative for San Mateo County, addressed
the Board and said that he checked with his colleagues, and yes PG&E would be absolutely
fine with finishing the engineering with the $147,000.

Director Keith said that in looking at the letter in the first paragraph on the second page it
talks about some things that would be additional cost and there are actually a couple of areas
that say that there may be additional costs and though it is not for design she asked for an
explanation of those costs.

Mr. Kogan explained that the permitting is a potential cost that may arise as we go through the
process; the other thing is long lead time materials which is the electrical materials and gas
materials (usually construction) but we put that in there just to provide the information to the
Board ahead of time so that it was not a surprise and we want to make sure we keep the
project on tract. Mr. Kogan said that the good news is that the Project Manager on the gas
side has said that the gas materials that we need to order ahead of time are really fairly simple
and we are using them throughout the service territory so we will be able to provide those in
advance and we will not have to ask for advance funding. Mr. Kogan said that the electrical
materials are more specific to this project so PG&E will be working with staff on that.

Director Keith questioned the comment in the letter that says there could be substantial cost and
asked for some clarification on what those amounts could be. Director Pine asked to amend the
question and asked if PG&E could provide a sense of what they believe the construction costs
would be. Mr. Kogan said that he hated to guess on that because a big part for the reason of
the estimating is to develop that cost estimate that would probably work much better
appreciating on its own and Mr. Materman did a very good job pointing out the difference
between the baseline project and what PG&E will actually build. Mr. Kogan asked one of his
associates to speak and stated that he might be able to provide a number to the Board.

Rick Lodwick, Project Manager for gas transmission for PG&E for this project told the Board
that he does not have a number for the Board right now but that there will be an increase in
the construction cost but not an increase in estimate. Director Keith asked about the possible
increase in cost due to the pipe method. Mr. Lodwick responded saying that depending on
the method used to install the pipe there are differences in the piping material itself.

Director Pine asked if PG&E made a decision on whether it is going to pursue the more
expensive replacement project/the betterment project. Mr. Lodwick said that as of right now
we anticipate going ahead with the betterment project, it provides us with more capability for
the gas line and it provides for the maintainability of that pipeline. Mr. Lodwick said on the
west side of the creek if we were to replace it in the existing location which is the baseline
right now it is very close to housing that is very limited access and any work we might have to
do anytime in the future on that piping would result in significantly greater disruptions for the
Chairperson Burt asked for a review of the additional broader benefits to the public of this betterment; if you do the betterment what benefits occur to the public. Mr. Kogan responded saying the accessibility and the construction impact from building the line it’s less of an impact for folks that back up to the creek on the East Palo Alto side. Chairperson Burt asked if PG&E across the board for these major transmission lines is upgrading from 20 to 24 inches; is the 20 inches currently substandard. Mr. Kogan responded saying he would not say substandard but PG&E is standardizing to the 24 inch and a lot of that has to do with our inline inspection smart pigs, they are called that because of their squeak, but standardizing the pipeline makes it easier to do the inline inspection. Chairperson Burt asked for clarification on if the 20 inch is difficult to do the pig inspection. Mr. Kogan responded saying that it’s not that it’s difficult the smart pigs that we have actually can negotiate the difference between 20 to 24 inch but where it gets difficult is when it gets as large as 34 inch, within a few inches its negotiable. Chairperson Burt commented on the fact that PG&E is also going from a line that has a certain age and certain design characteristics and certain manufacturing characteristics to a newer modern one and he asked if there was a design improvement or manufacturing improvement that makes it a next generation of line as a result of this change.

Mr. Lodwick said that the biggest benefit for us to the 24” is for piking capabilities, we can pig across both of them and get this data, with respect to materials there are obviously better seals that are out now but we believe that the existing piping that is in the ground for the rest of the area is safe does not represent a threat. Chairperson Burt asked how old the line is. Mr. Lodwick said they believe this line is a 1959 line. Chairperson Burt asked what the range was for the useful life of these lines. Mr. Lodwick stated that PG&E is still using piping that has been in the ground for eighty years. Chairperson Burt responded saying that we are at fifty-three so if you replace it than you start over. Mr. Lodwick said yes you start over with the segment you replace but what we use to replace are the results of our in-service inspection basically checking parts of the line for integrity and until we get an indication that the line is failing in integrity we keep in service. Chairperson Burt said that he understands that PG&E would not replace it but let’s say you have a line that lasts about one hundred years and you are ninety years into that and you replace it with a new line you have another one hundred years approximately; if you just put in a line ten years ago and replace it that is a different story. Chairperson Burt said that this is a line that PG&E is saying they have gotten eighty years out of lines like it and we are over sixty so in a real ball park sense you get to have a new line that maybe it doesn’t change the safety because you are already inspecting to know that would trigger replacement so maybe in this case there is a value that goes to PG&E by not having to replace this line for another eighty years as opposed to having to replace it after another thirty years. Mr. Lodwick responded saying that we prioritize our pipeline replacement, we have the Pipeline enhancement Safety Program, anyone who has had the unfortunate situation to get caught in some of the traffic that PG&E has caused this year knows just how much work we have done in the community and we have prioritized that based on a number of factors; whether is the upgrades retrofitted for inline inspection, age is one but not the determining factor, other development, having better access to the line and that all goes into an analysis and each one is prioritized based on that. Mr. Lodwick said that
we do have segments of the line that are significantly older than this one that are not scheduled for replacement because all of the factors.

Director Keith stated that she understood what was being said but at the same time this is a spot where you have to reconfigure and in looking at the letter, when you say PG&E will provide the SFCJPA with the cost of the 20inch piping as part of the cost estimate and PG&E will be responsible for additional cost, but does not confirm that you will do the 24 so can you confirm that the 24inch will be used. Mr. Kogan replied saying yes that's the plan on the enhanced project we will be using the 24inch. Director Keith asked for clarification that it will be for the whole project. Mr. Kogan replied saying correct. Director Keith said so that would be a commitment that PG&E will make. Mr. Kogan said yes it would be in PG&E's best interest. Director Keith said when reading letter it does not say that so she wanted to confirm that that was the case. Mr. Kogan said that to be fair to the SFCJPA PG&E does not want to charge the SFCJPA for the project that PG&E would end up building and that we want to make sure we are ferreting out the cost, only the cost of what the SFCJPA project is requiring PG&E to replace and not the betterment so that's where we want to make sure we are capturing the difference in the cost between the 20 and 24inch line and the significantly more cost are on PG&E. Director Keith asked if PG&E is paying the cost of relocating the pole. Mr. Kogan said no the work on the poles and the work on the two electrical transmission lines would be at the cost of the SFCJPA because all of that work is directly related to this project. Director Keith said that one thing we have talked about is that at some point those have to be replaced as well. Mr. Materman responded saying in terms of the electrical it was our assessment that it would be an SFCJPA project responsibility because the project is compelling the movement of the electrical poles and the transmission tower. Mr. Stepanicich said that this was dictated by the easement agreement between Palo Alto and PG&E that addressed who was responsible for the cost and it became a public cost rather a PG&E cost.

Mr. Kogan said that he would take back from this meeting the question of whether or not PG&E plans to reconducter those lines at any point in the near future and see how that can fit into the mix on the project. Mr. Materman speaking to Mr. Kogan said that PG&E is planning on a betterment of 20 to 24inches on the betterment project, and the betterment project to him in this conversation essentially means the broader pipeline project where the gas pipeline is essentially on the golf course side in that whole reach. Mr. Materman asked if there was confirmation that PG&E was planning the betterment of 20 to 24inches in the baseline project should PG&E decide to do the baseline project. Mr. Kogan responded saying yes that is his understanding. Mr. Materman said additionally what PG&E is asking the SFCJPA for is the cost to replace the 20 inch line in the baseline project area rather than the 24inch line. Mr. Materman said that there are really two elements that PG&E would be responsible for in terms of construction cost, one is if they choose the baseline project they would be responsible for anything above the 20inch pipeline and if they choose the larger project/betterment project they would be responsible for that entire project and the 20inch replacement of the baseline project. Mr. Kogan replied saying correct and that he thinks that at the end of the engineering it would be good to circle back to this so that the SFCJPA knows the numbers that PG&E is talking about.

Director Abrica thanked the PG&E reps for being here and asked how in this process, all the analysis is done by PG&E in terms of figures and estimates and the decision of what to do; does the SFCJPA at some point have an opportunity to have an independent review or some
dialogue with other people who are in the field and get a second opinion or is that outside of our scope. Mr. Materman replied saying that there is not a large marketplace for gas transmission lines in this area and that we would try to as best as we can to ground truth the cost estimates so we can most effectively put those estimates in our overall project estimates. Mr. Materman said in terms of taking a close look at PG&E’s analysis for what method they use for putting the pipe under creek and that sort of thing, we could hire engineers that specialize in that kind of work which is something that we may want to do, but for now PG&E gives us a request for $147,000 and other than to assume that that’s what they need and to assume that the money is going to gas transmission design and cost estimation rather than some PR campaign there is nothing else we can do. Mr. Materman said that in terms of when we get into the bigger dollars of construction costs it would be in our best interest to ground truth those.

Director Abrica asked if the useful life of the pipes is also something we get PG&E’s analysis on. Mr. Materman said that all of the questions the Board has asked are really good questions and unfortunately given the way this industry works in California we have to rely on PG&E to be the requester and the spender. Mr. Materman said that Palo Alto does have a utilities department and they have been engaged in this process so that has been helpful and we plan to continue to engage them in this process and maybe engage them in a more specific way depending on the availability of their staff to help us ground truth the estimates.

Chairperson Burt asked in both the design phase and the construction phase is PG&E proposing that we pay for on the 20inch line cost, which is the baseline cost, would we pay for the replacement cost or the depreciated value of that portion of the replacement cost. Mr. Kogan replied saying the replace cost. Chairperson Burt said that if you have a line that is near the end of its useful life, and he is not saying this one is, but if you have a trigger life an event like we have to reconstruct you get a brand new line and we have to pay for the new line even though it may be through 2/3rds of its life. Mr. Kogan responded saying this is not like a used car not to be too candid but it’s not the way gas transmission lines are. Chairperson Burt responded saying they don’t have infinite life it’s not a predetermined life it’s not like we can say this life is going to last eighty years or ninety years and he acknowledges that that is not knowable it is a fact that a certain trigger determines when it needs to be replaced. Chairperson Burt said that Palo Alto just went through this with the lines that PG&E are currently replacing there were a lot of discussions on what triggers the point in time that you replace the lines in Palo Alto and frankly PG&E ended up replacing some lines that were less knowable on their safety and things like that. Chairperson Burt said that he acknowledges that there is not a bright line that says we know exactly how many more decades this line has therefore we can calculate what’s the depreciated value, but it’s not new line, this is a line that under most arguments appears to be over half of its useful life and we are getting no credit for that.

Mr. Kogan said he understands what is being said and that part of the other aspect of this goes to Director Abrica’s comments as well; we are heavily regulated by the PUC and were we to choose to pay to replace a line any lines we replace have to be approved by the PUC. Mr. Kogan said that there is a great deal of oversight in this process and the other part of the question is should the rate payers pay for the line that is being replaced for part of this project. Chairperson Burt responded saying that you have your argument that the interest of both the stockholders and the rate payers; the other side of it is that you get a new line, you
have a line that is right now fifty-four years old that is maybe good for a total of eighty years so it’s getting close to 2/3rds of its useful life and we’re getting no credit for giving a new line. Mr. Kogan said he appreciated all of the questions and comments and that right now we are not there yet and once we have the estimates we can move forward with these questions but we are not there yet.

Chairperson Burt said going forward we would like to understand how do these determinations get made on a replacement of a depreciated value object. Director Pine stated that there must be projects comparable to ours that have had this type of replacement so we want to know the practice and the theory behind the practice. Chairperson Burt added that we would also like to know who determines the practice.

Director Keith asked when the last time this pipe was checked. Mr. Kogan responded saying that 2011 was the last survey and an annual leak test and that if the SFCJPA project does not go forward then the next schedule is set for 2014.

Mr. Materman responded saying that the last hydrostatic pressure test was in 1989. Director Keith said that we may want to do the hydrostatic testing now to determine the integrity of the pipes. Mr. Kogan said if we don’t identify leaks and we have strength test recognizing the strength of the pipe than its considered safe. Director Keith asked how often the hydrostatic testing is done. Mr. Krogan replied prior to the last two years, a line was hydrostatically tested when it was put in and not again unless there was other work done on it, but now because of the San Bruno tragedy it will be done every 5-7 years. Director Keith asked if there are ways to check now so that there are no issues and she agrees with Chairperson Burt that there should be some discounting for the age and we want to check line as we will be more comfortable knowing if the integrity is there or not. Director Keith said that if the integrity is not there than we would want PG&E to replace the line. Mr. Kogan replied saying that upon PG&E’s review of the records and the surveys PG&E is confident in the integrity of the line so additional strength testing in the framework of the prioritization of all of the work we do throughout the service territory would probably wind up pushing this project out beyond the scope of time that you really want it to be done and it is very difficult to go back to the PUC and say we know we don’t need to strength test this line but the SFCJPA is requesting that we do to determine whether or not we should amortize the cost of replacement and PUC might look at us and say that is not the way you are supposed to be doing this.

Director Keith asked Mr. Kogan to make sure he takes all of these concerns back to PG&E and she asked in regards to the PUC do they have the capability of looking at estimates from PG&E, is that something that they do because Director Burt made a great point in regards to having an outside agency look the proposal that we will get. Mr. Kogan said that he is not aware that they do but he can check into to that and that all of the work PG&E does goes to the PUC, our general rate cases for their review.

Director Keith made a motion to authorize the Executive Director to provide a payment to Pacific Gas & Electric of $147,000 to complete design engineering and cost estimation to modify natural gas and electrical transmission lines and electrical poles for the S.F. Bay-Highway 101 project with the request that PG&E evaluate the fair depreciated value of the baseline pipes and that we get information from PG&E about the reconductering of the lines as well. Director Pine seconded. Chairperson Burt said that he thinks this is good direction
as it gives guidance for continuing discussions between our staff and PG&E and we look forward to a fair and equitable resolution to each party’s responsibilities. Director Pine said that he thinks Mr. Materman and the Board have done a good job we have a responsibility to make sure our funds are spent wisely and he acknowledges that PG&E has a lot of projects that are public safety urgency and this one is not at the top of the list and he thanked the Project Management team for working on this now and in the future. Motion to authorize the Executive Director to provide a payment to Pacific Gas & Electric of $147,000 to complete design engineering and cost estimation to modify natural gas and electrical transmission lines and electrical poles for the S.F. Bay-Highway 101 project with the request that PG&E evaluate the fair depreciated value of the baseline pipes and that we get information from PG&E about the reconductering of the lines as well approved unanimously 5-0.

Mr. Kogan thanked SFCJPA staff acknowledging their understanding with PG&E’s process.

Director Keith thanked the PG&E for coming to the meeting and being available to answer questions for the Board.

Approve Resolution #12-10-25A, certifying the Final Environmental Impact Report for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101

Mr. Materman gave the Board a brief presentation on the EIR background. Mr. Materman asked the Board to approve Resolution#12-10-18A, certifying the Final Environmental Impact Report for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101.

Mr. Materman told the Board that Mr. Murray and Mr. Jones met with Fish and Wildlife staff based in the Bay Area that manage the site and staff from Sacramento who joined the meeting by phone and based on a couple of e-mails he has seen from Fish and Wildlife that it was a positive meeting. Mr. Murray said that the Fish and Wildlife staff was very thankful because what they wanted was information and we were able to describe the project in detail to them give them information as to why we came to the decision on the design that we have, importance of the project, which they did not all understand the issues of flooding, recreation restoration and the cohesiveness of those issues here but the real danger to loss of property, well-being and people and they really responded well to that. Mr. Murray said that he thinks that it was a good meeting and feels good that we have developed a positive way forward to get through these issues. Mr. Murray said that their goal in the future will be in the post-project monitoring and in developing mitigation for the project as we move toward construction.

Matthew Jones, ICF International, said that in terms of certifying the CEQA document and as we pointed out we do have mitigation and monitoring component as part of the Faber Tract that we have outlined in the EIR. Mr. Jones said that he believes that the way we laid it out is valid we do have set restrictions on how we coordinate with Fish and Wildlife service and the Department of Fish and Game as is required per permitting process. Mr. Jones said that he thinks we have laid out a good framework with setting out those habitat monitoring plans for the period and he thinks all we need to do is work through some of those details from the permitting phase. Mr. Jones said from the CEQA perspective those mitigations are still valid, they are complete and he feels comfortable recommending certification of the document.
Director Keith asked if the tree replacement mitigation questions had been answered. Mr. Jones said that is 1-1 and that there is some flexibility on permit condition; where it could be and how it could be done, at this time he does not think we can go below 1-1 but we certainly don’t have to do it within that area.

Director Schmidt asked for staff to speak about the number of contacts we have had with Refuge staff. Mr. Murray said that we did the site visit with the Refuge staff, then we did another site visit with the regulatory staff of the Fish and Wildlife service and several other agencies at that time, we did one sit down meeting with the management; that was Eric that the Board met last week and the Supervisor of the region, management staff came to one of our scoping meetings when we first released the Notice of Preparation for the DEIR and they submitted comments although outside of the formal commenting period they sent a long letter listing their concerns and then we had a couple of phone calls with them after that. Mr. Murray said the believes that our environmental consultant had some offline conversations but he does not have any documentation of that, then there was a long period of time that we did not have any contact with them, we did submit sixty percent design to them but we did not ask specifically for comment at that time and there are a couple of e-mails back and forth. Mr. Murray said that we did not have an organized program where we would report to them on project progress and at this point when we got so close to final design they were really looking to broaden their understanding of the project so that is why they came to ask us for more information and he thinks that was provided. Mr. Materman said that in addition to providing comments in the scoping process they also provided a letter in March of 2010 reiterating their details of the project and their concerns about the assessment. Mr. Materman said that in 2010 there was quite a bit of engagement but as Mr. Murray mentioned it waned during the middle of our design period and there were many months when we were not engaged in design as we were going through the amendment process for the contract.

Director Schmidt asked for clarification if the lowering of the levee was a part of the project during scoping and 60%. Mr. Murray responded saying that the lowering of the levee has been a part of the project since our preliminary analysis in 2009.

Ilene McLaughlin, Citizens Committee to Complete the Refuge, said that at the end of the last meeting she was appreciative of the fact that the Board did defer their decision to certify the EIR and that the Board also saw to the fact that there was a need to talk with the Refuge. Ms. McLaughlin said that she was thankful that both of those things occurred and if her comments helped move them she is thankful that the Board listened. Ms. McLaughlin said that this afternoon she did receive an e-mail that was between SFCJPA staff and Refuge Staff that was forwarded to her that was to let her know where they stood subsequent to their meeting yesterday and that she has to say the e-mail was void of detail. Ms. McLaughlin said that the e-mail indicated that there was this general EIR world agreement and we are going to have this working relationship but it did not provide detail on the issues that were raised and at one point Eric did say that were some issues outstanding but he did not say what and she really has no detail and the public has no detail and given that it has been recognized that there has been a gap in communication, she knows the decision is the Board’s, but she hopes that there can be some kind of remedy, perhaps an issue of joint statement between the SFCJPA staff and the Refuge staff saying that these issue are covered and these are the
points that still need to be addressed and this is going to be the nature of the working relationship and if those things were discussed in that meeting than she would appreciate them put in some public form.

Libby Lucas, Los Altos resident, said that she goes the same way after the last meeting though her concerns are different saying that when the original scoping meeting came out about lowering the levee a number of us including the Refuge said that we did not favor that solution we did feel it was valid and as Mr. Huerta said earlier this evening it's very difficult to get a hold of any detailed material, she has not had a chance to get a copy of the final EIR and the particulars are very hard to address if you don’t see them or read them. Ms. Lucas said that she wanted to take a step back and remind the Board that this Faber Tract site was from two rounds of dredge spoil from the dredging of the Palo Alto Yacht Harbor; the first time was in ‘68/’69 and about 200,000 cubic yards of dredge spoils and in 1973 they put in 170,000 cubic yards and it was a duct and grazing tract before that then the BCDC said that they wanted it opened for bay action/tidal action, then it became a model for restoration and they first were looking for pickle weed than they realized that due to the elevation it was going to be grass and Dr. Tom Harvey put it all in with family and friends and it was considered a very good success. Ms. Lucas said that BCDC still has jurisdiction and she does not believe that they have any communication from the SFCJPA on this since 2010. Ms. Lucas said that at the time when BCDC insisted that the tract be used for tidal action their preference was she believes that it would be considered a critical high-tide resting marsh area, in other words this would be where Clapper Rail could go when tides were high. Ms. Lucas said that if you lowered this levee that is 1/3 of this upland refuge you are opening it to extreme overflow and you need to have substantiation in these documents and she has not seen it to date on the incidents of the amount of time and how many times per year that the river will overflow with a two year event or five event and then you need to have some instrument besides the hydrological evaluation of the sediment load because when overflow will be when it is carrying the highest load of the sediment and since this is a Steelhead stream you will have your migratory fish that will be coming in the fall or going out in the spring and if they come in during that high tide sediment flow going over to a marsh there may be a little problem with them getting back out to the bay and when they are coming in they really need a pulse flow. Ms. Lucas said her last consideration is that when you look at the natural channel it has a lot of woody debris it comes down from Black Mountain on the Los Trancos side and it has a whole lot of different wood coming from the San Mateo County side and you need to have a certain pulse flow to take that woody debris out to the bay and if you divert it into the marsh you are going to end up having it dispersed and probably not having enough to carry it through so your sediment and woody debris build up closer to 101 and you will get reflux earlier than you would otherwise. Ms. Lucas said with the discussion of the continuity to the Baylands you need to have the hydrological, the geomorphological evaluation and she would like to say she knows how serious the flooding is and this project is a decade overdue, we all know of the friends who had to go out and row boats and when she was on the Resource Conservation Board they did get all the frantic calls from people asking for help in restoring their riverbanks and we had to rely on solo conservation resources because the SCVWD could not get mobilized fast enough so we all know about the problems upstream but she does think that this other has to be addressed so if you could ask for an addendum, you could approve what you have but she does think that the Board needs to follow up on these other aspects.
Mr. Murray said that the suggestion we do an addendum is something we can look into there are additional studies that maybe we can talk through but he is not in a position to nor would he be comfortable recommending doing something like this at this this point. Mr. Murray said that there is a varying degree of opinion in regards to the people we talk to in regards to the opening of the Faber Tract and if it is beneficial or detrimental. Mr. Murray said that the majority of the people we talk to say in the long-term it is a good idea but does not want to misrepresent any of their opinions so he will not quote them. Mr. Murray said that in regards to Ms. McLaughlin’s comments we can have something in writing and that he believes that Fish and Wildlife are comfortable in their role at the regulatory level and he really got a sense yesterday that all work together well and they all know each other so in developing mitigations for the project and monitoring, we have developed a connection that he thinks is beneficial and will be helpful moving forward. Director Keith said that she does not believe it has to be super detailed she understands the concerns of the public in wanting show that there is a joint working relationship and she believes that there is, Eric was here last time and that is probably who we are having discussion s with as well, but it would be helpful to have that, not in great detail but something showing the direct relationship. Mr. Murray said he could provide some detail on the type of questions they asked; they wanted more specific detail on the topographic data for the Faber Tract so that they could better understand how the fresh water flows into the Faber Tract how it dissipates, they wanted to know more about our velocities; the velocities of the water going in there and why we decided on the length of the degrade that we did and the elevation of the degrade and we provided all of that information to them. Mr. Murray said there was a lot of discussion on the Clapper Rail and Clapper Rail sightings in the Faber Tract and Mr. Jones was able to pull up those records and provide them to the Fish and Wildlife staff and we learned they have a bunch of their own information and it was good discussion about when the Clapper Rail are there and how they are utilizing the area and our discussion led to how we could provide additional observational studies to make sure that as construction is going we are keeping a good eye on those birds and other species.

Chairperson Burt asked if the additional information was supplemental or in the EIR. Mr. Murray said most of the information is in the EIR and that we did mention that we looked at other ideas descriptions of our preliminary alternatives analysis and they understood that we came to this design in a thoughtful and considerate way and he thinks that they were very receptive to the information and felt comfortable with their role going forward.

Mr. Jones said that wed did come with more information and we did not use most of it as we talked through things that were in the EIR. Mr. Jones said in terms of the topics that were discussed; one of the things is we proposed mitigation offering standard protocol and it offers seven options some of which we talked about are call type surveys where you call out to the birds during breeding season, some are more habitat and just trying to locate them, surveys out of the breeding season and they told us that while that was correct protocol they are probably in the context of permitting going to limit it just to the breeding time survey, so they are going to restrict that back a little bit, call surveys are preferred anyways so with the context of the construction schedule we will be able to implement those anyways. Mr. Jones said that they also talked about the bones you would put on that type of monitoring plan, they had some very specific information as to where they would like us to set up some of those stations and how they would like us to do it and those are things we would talk through with them as got into that phase as well and it was good that the regulatory representative who
will be issuing the biological opinion from Fish and Wildlife service was able to be on the call so he got some of that information as well. Mr. Jones said that it was good for all to have those pieces of information moving into the construction phase.

Director Schmidt said that the speakers have some good ways of continuing the dialogue and information exchange and that he does not think we need anything as formal as an addendum.

Mr. Stepanicich said there is no reason to do an addendum as an addendum would be used after the project EIR was certified if there were changes to the project. Mr. Stepanicich said that the Board is making a determination tonight as to whether the EIR at this time is sufficient and he would not recommend doing and addendum unless the project got changed after the project was certified. Mr. Jones said that he concurs with counsel. Director Schmidt suggested that the Board could go ahead and certify the EIR and then say that we would like to have some continuing discussion with the stakeholders and we got a little of an answer verbally right now and he would like to request that our speakers submit their request in writing so that we have a better understanding of what you would like in terms of continuing communication. Director Schmidt asked staff to answer the question about the interaction with BCDC.

Mr. Murray said that the project site is within their purview so we are required to obtain a permit through BCDC, they submitted a letter saying as much and they came to several of our events and public meetings and they were able to attend a pre-project tour that we did for local stake holders, NGO’s and a few of the local government agencies; we went out and walked the site and they got a better understanding of the project itself. Mr. Jones added that as a responsible agency they were the distribution list for the FEIR, receiving it both by e-mail from Mr. Murray and via hardcopy through the clearing house. Mr. Materman added that BCDC used this project as a case study for an example of how sea level rise should be addressed by public agencies and that case study is on their website and our website; they have been very interested and closely following this project. Director Schmidt asked about the questions regarding how many times the Faber Tract would be flooded. Mr. Jones responded saying that currently the project area of the Faber Tract gets flooded at about the five year fluvial event in San Francisquito Creek, we are lowering that threshold to about the two- three year event so statistically we are talking about going from a twenty percent probability in any given year to a forty percent probability in any given year. Mr. Materman added that it is important to understand and we talked about this last time as well, we are not really changing the amount of water or the velocity of the water we are just changing the frequency of the flow into the Faber Tract and the second thing is something we have not talked about is that what we are doing is taking what’s called a levee, but is really a mound of dirt that’s nine to eleven feet in elevation and we are taking it down to eight feet so when we say degrade it’s not taking it to zero and it’s not taking half of it off its taking two - three feet off the levee for a portion of this.

Director Schmidt asked Ms. McLaughlin to give the Board some detail on the type of communication she would like to see. Ms. McLaughlin said that her comments tonight pertained to the missing information in the meeting that happened yesterday and the brief e-mail she received that did not have any of the information on the details that were raised in that meeting and she would like to see that in writing in some form that we can understand
what issues were raised by the refuge and how they were resolved and as she mentioned Eric said in the e-mail that there were still some unresolved issues and she has no idea what those are but she would like to see them resolved as well. Ms. Laughlin said that the likes the idea of continuing communication and the ideas that Ms. Lucas has raised are great for continuing a relationship with us who are watching the wetlands and we would certainly like to see this project as a real positive one in that direction.

Director Keith thanked Ms. McLaughlin for her comments and said that Ms. McLaughlin was instrumental with the Facebook dealings and her role here can be just as beneficial. Director Keith suggested that we have a FAQ on our website so that as the questions come up people can refer to the website for answers. Director Keith asked that any trucks going to and from the site whether or not they are loaded, that their covering be pulled because often time these trucks will be going down the freeway and they are not full of dirt but still have rocks and things to help prevent accidents.

Chairperson Burt said in terms of the overall frequently asked questions, we had two members of the public that were asking about the overall rationale of the lowering of the levee and the opening of the Faber Tract and he is sure we have it in numerous locations and we just need to figure out how we can more attractively supply it out to the people that maybe were not at every meeting.

Director Burt asked that in terms of the advancement notification if that could be done in Spanish as it increases the direct communication with our residents.

Director Keith made a motion to certify the Final Environmental Impact Report for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101. Mr. Stepanicich added that this will be done through adoption of Resolution number 12-10-25A. Director Abrica seconded. Motion to adopt Resolution number 12-10-25A to certify the Final Environmental Impact Report for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101 passed unanimously 5-0.

Approve Resolution #12-10-25B, authorizing the Executive Director to sign a Funding Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101. Mr. Materman asked the Board to approve Resolution #12-10-25B, authorizing the Executive Director to sign a Funding Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101. Mr. Materman stated that legal has reviewed and approved the form. Mr. Stepanicich said that the staff at DWR had two additions that they want added to the resolution in the last paragraph: “the Executive Director, Len Materman,” and then also to say after the authority, “or his designee.” Director Schmidt moved approval of Resolution #12-10-25B, authorizing the Executive Director to sign a Funding Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement for the San Francisquito Creek Flood Reduction, Ecosystem Restoration,
and Recreation Project, San Francisco Bay to Highway 101 as amended. Director Keith seconded. Motion to approve Resolution #12-10-25B, authorizing the Executive Director to sign a Funding Agreement with the California Department of Water Resources and to sign requests for disbursements to be made under this Funding Agreement for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, San Francisco Bay to Highway 101 as amended approved unanimously 5-0.

6) **BOARD AND ASSOCIATE MEMBER MATTERS** - Non-agendized comments, requests, or announcements by Board and/or Associate members, no action may be taken
Chairperson Burt noted that the upcoming election with Measure B in Santa Clara County which is very important to the projects that we are working on and we hope to get broad public support for it.

7) **ADJOURMENT:**
Chairperson Burt adjourned the meeting at 5:49pm.

Minutes Prepared by Clerk of the Board: Miyko Harris-Parker
With the help of Kevin Murray and Miyko Harris-Parker, I am pleased to submit the following:

a) Discuss the plan for San Francisquito Creek projects in light of voter approval of the Santa Clara Valley Water District’s November 6, 2012 special tax measure

The SFCJPA Board discussed the Santa Clara Valley Water District’s countywide November 6, 2012 special tax ballot measure – Measure B or “Safe, Clean Water and Natural Flood Protection” – at the December 2011 and March 2012 meetings. As Board members will recall, the measure included funding for the construction of a project that will protect against a 100-year San Francisquito Creek flow east of Highway 101 concurrent with a 100-year tide and 50 years of Sea Level Rise – the SFCJPA’s S.F. Bay-Highway 101 project – and protect against 50-year Creek flows between Highway 101 and El Camino Real by modifying bridges and removing in-channel bottlenecks.

Needing a two-thirds majority to pass, Measure B secured over 73% support according to the County Registrar of Voters on November 13, 2012. With Measure B’s approval, the SFCJPA, Water District and SFCJPA Member Agencies have more information to plan the implementation of these projects. Since November 6th, SFCJPA and Water District staff have begun discussions of a potential process and timeline toward construction of our major capital projects. For this informational item, we will discuss this in very general terms. The project summary shown below is from the Measure B ballot information.

<table>
<thead>
<tr>
<th>PROJECT E5</th>
<th>San Francisquito Creek Flood Protection – San Francisco Bay to Middlefield Road, Palo Alto</th>
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<tbody>
<tr>
<td>GOAL</td>
<td>To protect more than 3,000 homes and businesses, and city infrastructure, while enhancing long-term water quality, wildlife habitat and recreational opportunities.</td>
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<tr>
<td>DESCRIPTION</td>
<td>Complete construction of projects that provide 100-year flood protection and ecosystem benefits from San Francisco Bay to Hwy-101, and construction of projects that provide approximately 50-year flood protection, ecosystem and recreational benefits, between Hwy-101 and Middlefield Road. The work will include modifying bridges at University Avenue, Newell Road, Middlefield Road and Pope/Chaucer Street, addressing additional channel constrictions upstream of Hwy-101, and setback levees and floodwalls downstream of Hwy-101. The project is sponsored by the San Francisquito Creek Joint Powers Authority, of which the District is a member agency, in partnership with the Army Corps of Engineers. Additional benefits may be realized if federal funding from the Army Corps is available. The project builds on the planning and design tasks initiated as part of the Clean, Safe Creeks program and are on track to be completed.</td>
</tr>
</tbody>
</table>
| BENEFITS   | • Provide flood protection to more than 3,000 parcels in Palo Alto  
• Reduce bank erosion and sedimentation-related impacts along San Francisquito Creek  
• Provide new or improved habitats for endangered species and enhanced recreational opportunities for the community  
• Improve water quality |
| GEOGRAPHIC AREA OF BENEFIT | Palo Alto |
| ESTIMATED FUNDING FROM SAFE, CLEAN WATER PLAN | $35.5 million |
b) Receive and discuss a consultant’s report on the feasibility of a new SFCJPA Special Finance District to fund the construction of capital projects

As has been discussed at previous SFCJPA Board meetings, we are working to develop a detailed estimate of the funds required to complete construction of our capital projects between S.F. Bay and El Camino Real. Even with contributions from the state government through support for bridge replacement and competitive statewide ballot proposition grant programs, and possible federal support through the Corps, our efforts to realize 100-year protection will require the SFCJPA or its Member Agencies to secure millions of new dollars.

The Water District's 2012 Measure B discussed in the previous agenda item will help us make substantial progress towards this goal by constructing a 100-year protection project between the Bay-Highway 101 and 50-year protection projects upstream of Highway 101. This agenda item continues a discussion from earlier Board meetings regarding the feasibility of the SFCJPA raising the capital and other costs required to construct projects that achieve 100-year protection from Creek flooding in all areas downstream of El Camino Real, and that same level of protection, including Sea Level Rise for areas subjected to both Creek and Bay tidal flooding. These project alternatives include floodwalls, an underground culvert, or upstream detention for Creek flows, and Bay levees for tides. For the past year, the SFCJPA and Water District have been developing preliminary designs regarding Creek flow protection, and for Bay flooding, the SFCJPA has recently been awarded a State grant to conduct planning and design of levees from the Creek to Redwood City and the Water District will conduct this work on the south side of the Creek.

Should the Board decide to move forward with a financing district that includes the three cities within the SFCJPA, we will likely not put before voters or property owners (depending on the financing mechanism we choose) a new financing district until we have established a preferred alternative for capital projects and analyzed their environmental impacts.

Alternatives and impacts of projects that provide flood protection, and enhance the ecosystem and recreation between Highway 101 and El Camino Real, will be analyzed as part of a new Environmental Impact Report led by the SFCJPA beginning in January. At its October 11 meeting, the Board authorized me to sign an agreement with the Water District to fund this EIR. That agreement has been signed, prospective consultants have been interviewed, and I expect to ask the Board to authorize me to sign an EIR consultant contract at the December 13th meeting. We expect this EIR to be completed in the summer of 2014, after which we can go to the voters for construction funding support.

During the twenty month period between now and the completion of the EIR, the SFCJPA can proceed with defining the costs of each 100-year protection approach, reaching out to the community regarding the project alternatives, gauging the community’s appetite for a new special tax or assessment that will reduce their risk and likely eliminate the requirement that most of them pay flood insurance premiums, deciding on a preferred finance strategy (tax or assessment), and commissioning a report that outlines the details of the proposed finance district.

In the fall of 2011, I hired a consultant to study the feasibility of the SFCJPA creating such a district, and they have completed their report. At this Board meeting, they will present their methodologies, findings of potential per-parcel costs based on the cost assumptions we provided to them, and options for raising funds. They will answer questions from the Board and public so that we may have a productive discussion early in this process. I am not looking for specific Board action on this item but general direction on the Board’s interest in proceeding with the activities listed in the preceding paragraph related to exploring the formation of such a district.
c) Authorize the Executive Director to sign an agreement with the East Palo Alto Sanitary District to fund the cost of modifying the portion of the main sewer line impacted by the S.F. Bay-Highway 101 project

In order to accommodate construction of the S.F. Bay-Highway 101 Project, the SFCJPA must provide for modifications to an existing sewer line and gravity siphon owned and operated by the East Palo Alto Sanitary District (EPASD). Here is a brief summary of the process that got us to where we are today.

SFCJPA Project Manager Kevin Murray attended the May 3, 2012 EPASD Board of Directors meeting, and proposed a cost share for the construction costs of modifying the EPASD sewer line and siphon, with the SFCJPA paying for 60% of the construction costs and EPASD paying 40% of the costs. The offer did not include soft costs, such as the cost of geotechnical studies, surveying, environmental review and permitting borne by the SFCJPA, and design and construction management borne by the EPASD.

While recognizing the opportunity to partner with the SFCJPA to improve the efficiency, safety, and long-term maintenance of installing new pipeline in coordination with the flood protection project, as well as the financial advantage of having the work covered by the SFCJPA’s EIR and regulatory permits, the EPASD Board responded in June that a 70% SFCJPA-30% EPASD cost share would be more in line with their analysis of the benefits for both agencies, and that soft costs for both agencies should be included in the calculation.

Following SFCJPA Board direction at the July 26, 2012 meeting, I attended an August 21 meeting of the EPASD Engineering Committee and offered a 65-35% split, excluding soft costs. By way of a letter from the EPASD Project Engineer, the EPASD Board accepted the offer of 65-35% cost share, but again requested that soft costs be included.

During the month of September, SFCJPA and EPASD staff met several times to work out the estimated costs for both construction and soft costs associated with modifications to the EPASD utility. Concurrently, a draft funding agreement was created and reviewed by staff and legal counsels of both the SFCJPA and EPASD. Upon realization that the soft costs that would be incurred by the SFCJPA and EPASD would likely be almost equal, SFCJPA and EPASD staff agreed that a 65-35% cost share, including soft costs, would be a fair and equitable allocation of costs. The draft Agreement was modified to capture this consensus, and SFCJPA staff recommended that the EPASD consider this arrangement at their next Board meeting.

On November 1, the EPASD Board of Directors approved the attached funding agreement with a 65-35% split, including soft costs. Construction costs of the EPASD portion of the project are currently estimated at $500,000, and soft costs for each agency equals approximately $50,000, for a total of about $600,000. These numbers will be refined over the next couple of months.

Based on the current estimate of $600,000 for the total project, minus the EPASD’s percentage of the soft costs that the SFCJPA has already incurred, the SFCJPA would be responsible for approximately $372,500. I will not sign the agreement until the final amount is determined, and if that final amount exceeds $372,500, I will report back to the Board for direction.

Proposed Action: Authorize the Executive Director to sign the attached agreement with the East Palo Alto Sanitary District to fund the cost of modifying the portion of the main sewer line impacted by the S.F. Bay-Highway 101 project.
AGREEMENT

BETWEEN THE EAST PALO ALTO SANITARY DISTRICT
AND
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

To fund the replacement of the East Palo Alto Sanitary District’s 24” Siphon under San Francisquito Creek and relocate the portion of the main sewer line required by the San Francisquito Creek Joint Powers Authority’s Flood Reduction, Ecosystem Restoration and Recreation Project, San Francisco Bay to Highway 101

This Agreement is entered into on _____________ __, 2012 (“Effective Date”) by and between the East Palo Alto Sanitary District, a public agency of the State of California (“DISTRICT”), and the San Francisquito Creek Joint Powers Authority, a California joint powers authority (“AUTHORITY”).

RECITALS:

WHEREAS, the AUTHORITY will modify the channel of San Francisquito Creek between San Francisco Bay and Highway 101 as part of the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project (“Project”);

WHEREAS, in order to complete the Project, modifications to the existing sewer line and 24” siphon owned and operated by the District (“Modifications”) are needed to accommodate a widened creek channel resulting from the Project; and

WHEREAS, the Scope of Work for the Modifications is shown on Exhibit “A” attached to this Agreement and incorporated herein by this reference.

AGREEMENT

NOW, THEREFORE, IT IS HEREBY AGREED by the parties hereto, as follows:

1. The Recitals set forth above are true and correct and hereby incorporated into this Agreement as though restated in full.

2. The DISTRICT will contract with an engineer to design and manage the construction of the Modifications, limited to work needed to accommodate the Project.

3. The AUTHORITY will provide the DISTRICT with geotechnical data sufficient to design and construct the Modifications.
4. The AUTHORITY shall have the right to review and approve final design and cost estimates as prepared by the DISTRICT’s contracted engineer. District shall not proceed with the bidding process for the construction of the Modifications until the Authority has approved in writing the final design and cost estimates.

5. The AUTHORITY has evaluated the environmental impacts of the Modifications as required by and in accordance with the California Environmental Quality Act as part of the Environmental Impact Report prepared by AUTHORITY for the Project.

6. The AUTHORITY shall include the construction of the Modifications in its applications for all regulatory permits needed for the Project, and shall secure all permits or other regulatory clearances needed to complete the Modifications.

7. The DISTRICT will bid and award a contract to the lowest responsible bidder to construct the Modifications, and provide AUTHORITY all documents related to the bidding process.

8. The DISTRICT will notify the AUTHORITY of the bid award recipient (“Contractor”) to construct the Modifications no later than five (5) working days after the award.

9. The DISTRICT will transmit to the AUTHORITY all Contractor invoices that it has approved for the work completed by the Contractor. The AUTHORITY shall reimburse the DISTRICT for 65% of all approved Contractor invoices within fifteen (15) business days from the receipt of the Contractor invoices from DISTRICT. Any change orders that increase the total amount of the construction contract shall be subject to the approval of the AUTHORITY, which shall not be unreasonably withheld.

10. The AUTHORITY shall reimburse the DISTRICT 65% of the design and construction management costs incurred by DISTRICT, which amount shall be agreed upon by DISTRICT and AUTHORITY, within ninety (90) days of the Effective Date of this Agreement.

11. The DISTRICT shall reimburse the AUTHORITY 35% of the costs of incurred by AUTHORITY, which amount shall be agreed upon by DISTRICT and AUTHORITY, within ninety (90) days of the Effective Date of this Agreement, for geotechnical investigations, environmental documentation, and permitting required to complete the Modifications.

12. District shall be the owner of the Modifications. It is understood and the DISTRICT and AUTHORITY agree that upon completion of the Modifications, and mutual acceptance of the Modifications by the parties hereto, maintenance responsibilities for the Modifications shall vest in the DISTRICT.
13. The AUTHORITY shall indemnify and hold harmless the DISTRICT from all damages, claims, losses, liabilities, suits, or actions of any kind or nature, including, without limitation, property damage and personal injury, including death, arising out of or relating to the matters covered by this Agreement to the extent such damages, claims, losses, suits or actions are due to the acts, omissions, or active or passive negligence or willful misconduct of the AUTHORITY in its performance of this Agreement.

The DISTRICT shall indemnify and hold harmless the AUTHORITY from all damages, claims, losses, liabilities, suits, or actions of every kind or nature, arising out of or relating to the matters covered by this Agreement to the extent such damages, claims, losses, liabilities, suits or actions are due to the acts or omissions, negligence or willful misconduct of the DISTRICT or DISTRICT’S failure to perform obligations required of the DISTRICT under this Agreement.

The duty to indemnify and hold harmless includes duties to defend as set forth in Section 2778 of the California Civil Code.

14. There are no intended third-party beneficiaries of any right or obligation assumed by the DISTRICT or the AUTHORITY under this Agreement. This Agreement shall not be amended or modified unless in writing signed by both parties.

15. Time is of the essence for each and every provision of this Agreement.

16. This Agreement may be signed in counterparts, each of which shall constitute an original, and all of which shall constitute one fully executed Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the Effective Date.

“AUTHORITY”
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

By _____________________________
Len Materman, Executive Director

“DISTRICT”
EAST PALO ALTO SANITARY DISTRICT

By _____________________________
Leroy Hawkins, General Manager