

File No. 111094

Committee Item No. 7

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: November 16, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Victor Young

Date: November 10, 2011

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Amendment to Memorandum of Understanding - Alameda County Resource Conservation
2 District - Not to Exceed \$775,000]

3
4 **Resolution authorizing the General Manager of the San Francisco Public Utilities**
5 **Commission to execute the first amendment to the Memorandum of Understanding**
6 **with the Alameda County Resource Conservation District for an amount not to exceed**
7 **\$775,000 and with a total duration of fourteen (14) years, pursuant to Charter Section**
8 **9.118.**

9
10 WHEREAS, The SFPUC in Resolution No. 09-1020 dated July 14, 2009, approved
11 findings under the California Environmental Quality Act (CEQA), including a statement of
12 overriding considerations, and a Mitigation and Monitoring and Reporting Program (MMRP)
13 attached to the Final Environmental Impact Report (FEIR) for the Bay Division Pipeline
14 Reliability Upgrade Project (Project); and

15 WHEREAS, The SFPUC, as part of the approved Project MMRP, agreed in mitigation
16 measures BIO 15 and 16 to provide compensation for impacts to wetlands, other waters of the
17 United States and State, and to State regulated habitats; and

18 WHEREAS, The Board of Supervisors in Resolution No. 371-09 adopted findings under
19 CEQA, including the adoption of the MMRP previously approved by the SFPUC relating to the
20 funding of the Project; and

21
22 WHEREAS, The construction of the Project resulted in impacts to 1.00 acre and 160 linear
23 feet of creek and riparian scrub habitat and temporal losses in functions associated with
24 temporary impacts to 0.154 acres and 200 linear feet of creek and riparian scrub habitat in
25 Alameda County; and

1
2 WHEREAS, The SFPUC, in order to undertake mitigation for Project impacts BIO 15 and
3 BIO 16, agreed with State and Federal permitting agencies to implement two separate
4 projects on SFPUC property on the Arroyo de la Laguna as part of the SFPUC's Habitat
5 Reserve Program -- the Arroyo de la Laguna Willow Riparian Scrub Enhancement and the
6 Arroyo de la Laguna Streambank Protection and Restoration Projects, which together would
7 restore 1.17 acres and 340 linear feet of creek and riparian habitat and enhance 0.85 acres
8 and 500 linear feet of creek and riparian habitat; and WHEREAS, the environmental effects of
9 the Arroyo de la Laguna Willow Riparian Scrub and Riparian Habitat Restoration project were
10 reviewed by the San Francisco Planning Department on April 6, 2011, in a note to the file for
11 the Project, case no. 2005.0146E, that analyzed the secondary impacts of mitigation in the
12 Project MMRP and concluded that implementation of the proposed habitat conservation
13 activities would not (1) result in any additional significant impacts beyond those disclosed in
14 the Project FEIR, or (2) increase the severity of any significant environmental impacts
15 identified in the FEIR with the inclusion of all mitigation measures identified in the Project
16 MMRP; and

17 WHEREAS, the Alameda County Resource Conservation District prepared a CEQA
18 categorical exemption, CEQA Guidelines Section 15333, Small Habitat Restoration Projects,
19 for the Arroyo de la Laguna Streambank Protection and Restoration Project filed on April 24,
20 2006, State Clearinghouse No. 2006038500; and

21 WHEREAS, The SFPUC in Resolution No. 08-0226 dated December 9, 2008, authorized
22 the General Manager to execute a Memorandum of Understanding (MOU) by and between
23 the San Francisco Public Utilities Commission and the Alameda County Resource
24 Conservation District to plan and, where authorized under CEQA, implement watershed
25

1 protection projects in the upper Alameda Watershed, including the implementation of
2 mitigation measures included in subsequent project MMRPs; and

3 WHEREAS, The original MOU had a duration of five years and an approved budget of
4 \$2,000,000; and

5 WHEREAS, The parties desire to enter into the first amendment to the Memorandum of
6 Understanding to continue to plan, design, and, where authorized under CEQA, implement
7 watershed protection projects and required mitigation for approved SFPUC capital projects;
8 and

9 WHEREAS, The Board finds that since the Project FEIR, the April 6, 2011 letter to the file,
10 and the March 24, 2006 categorical exemption were finalized, there have been no substantial
11 changes in Project circumstances that would require major revisions to the FEIR, the letter to
12 the file, or the categorical exemption due to the involvement of new significant environmental
13 effects or an increase in the severity of previously identified significant impacts, and there is
14 no new information of substantial importance that would change the conclusions set forth in
15 the FEIR, the letter to the file, or the categorical exemption; and

16 WHEREAS, Funds in the amount of \$575,000 for this amendment will be available from
17 Habitat Reserve Program (HRP) Capital Improvement funds, and \$200,000 will be available in
18 future years from Water Enterprise Operating Budget funds (CUW257 and/or CUW264); now,
19 therefore, be it

20 RESOLVED, That this Board of Supervisors hereby approves and authorizes the General
21 Manager of the San Francisco Public Utilities Commission to execute the first amendment to
22 the Memorandum of Understanding with the Alameda County Resource Conservation District
23 for an amount not to exceed \$775,000 and with a total duration of fourteen (14) years.
24
25

Item 7
File 11-1094

Department:
Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would approve the First Amendment to the existing Memorandum of Understanding (MOU) between the PUC and the Alameda County Resource Conservation District (ACRCD) to (a) increase the amount of the MOU by \$775,000, from not-to-exceed \$2,000,000 to not-to-exceed \$2,775,000, and (b) extend the MOU term by nine years, from the current term of five years (December 9, 2008 - December 8, 2013) to the new term of 14 years (December 9, 2008 - December 8, 2022).

Key Points

- The Board of Supervisors Budget and Finance Committee originally considered the proposed resolution on November 2, 2011, at which time the PUC asked that the item be continued.
- On April 1, 2010, the PUC, as part of the overall Water System Improvement Program (WSIP), began construction of the \$307,000,000 Bay Division Pipeline Reliability Upgrade Project ("Project"), in which the PUC is constructing a tunnel under the San Francisco Bay to transport water from Alameda County to Santa Clara County. In accordance with the California Environmental Quality Act (CEQA), a Final Environmental Impact Report (FEIR) was prepared for the Project, which included a Mitigation, Monitoring and Reporting Program (MMRP) for two impacted areas along the Alameda Creek Watershed, near Sunol, California.
- The PUC entered into a five-year MOU with ACRCD from December 9, 2008 through December 8, 2013, in an amount not-to-exceed \$2,000,000, for ACRCD to plan and implement watershed protection projects in the Upper Alameda Watershed and to mitigate for potential impacts associated with WSIP projects in Alameda County, including the Bay Division Pipeline Reliability Upgrade Project, consistent with the MMRP. The MOU between PUC and ACRCD also provides for watershed and environmental improvements, including outreach and education programs, as part of the PUC's Watershed and Environmental Improvement Program (WEIP).

Fiscal Impacts

- The PUC has expended and encumbered \$1,960,853 of the not-to-exceed amount of \$2,000,000 under the existing MOU, leaving an unencumbered and unexpended balance of \$39,147.
- Under the proposed First Amendment to the MOU between the PUC and ACRCD, the PUC is requesting an additional amount of \$775,000 to the previously authorized \$2,000,000 amount, resulting in a new not-to-exceed amount of \$2,775,000. The additional \$775,000 will be expended as follows: (a) \$363,000 to fund additional mitigation and post-construction monitoring through 2022, in compliance with the MMRP; and (b) \$412,000 to continue upper watershed protection and restoration projects as part of the Watershed and Environmental Improvement Program (WEIP).
- The funding source for the \$2,000,000 not-to-exceed amount in the existing MOU includes: the WSIP Habitat Reserve Program and Watershed and Environmental Improvement Program Capital Improvement funds; and Water Enterprise operating revenues.
- The funding source for the proposed \$775,000 includes \$575,000 of WSIP Habitat Reserve Program funds, previously appropriated by the Board of Supervisors, and \$200,000 of future Water Enterprise operating revenues, which are subject to annual appropriation by the Board of Supervisors in FY 2012-13 through FY 2015-16.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

San Francisco Charter Section 9.118 provides that agreements, including Memoranda of Understanding (MOU), with terms more than ten years or expenditures greater than \$10,000,000, or amendments to such MOUs that are greater than \$500,000, are subject to Board of Supervisors approval.

Background

The San Francisco Public Utilities Commission (PUC) is currently undertaking an overall Water System Improvement Program (WSIP) which consists of 86 projects to repair, replace, and seismically upgrade the Hetch Hetchy water system's aging pipelines, tunnels, pumps, tanks, reservoirs and dams. On April 1, 2010, the PUC, as part of the overall WSIP, began construction of the \$307,000,000 Bay Division Pipeline Reliability Upgrade Project ("Project"), in which a water pipeline will be constructed under the San Francisco Bay from Alameda County to Santa Clara County, in order to transport water from Hetch Hetchy to the Crystal Springs Reservoir. PUC expects the construction of the Project to be completed in approximately 2015.

In accordance with the California Environmental Quality Act (CEQA), a Final Environmental Impact Report (FEIR) was prepared for the Project, which included a Mitigation, Monitoring and Reporting Program (MMRP) for two impacted areas along the Alameda Creek Watershed, near Sunol, California.¹

The PUC entered into a Memorandum of Understanding (MOU) with the Alameda County Resource Conservation District (ACRCD)² on December 9, 2008, for the ACRCD to plan and implement watershed protection projects in the Upper Alameda Watershed³ and to mitigate for potential impacts associated with the WSIP, including the Project, consistent with the MMRP. The MOU between PUC and ACRCD also provides for watershed and environmental improvements, including outreach and education programs, as part of the PUC's Watershed and Environmental Improvement Program (WEIP). The existing MOU is for five years, from December 9, 2008 through December 8, 2013, for a not-to-exceed amount of \$2,000,000, funded with Habitat Reserve Program Capital Improvement funds⁴. As the existing MOU was less than \$10,000,000 and ten years, the MOU was not subject to approval by the Board of Supervisors.

The Board of Supervisors Budget and Finance Committee originally considered the proposed resolution on November 2, 2011, at which time the PUC asked that the item be continued.

¹ See Attachment for a map of the two impacted areas.

² The Alameda County Resource Conservation District (ACRCD) is an independent, non-regulatory, special district, with the primary responsibility of serving as the lead conservation agency for the agricultural lands in central and southern Alameda County. The ACRCD's current 11-member board of directors is appointed by the Alameda County Board of Supervisors.

³ The Upper Alameda Watershed which empties into the San Antonio Reservoir, is part of the Hetch Hetchy Water System, and is located near Sunol, California.

⁴ The Habitat Reserve Program Capital Improvement funds are from the overall WSIP that are set aside for mitigation projects. The Habitat Reserve Program is now known as the Bioregional Habitat Restoration Project, although the name "Habitat Reserve Program" is used in the PUC legislation.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize an amendment to the existing MOU between the PUC and the Alameda County Resource Conservation District to (a) increase the amount by \$775,000 from a not-to-exceed amount of \$2,000,000 to a not-to-exceed amount of \$2,775,000, and (b) extend the term of the MOU by nine years from five years (December 9, 2008 through December 8, 2013) to 14 years (December 9, 2008 through December 8, 2022).

The following Table compares the costs under the existing MOU amount of \$2,000,000 with the costs under the proposed not-to-exceed amount of \$2,775,000:

Proposed Increased Costs of the Memorandum of Understanding

| Purpose of Funds | Existing MOU | Proposed Increase | Proposed Total |
|---|--------------------|-------------------|--------------------|
| WSIP Mitigation and Monitoring of the Bay Division Pipeline Reliability Upgrade Project | \$1,212,018 | \$363,000 | \$1,575,018 |
| Watershed and Environmental Improvement Program (WEIP) projects | 787,982 | 412,000 | 1,199,982 |
| Total | \$2,000,000 | \$775,000 | \$2,775,000 |

An explanation of the increased cost of \$775,000 is explained below.

Mitigation and Monitoring from the Bay Division Pipeline Reliability Upgrade Project (\$363,000)

The existing MOU provides for mitigation and monitoring of the impacts of construction of the Bay Division Pipeline Reliability Upgrade Project on the two affected Alameda Creek watershed areas, as required by the MMRP. According to Mr. Greg Lyman, PUC Habitat Mitigation Engineer, when PUC negotiated the MOU with ACRCDC in 2008, the four regulatory agencies responsible for oversight had not finalized the scope of necessary post-construction monitoring.⁵ The PUC is now requesting \$363,000 and a nine-year extension of the existing MOU to pay for ongoing mitigation and monitoring of the impact of the Project after completion of the construction in 2015. According to Mr. Lyman, the requested funds are sufficient to complete the post-construction mitigation and monitoring of the Project impacts on the Alameda Watershed for the nine-year extension from 2013 through 2022.

Watershed and Environmental Improvement Program Projects (\$412,000)

In addition to mitigation and monitoring for the Bay Division Pipeline Reliability Upgrade Project, the existing MOU includes (a) outreach to private land owners within the Alameda Watershed to encourage participation in protecting and restoring the Alameda Watershed, (b) the development of environmental education curriculum for children by the non-profit organization, Sustainable Agriculture Education (SAGE), that teaches children farming techniques on SAGE's 18 acre organic farm, (c) the Historical Ecology program for researching the natural state of the

⁵ Regulatory agencies include: California Department of Fish and Game, Regional Water Quality Control Board, United States Fish and Wildlife Service, and the United States Army Corps of Engineers.

Alameda Watershed, (d) environmental monitoring of rangeland within the Alameda Watershed, and (e) the Alameda Creek Watershed Center in Sunol Interpretive Master Plan. According to Ms. Carla Schultheis, PUC Watershed and Environmental Improvement Program Coordinator, the proposed increase of \$412,000 would allow the PUC to continue to implement and expand these watershed protection, restoration, and education programs as part of the WSIP.

FISCAL IMPACTS

According to Mr. Carlos Jacobo, PUC Budget Manager, as of the writing of this report, expenditures and encumbrances under the existing MOU total \$1,960,853, leaving an unencumbered, unexpended balance of \$39,147.

The proposed resolution would increase the existing MOU not-to-exceed amount of \$2,000,000 by \$775,000, for a new total not-to-exceed amount of \$2,775,000, as shown in the Table above. The additional \$775,000 includes (a) \$575,000 of funds previously appropriated by the Board of Supervisors from the WSIP Habitat Reserve Program, and (b) \$200,000 of future Water Enterprise operating revenues, which are subject to annual appropriation by the Board of Supervisors in FY 2012-13 through FY 2015-16.

RECOMMENDATIONS

Approve the proposed resolution.



Basemap from USGS topographic
Digital Raster Graphics

Bioregional Habitat Restoration Arroyo de la Laguna Projects 1 and 2 Location Map



0 2,000 4,000 Feet

San Francisco Public Utilities Commission
Natural Resources Division



J. Lukins 10-18-11



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

1155 Market Street, 11th Floor
San Francisco, CA 94103
T 415.554.3404
F 415.554.3161
TTY 415.554.3488

TO: Angela Calvillo,
Clerk of the Board of Supervisors

FROM: Nathan Purkiss, 554-3404

DATE: 10/5/2011

SUBJECT: Resolution authorizing the General Manager of the SFPUC to execute the first amendment to the MOU with Alameda County Resource Conservation District (ACRCD) for an amount not to exceed \$775,000.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 OCT -5 AM 11:36

Please find the original and 4 copies of the resolution attached to this cover letter, along with the supporting documents for introduction on October 18, 2011, including:

- An SFPUC sponsored Board of Supervisor's Resolution
- An SFPUC Commission Agenda Item (with a signed copy of SFPUC commission resolution)
- A copy of the MOU related to this resolution (signed by the City Attorney)

Please feel free to contact Nathan Purkiss if you have any questions about this resolution.

Departmental representative to receive a copy of the adopted resolution:

Name: Nathan Purkiss Phone: 554-3404

Interoffice Mail Address: 1155 Market Street, 11th Floor

Edwin M. Lee
Mayor

Francesca Viator
President

Anson Moran
Vice President

Ann Moller Caen
Commissioner

Art Torres
Commissioner

Vince Courtney
Commissioner

Ed Harrington
General Manager





Services of the San Francisco Public Utilities Commission

San Francisco
Water
Power
Sewer

AGENDA ITEM

Public Utilities Commission

City and County of San Francisco



DEPARTMENT Water Enterprise, Natural
Resources and Lands Management
Division

AGENDA NO.

17

MEETING DATE July 12, 2011

Authorize First Amendment to Memorandum of Understanding (MOU): Regular Calendar
Project Manager: Tim Ramirez/Carla Schultheis

Authorize First Amendment to MOU with Alameda County Resource Conservation District

| | |
|---|--|
| Summary of Proposed Commission Action: | Authorize the General Manager of the San Francisco Public Utilities Commission (SFPUC) to execute a first amendment to the Memorandum of Understanding by and between the San Francisco Public Utilities Commission (SFPUC) and Alameda County Resource Conservation District (ACRCD) to continue the planning, design, and, where authorized under the California Environmental Quality Act (CEQA), the implementation of natural resource management projects in the Alameda Creek Watershed in an amount not to exceed \$775,000 and extending the completion date by nine years to December 31, 2022, subject to the Board of Supervisors approval pursuant to Charter Section 9.118. |
| Background: | <p>In 2008, the SFPUC and ACRCD entered into an MOU authorized by Commission in resolution No. 08-0226. The total cost authorized in the initial MOU was \$2,000,000. These funds were used to:</p> <ul style="list-style-type: none"> - Develop and begin implementation of an upper Alameda Creek Watershed outreach plan. - Conduct a historical ecology survey of Alameda Creek. - Develop curriculum for 4th-8th grade students at the Sunol AgPark. - Conduct rangeland monitoring in the Alameda Watershed. - Design the Arroyo de la Laguna Willow restoration project. - Design the Arroyo de la Laguna riparian restoration project. |

APPROVAL:

DEPARTMENT /
BUREAU

COMMISSION
SECRETARY

Mike Housh

FINANCE

Todd L. Rydstrom

GENERAL
MANAGER

Ed Harrington

| | |
|----------------------------|--|
| | <ul style="list-style-type: none"> - Begin construction of the Arroyo de la Laguna restoration project. - Conduct education regarding conservation easement and begin conservation easement facilitation. <p>The proposed amendment will continue the planning and design of natural resources management projects in the Alameda Creek Watershed. Projects that will be implemented by the ACRCDD under the MOU include mitigation on SFPUC owned watershed lands that was previously approved by the Commission as part of its approval of Water System Improvement Program (WSIP) projects. Such mitigation is required under the Mitigation, Monitoring and Reporting Programs approved by the Commission as part of project approval, and may be funded by the Habitat Reserve Program (HRP) or the Watershed Environmental Improvement Program (WEIP). The total cost under this first amendment is \$775,000.</p> |
| Result of Inaction: | Without the approval of this first amendment to the MOU, the SFPUC will not be able to implement required mitigation agreed to by the SFPUC in its approval of the Bay Division Pipeline No. 5 Project. In addition, the SFPUC would be unable to fulfill its commitment to fund the Watershed and Environmental Improvement Program (WEIP) using Water Enterprise operating revenues, previously authorized for a total of \$1 million over a term of 5 years in SFPUC Resolution No. 08-0226. |
| Budget & Costs: | <p>The estimated cost of services is \$775,000.</p> <p>Funds in the amount of \$575,000 are available from Habitat Reserve Program (HRP) Capital Improvement funds. Funds in the amount of \$200,000 will be available in future years from the Water Enterprise Operating Budget funds (CUW257 and/or CUW264), part of the WEIP commitment.</p> |
| Schedule: | <p>The anticipated completion date of the MOU is December 31, 2022.</p> <p>The total amended duration of this agreement will be fourteen (14) years, subject to Board of Supervisors approval.</p> |

| | |
|----------------------------------|--|
| Description of Agreement: | <p>This action will provide the ACRCDD funds to continue the planning, design, and where authorized under CEQA, the implementation of natural resource management projects in the Alameda Watershed. For projects on SFPUC watershed land to be administered by the ACRCDD, construction would be authorized on a project-by-project basis under revocable permits issued by the Commission using contractors hired by the ACRCDD. Environmental review for proposed projects that have not been previously approved by the SFPUC under CEQA would be undertaken by the ACRCDD in accordance with the terms of the</p> |
|----------------------------------|--|

Agreement: First Amendment to MOU, Alameda County Resource Conservation District
Commission Meeting Date: July 12, 2011

| | | |
|------------------------|---|---|
| | MOU, with the issuance of Construction Funding subject to the reserved discretion of the SFPUC to approve such funding as a responsible agency under CEQA. | |
| | Parties to Agreement: | SFPUC and ACRC |
| | Purpose: | Continue the planning, design, and, where authorized, the implementation of natural resources management projects in the Alameda watershed. |
| | Location: | Alameda watershed |
| | Commencement Date: | July 12, 2011 |
| Recommendation: | SFPUC staff recommends that the Commission adopt the attached resolution. | |
| Attachment(s): | (1) SFPUC Resolution (2) First Amendment to the Memorandum of Understanding by and between the San Francisco Public Utilities Commission and Alameda County Resource Conservation District | |

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. _____

WHEREAS, The SFPUC in Resolution No. 08-0226 dated December 9, 2008, authorized the General Manager to execute a Memorandum of Understanding by and between the San Francisco Public Utilities Commission and the Alameda County Resource Conservation District to implement watershed protection projects in the upper Alameda Watershed; and

WHEREAS, The Bay Division Pipeline No. 5 project resulted in impacts to 1.00 acre and 160 linear feet of creek and riparian scrub habitat and temporal losses in functions associated with temporary impacts to 0.154 acres and 200 linear feet of creek and riparian scrub habitat in Alameda County; and

WHEREAS, The SFPUC in Resolution No. 09-1020 dated July 14, 2009, approved CEQA Findings, including a statement of overriding considerations, and a Mitigation and Monitoring and Reporting Program (MMRP) for The Bay Division Pipeline No. 5 project; and

WHEREAS, The SFPUC, as part of the approved MMRP, has agreed to implement two separate projects on the Arroyo de la Laguna; the Arroyo de la Laguna Willow Riparian Scrub Enhancement Project and the Arroyo de la Laguna Willow Riparian Scrub Restoration. The projects combined would restore 1.17 acres and 340 linear feet of creek and riparian habitat and enhance 0.85 acres and 500 linear feet of creek and riparian habitat; and

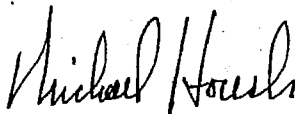
WHEREAS, The original MOU had a duration of five years and an approved budget of \$2,000,000; and

WHEREAS, The parties desire to enter into the first amendment to the Memorandum of Understanding to continue to plan, design, and, where authorized under CEQA, implement watershed protection projects; and

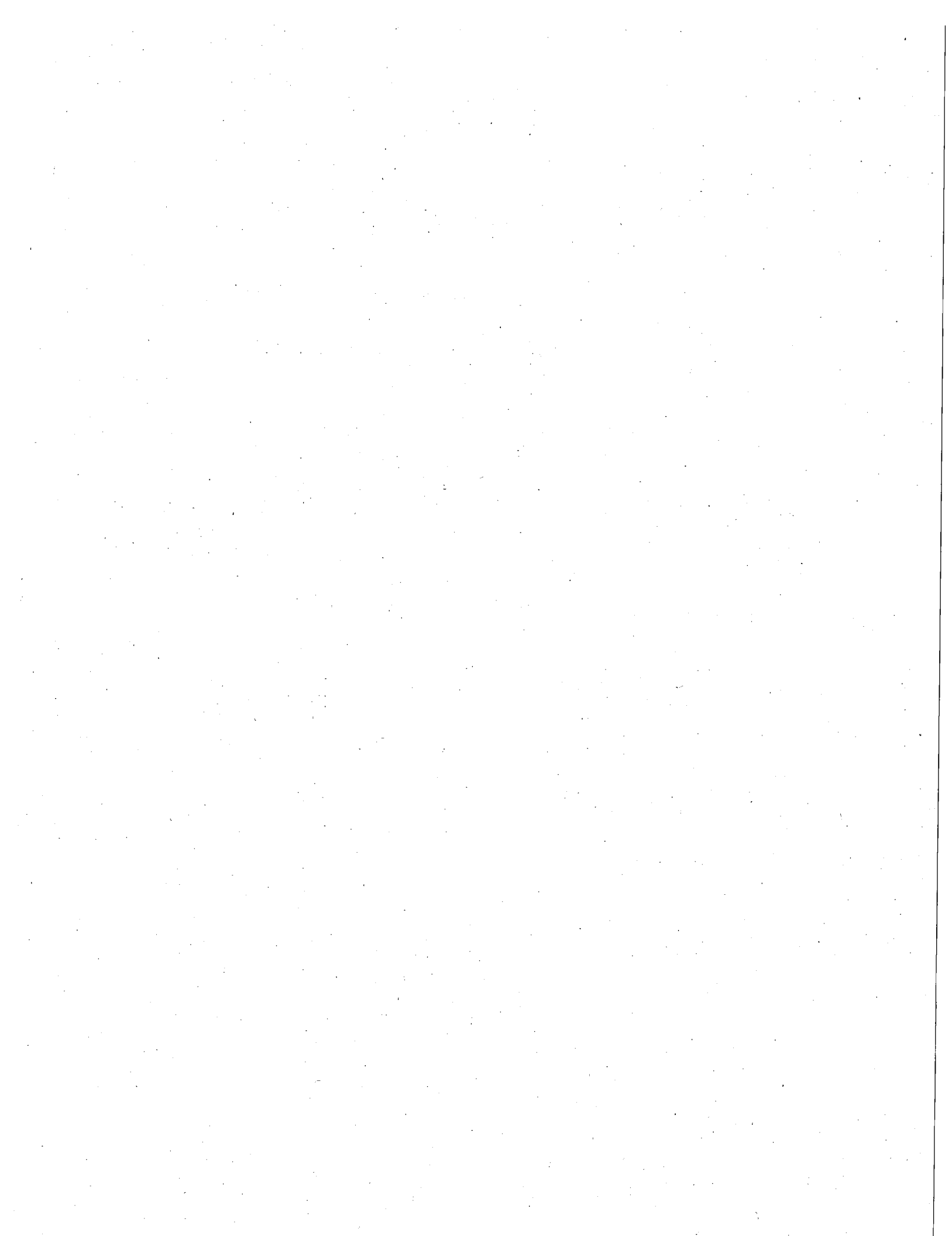
WHEREAS, Funds in the amount of \$575,000 for this amendment will be available from Habitat Reserve Program (HRP) Capital Improvement funds, and \$200,000 will be available in future years from Water Enterprise Operating Budget funds (CUW257 and/or CUW264); now, therefore, be it

RESOLVED, That this Commission hereby authorizes the General Manager of the San Francisco Public Utilities Commission to execute the first amendment to the Memorandum of Understanding with the Alameda County Resource Conservation District for an amount not to exceed \$775,000 and with a total duration of fourteen (14) years, subject to Board of Supervisors approval pursuant to Charter section 9.118 (b).

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 12, 2011

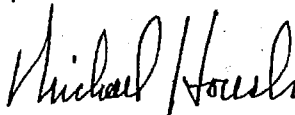


Secretary, Public Utilities Commission



RESOLVED, That this Commission hereby authorizes the General Manager of the San Francisco Public Utilities Commission to execute the first amendment to the Memorandum of Understanding with the Alameda County Resource Conservation District for an amount not to exceed \$775,000 and with a total duration of fourteen (14) years, subject to Board of Supervisors approval pursuant to Charter section 9.118 (b).

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 12, 2011



Secretary, Public Utilities Commission

C 3912

MEMORANDUM OF UNDERSTANDING
by and between the
ALAMEDA COUNTY RESOURCE CONSERVATION DISTRICT
and the
SAN FRANCISCO PUBLIC UTILITIES COMMISSION
to plan, design and implement
COORDINATED NATURAL RESOURCES MANAGEMENT PROJECTS

This Memorandum of Understanding (MOU) is made and entered into by and between the Alameda County Resource Conservation District (ACRCD) and the San Francisco Public Utilities Commission (SFPUC) for the purposes of coordinating and furthering watershed resources management especially within lands associated with the operation of the SFPUC water system.

WHEREAS, SFPUC operates water supply facilities within the Tuolumne River, Alameda Creek, and Peninsula watersheds and has a mission to serve San Francisco and its Bay Area customers with reliable, high quality, and affordable water while responsibly managing the resources - human, physical and natural - entrusted to its care; and,

WHEREAS, SFPUC has adopted the Water Enterprise Environmental Stewardship Policy and the Alameda and Peninsula Watershed Management Plans and initiated the Watershed and Environmental Improvement Program (WEIP) to more proactively manage, protect and restore environmental resources affected by SFPUC operations;

WHEREAS, SFPUC has a requirement to develop and implement mitigation plans, and the Habitat Reserve Program (HRP), under the Water System Improvement Program (WSIP); and,

WHEREAS, ACRCD, working with USDA Natural Resources Conservation Service (NRCS) has a mission to provide leadership in Alameda County and the region regarding natural resources conservation and agricultural enhancement through education, outreach, resource services and technical assistance, partnerships and funding; and,

WHEREAS, SFPUC, ACRCD and NRCS have similar natural resource conservation goals including, but not limited to, water quality protection, fire protection, grazing operations, riparian/wetland enhancement, aquatic and upland habitat enhancement, public outreach and education and integrated watershed resources management; and,

WHEREAS, SFPUC, ACRCD and NRCS are working cooperatively to protect and improve watershed values by operating more effectively and efficiently to meet mutually shared and beneficial organizational goals and objectives; and,

WHEREAS, ACRCD and NRCS are recognized as conservation leaders by their peer organizations and private landowners in Alameda County;

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

Section 1: Authority of Parties

- 1.1 The SFPUC is responsible for managing San Francisco's municipal utilities pursuant to the Charter of the City and County of San Francisco ("City").
- 1.2 The ACRCDD is a special purpose district as set forth in Division 9 of the California Public Resources Code.

Section 2: Definitions

The abbreviations and capitalized words and phrases in this MOU shall have the following meanings:

- 2.1 "ACRCDD" means the Alameda County Resource Conservation District.
- 2.2 "Construction Funding" means funding provided by the SFPUC for ACRCDD's implementation and oversight of Projects under this MOU that may be authorized on a Project-by-Project basis by the SFPUC.
- 2.3 "Contractor" means licensed contractors chosen by the ACRCDD, using Planning Funding and Construction Funding provided by the SFPUC, to plan, design and implement mutually agreed upon Projects.
- 2.4 "NRCS" means the United States Natural Resources Conservation Service, an agency of the United State Department of Agriculture.
- 2.5 "Parties" means the ACRCDD and the SFPUC.
- 2.6 "Planning Funding" means funding provided by the SFPUC to cover all expenses incurred by ACRCDD that are required to design, permit, conduct necessary environmental review and other pre-construction expenses for the Projects contemplated as a result of this MOU, as set forth in the fee schedule attached to this MOU as Exhibit A.
- 2.7 "Project" or "Projects" means the coordinated natural resource management projects, programs and plans that the Parties may agree to design, permit, and implement using SFPUC funding under this MOU.
- 2.8 "SFPUC" means the San Francisco Public Utilities Commission.

Section 3: Goal and Objectives of Coordinated Natural Resources Management Under This MOU

3.1. Goal:

- Protect and restore lands and natural resources especially those associated with the operation of the SFPUC water system using the SFPUC funding authorized under this MOU and the expertise of the ACRCDD in planning and implementing restoration Projects.

3.2. Objectives: Planning and implementing of watershed restoration Projects within ACRCDD's jurisdiction and consistent with the ACRCDD's mission and Public Resource Code Section 9151 that will result in:

- Improved management of activities to protect source water quality, native species and their habitat.
- The identification of watershed lands critical to restoration and protection of source water quality or key ecosystem restoration needs and restoration priorities.
- Enhanced public awareness of watershed resources, their protection and restoration efforts.

Section 4: Funding for Design and Implementation of Projects

4.1 Total SFPUC Contribution; Not To Exceed Amount: The SFPUC's total contribution (consisting of Planning Funding and Construction Funding) to the ACRCDD shall not exceed \$2,000,000.

4.2 Fiscal Limitations: THIS SECTION SUPERSEDES ANY CONFLICTING PROVISION OF THIS MOU. This MOU is subject to the fiscal provisions of the City's charter and the budget decisions of its Mayor and Board of Supervisors. No funds will be available hereunder until prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This MOU shall automatically terminate, without liability to the City, except for work actually performed by the ACRCDD, after this document is signed by the parties, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. The City's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. The City, its employees and officers are not authorized to request services, materials, equipment or supplies that are beyond the scope of those expressly described herein, unless this MOU is amended in writing and approved as required by law. Without such an amendment or approval, the City shall not be required to provide Construction Funding or Planning Funding to ACRCDD. The City, its employees and officers are not authorized to offer or promise any additional funding that would exceed the maximum amount specified in Section 4.1. Such additional funding requires lawful approval and certification by the Controller. Without such lawful approval and certification, the City shall not be required to provide such additional funding.

Likewise, the ACRCDD is also obligated to be fiscally responsible consistent with the budget decisions of its Board. In connection with this MOU, the ACRCDD has made its best efforts to present a reasonable budget that should allow the ACRCDD to accomplish the tasks set forth in this MOU. However, in the event that the ACRCDD subsequently determines in its reasonable judgment that the total budgeted cost of the services or materials to be provided by the ACRCDD under this MOU is expected to exceed the SFPUC's total obligation as set forth in this MOU, then the ACRCDD shall promptly notify the SFPUC of the anticipated or actual increased or excess cost. The ACRCDD and the SFPUC then shall work together to find a mutually agreeable funding source or other solution to meet the increased or excess cost. If, after fifteen (15) days (or additional time as may be mutually agreed to in writing by the Parties), a mutually acceptable funding source or other solution is not identified by the Parties, then (1) this MOU shall be deemed terminated by mutual consent without additional cost or penalty to either Party (2) ACRCDD shall cease any further work under this MOU and (3) ACRCDD's obligations under this MOU shall cease, subject to a written agreement of or amendment to this MOU by the Parties. Thereafter, the ACRCDD shall either (a) submit a final billing for services performed and/or materials provided up to the date of termination for SFPUC's review and approval, after which the SFPUC shall pay that invoice within thirty (30) days, or (b) refund to the SFPUC any SFPUC funds remaining on deposit with ACRCDD under this MOU within thirty (30) days of said termination.

- 4.3 **Initial Increment and Disbursement of Planning Funding:** Upon the approval of this MOU and submittal of an invoice, the SFPUC will advance an initial increment of Planning Funding to the ACRCDD totaling \$20,000. The SFPUC will disburse additional Planning Funding to ACRCDD as expenses are incurred under approved task orders. ACRCDD and SFPUC shall jointly approve each task order and an associated budget estimate. Following task order approval, the ACRCDD will undertake the work and invoice the SFPUC for work performed by Contractors and the ACRCDD on a monthly basis in accordance with section 4.10 of this MOU and the fee schedule attached as Exhibit A. SFPUC shall pay all invoices within thirty (30) days of receipt. The ACRCDD shall use the Planning Funding solely in accordance with the fee schedule attached hereto as Exhibit A for the planning, design and environmental review of the following types of Projects as agreed to in writing by the Parties. In no event will Planning Funding be used for Project implementation by the ACRCDD.

- 4.3.1 **Watershed Restoration** - provide assistance with the planning and design of watershed restoration Projects consistent with ACRCDD's mission and Public Resource Code Section 9151. Projects may include but not be limited to:

- Assist in the development of partnerships with local, state, and federal agencies and private landowners to develop and implement land use strategies that further the goals of both agencies.
- Work closely with SFPUC tenants in developing conservation plans which address range management techniques to improve sustainable forage production and species composition and to promote proper grazing methods to protect against soil erosion and to protect water quality.
- Develop and implement an inventory and monitoring strategy to determine natural

resources conditions and trends and to assist in prioritizing conservation efforts in the watershed, including but not limited to water quality sampling, creek surveys and vegetation monitoring.

- Develop conservation and restoration practices to protect and enhance riparian and wetland areas for ecological resource protection.
- Develop strategies for enhancement of native species and their habitats.
- Develop conservation and restoration practices to protect from surface soil erosion and improve and protect water quality.
- Provide assistance in the planning and design of restoration Projects and necessary environmental review.
- Development of designs for bridges over low water creek crossings.
- Design of fencing along creeks and designs for alternative, off-site livestock and wildlife water sources.
- Development of Project descriptions for native plant nurseries, seed collection and propagation in the Alameda Creek and Peninsula Watersheds.
- Development of a vegetation management plan including: fire management, non-native invasive species and special status species.
- Conduct a Historical Ecology study of the Alameda Creek Watershed.
- Fund small research and conservation Projects.
- Development of Plans and Specifications for enhancement Projects, including compensation actions.
- Preparation of CEQA documents for enhancement Projects.

4.3.2 **Education and Outreach** - provide assistance with education and outreach efforts to achieve the above objectives. Projects may include but not be limited to:

- Provide assistance in notifying property owners about potential land protection opportunities (e.g. fee and/or easement).
- Planning and design of Watershed Interpretive Centers.
- Develop and implement a comprehensive Watershed Awareness Program to educate the general public and school age children about SFPUC operations and land and natural resource issues.

4.3.3 **Cost Share** - utilize cost share programs, where appropriate, to help fund Projects:

- Work with the NRCS to determine utilization of Federal cost share and Conservation Technical Assistance programs to help support SFPUC Projects/programs.
- Support legislative efforts to seek out state or Congressional funding.

4.3.4 **Annual Reporting** - provide an annual report describing the status of activities implemented during the year.

4.4 **Environmental Review of Projects; ACRCD Lead Agency Status:** The expenditure of Planning Funding may result in the development of Project descriptions that include activities that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. In that event, the ACRCD shall serve as lead agency for preparation of any CEQA documentation required for Project approval. ACRCD shall independently evaluate the need for CEQA review and

documentation consistent with its mission and Public Resource Code Section 9151 and Sections 21000 et seq.

In connection with CEQA review for Projects located on SFPUC-owned watershed lands, the City, by and through the San Francisco Planning Department ("Planning Department") shall act as a responsible agency in consultation with the ACRCD. The ACRCD shall enter into a letter agreement with the Planning Department, prior to beginning CEQA review of each Project, regarding (1) the level of environmental review required for the Project under CEQA and (2) advance review and comment, prior to publication, of any administrative draft environmental documents for any Project by the Major Environmental Analysis section of the Planning Department. The Planning Department shall promptly review all documents and other material submitted by ACRCD pursuant to any such letter agreement. ACRCD shall not be responsible for any delay, or damages caused by any delay, of those Departments in completing its/their review of the submitted documents or material.

For Projects located on SFPUC-owned watershed lands, in the event that:

1. the Planning Department, acting as a responsible agency under CEQA, determines that (i) the level of environmental review required for the Project under CEQA or (ii) the extent of mitigation measures required to reduce or eliminate significant environmental impacts under CEQA is less than or is less extensive than that determined necessary by the ACRCD as lead agency, or
2. the SFPUC determines that the Project should go forward, with or without mitigation, when the ACRCD determines that the "no project" alternative is preferred under CEQA, then the ACRCD shall be excused as the lead agency under CEQA with no cost or penalty to the ACRCD, and the Planning Department shall assume all CEQA responsibilities as lead agency for the Project. The SFPUC shall indemnify, defend and hold harmless the ACRCD from and against all CEQA related claims, lawsuits, costs, penalties, causes of action, demands, losses and liability caused by or arising out of or related to the Planning Department's or SFPUC's determination under either 1 or 2 above.

Alternatively, for projects located on SFPUC-owned watershed lands, in the event that:

1. the Planning Department determines that (i) the level of environmental review required for the Project under CEQA or (ii) the extent of mitigation measures required to reduce or eliminate significant environmental impacts under CEQA is more than or is more extensive than that determined necessary by the ACRCD as lead agency, or
2. the SFPUC determines that the Project should not go forward and the "no project" alternative is preferred under CEQA, then the ACRCD shall adopt the determination by the Planning Department or SFPUC and the ACRCD shall complete the CEQA process as lead agency conforming to that determination.

Notwithstanding the foregoing, either Party retains the right to terminate this MOU or terminate either or both of the written agreements required by Sections 4.3 or 4.4, above,

at no additional cost or penalty, if that Party determines that (i) the actual cost or expense of proceeding with or completing any work contemplated under those sections for a Project will exceed or does exceed the budgeted or anticipated costs or expenses of the work for the Project or (ii) the actual scope of work for the Project will exceed or does exceed the budgeted or anticipated scope of work for the Project.

- 4.5 **Issuance of Construction Funding by SFPUC:** The SFPUC will not approve issuance of Construction Funding for any Project located on SFPUC owned watershed lands until there has been complete compliance with CEQA and the City's Environmental Quality Regulations (San Francisco Administrative Code Section 31). If any Project on SFPUC watershed lands is found to cause significant adverse impacts that have not been mitigated, the City retains absolute discretion, subject to the provisions of Section 4.4 above, to: (1) modify the Project to mitigate significant adverse environmental impacts, (2) select feasible alternatives which avoid significant adverse impacts of the Project, (3) require the implementation of specific measures to mitigate the significant adverse environmental impacts of the Project, as identified upon environmental evaluation in compliance with CEQA and the City's Environmental Quality Regulations, (4) reject the Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project, or (5) approve the Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse impacts.

Construction Funding shall be paid to the ACRCDD by the SFPUC on a Project-by-Project basis and shall be paid in a lump sum in advance to the ACRCDD or as otherwise agreed to by the Parties pursuant to a separate written agreement. The ACRCDD shall not be required to proceed with the construction or implementation of any Project until actual receipt of Construction Funding.

- 4.6 **Administration of Contracts to Expend Planning Funding and Construction Funding:** The ACRCDD shall act as the contracting entity and project manager for Contractor(s) selected to design, engineer, and implement any Projects selected by the Parties under Section 4.2. The ACRCDD shall use the contract templates for professional and contractor services attached hereto as Exhibits B and C, respectively.

Prior to submission to any third party (architect, engineer, contractor, etc.) to be retained by the ACRCDD for any Project, the ACRCDD shall submit to the SFPUC (or its designated representative) for its review and approval all contract templates that have been modified or customized (i.e. where the template is used but Project-specific information or details have been added) by ACRCDD staff for a particular Project.

In addition, ACRCDD shall submit to the SFPUC (or its designated representative) for its review and approval all contract templates that have been provided to a third party (architect, engineer, contractor, etc.) to be retained by the ACRCDD for any Project whenever the third party proposes to modify in whole or in part the terms of the contract templates attached hereto as Exhibits B and C.

The SFPUC (or the designated representative) shall approve or disapprove the proposed modified or customized contract template form within fourteen (14) days of receipt of the document or the document shall be deemed approved by the SFPUC.

In the event that SFPUC (or the designated representative) does not approve the proposed modified or customized contract template form, then the ACRCDD shall use its best efforts to negotiate an alternative agreement, if possible, that is acceptable to the ACRCDD and the third party. That alternative agreement shall be submitted to the SFPUC (or its designated representative) for its review and approval. If the SFPUC (or the designated representative) does not approve the alternative agreement within 7 days of receipt, or if the ACRCDD and the third party are not able to agree on language for an alternative agreement, then the ACRCDD shall terminate the Project with no cost or penalty to the ACRCDD.

- 4.7 **Hold Harmless and Liability:** ACRCDD and SFPUC each agree to mutually indemnify, defend at its own expense, including attorneys' fees, and hold the other harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to any negligent act, error or omission, or willful misconduct of itself, its officers or employees, or any of its agents acting pursuant to this MOU.
- 4.8 **Cooperation Regarding Public Relations and Outreach:** The Parties will work cooperatively with each other to jointly review and approve all press releases and other information created for public consumption concerning Projects and programs implemented pursuant to this MOU.
- 4.9 **Relationship of Parties With Respect to Funding:** The obligation of each party to make payments under the terms and provisions of this MOU is an individual and several obligation and not a joint obligation with those of the other parties. Each party shall be individually responsible for its own obligations under this MOU. No party shall be under the control of or shall be deemed to control any other party or parties collectively. No party shall be the agent of or have the right or power to bind any other party without such party's express written consent, except as expressly provided in this MOU. In the event any party or entity fails to make any payments referenced in this MOU, the ACRCDD shall have the right to terminate this MOU. If so terminated, the SFPUC and the City shall only be responsible for reimbursing any party or other entity for any amounts or payments received after deduction for work, including but not limited to administration, which was performed under this MOU prior to such termination.
- 4.10 **Invoices:** All ACRCDD contracts shall require the Contractors to submit monthly invoices. The invoices shall set forth in detail the work performed, materials used, and the expenses incurred by the Contractors, as well as the amount of total billings to date and the remaining balance in the contract. The ACRCDD's contract with any Contractors shall allow the Parties the right to audit the Contractor's books and records regarding the costs of any projects for a period of at least three years following completion of the

contract.

- 4.11 **Project Recognition:** SFPUC shall retain all ACRCDD and NRCS identifying marks, logos, and symbols on engineering designs, standards, specifications and practice application sheets developed and utilized by ACRCDD and NRCS for this project. In addition, SFPUC will credit ACRCDD and NRCS on any and all NRCS developed designs. SFPUC and ACRCDD shall respect and credit the proprietary rights of any third parties in any pre-existing materials.
- 4.12 **Project Outreach:** SFPUC agrees to allow a project construction sign on the site that recognizes the Project and the ACRCDD and/or NRCS's role. Further, SFPUC agrees that SFPUC and/or the ACRCDD may utilize the project and its separate elements for educational outreach and public relations purposes.

Section 5: Notice and Contacts

With the exception of notice required under Section 4.6.2, any notice, payment, credit or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery or five (5) days after deposit in any United States mail depository, first class postage prepaid and addressed to the party for whom intended; or on the same day as a facsimile transmission is sent as long as original is placed in the mail on the same day.

For purposes of this MOU, the following persons are authorized representatives of their respective agencies.

ACRCDD:

Karen Sweet (or designee)
Executive Officer
Alameda County Resource Conservation District
3585 Greenville Road, Suite #2
Livermore, CA 94550-6710

SFPUC:

Tim Ramirez
Manager, Natural Resources and Lands Management Division
Water Enterprise, San Francisco Public Utilities Commission
1145 Market Street, 4th Floor
San Francisco, CA 94102
415-554-3265 (telephone)
415-934-5770 (facsimile)
TRamirez@sfgwater.org

City and County of San Francisco, City Attorney's Office:

Joshua Milstein
Deputy City Attorney
1390 Market Street, Suite 418

San Francisco, CA 94102
415-554-4211
415-554-8793
Joshua.D.Milstein@sfgov.org

Any party may change such address by notice given to the other party as provided herein.

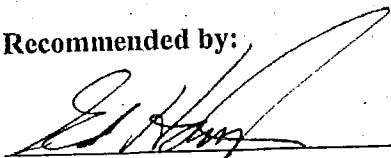
Section 6: General Provisions Governing MOU

- 6.1 **Term:** The term of this MOU shall be for sixty (60) months from the date of execution by the Parties. Either party may terminate this MOU with cause upon provision of seven days' written notice to the other party. The expiration of the term of this MOU shall not relieve the ACRCDC of any post-termination responsibilities or work that both (1) are required by federal and state permitting agencies and (2) for which ACRCDC has actually received payment in advance by the SFPUC or the City. Provided, however, that prior to the issuance of notice of termination the issuing party shall provide written notice to the other party of such cause for termination and may request immediate action or cure or may establish a specific time period by which such action or cure must occur. If the party receiving notice fails to take prompt corrective action or otherwise pursue cure as requested in the written notice, the requesting party shall have the right to issue the seven-day notice of termination.
- 6.2 **Amendment:** The Parties may agree to modify the terms of this MOU by written agreement authorized by the governing boards of both Parties.
- 6.3 **Assignment:** Neither this MOU nor any duties or obligations hereunder may be assigned or delegated unless first approved by all Parties by written instrument executed and approved in the same manner as this MOU.
- 6.4 **Invalidity of Any Term Not to Invalidate Entire Memorandum:** In the event that any of the terms, covenants or conditions of this MOU or the application of any such term, covenant or condition shall be held invalid as to any party by any court of competent jurisdiction, all other terms, covenants, or conditions of this MOU and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those invalid provisions are not severable from all other provisions of this MOU.
- 6.5 **Construction of Terms:** This MOU is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than another party.
- 6.6 **Good Faith:** Each party shall use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of its terms.
- 6.7 **Tropical Hardwood and Virgin Redwood Ban:** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.
- 6.8 **Governing Law:** This MOU is made under and shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year indicated on the first page of this MOU.

CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION

Recommended by:



Edward Harrington, General Manager

Date _____

PUC Res. No. 08-0227

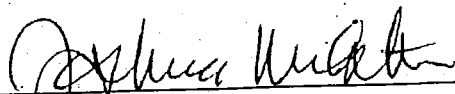
By MICHAEL Housh, Secretary

Adopted 12/09, 2008

APPROVED AS TO FORM

Dennis J. Herrera, City Attorney

By



Joshua Milstein

Deputy City Attorney

ALAMEDA COUNTY RESOURCE CONSERVATION
DISTRICT

Authorized by the Alameda County Resource
Conservation District

Adopted 11/17, 2008

By

Rod Trigg for SC 12/17/08

Jocelyn Combs, President

Date

Alameda County Resource Conservation District

APPROVED AS TO FORM

Richard E. Winnie, County Counsel

By:



Andrea L. Weddle

Deputy County Counsel

EXHIBIT A
Schedule of ACRCD Charges

| Personnel Category | Hourly Rate Range |
|---------------------------|--------------------------|
| Executive Officer | \$90 - \$115 |
| Range Conservationist | \$75 - \$100 |
| Resource Conservationist | \$75 - \$100 |
| Accountant | \$75 - \$100 |
| Outreach Coordinator | \$40 - \$65 |
| Project Assistant II | \$35 - \$60 |
| Project Assistant I | \$25 - \$50 |

| Personnel Category | Hourly Rate |
|---------------------------|--------------------|
| District Conservationist | \$50 - \$70 |
| Ecologist | \$35 - \$60 |
| Engineer | \$35 - \$60 |
| Program Assistant | \$20 - \$35 |

- This fee schedule is subject to change as needed by the RCD Board of Directors and/or NRCS.
- This does not include sub-consultants whose rates will be billed at cost plus 10% overhead.
- Mileage will be at the current IRS rates which is currently \$.585/per mile and is subject to change when the IRS rates change.

Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) after 60 days. In the event collection action becomes necessary, SFPUC agrees to pay all costs of collection, including attorney's fees.

First Amendment to the Memorandum of Understanding (MOU)

Dated

July 12, 2011

by and between

ALAMEDA COUNTY RESOURCE CONSERVATION DISTRICT

and the

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

to plan, design and implement

COORDINATED NATURAL RESOURCES MANAGEMENT PROJECTS

I. Recitals

- A. The MOU authorized by the organizations listed above in 2008 includes a provision for amendments.
- B. The funding provided in the MOU, totaling \$2,000,000, has mostly been expended to plan a variety of natural resources management projects.
- C. The signatories to this Amendment have agreed to implement several natural resources management projects. It is estimated that an additional 9 years and an additional \$775,000 will be needed to complete said projects.

II. Modifications to the MOU

The MOU is hereby modified as follows:

- A. Section 4.1, Total SFPUC Contribution; Not To Exceed Amount, currently reads as follows:

The SFPUC's total contribution (consisting of Planning Funding and Construction Funding) to the ACRCDD shall not exceed \$2,000,000.

Such section is hereby amended in its entirety to read as follows:

The SFPUC's total contribution (consisting of Planning Funding and Construction Funding) to the ACRCDD shall not exceed \$2,775,000.

- B. Section 4.3.1 currently reads as follows: **Watershed Restoration** - provide assistance with the planning and design of watershed restoration Projects.

**First Amendment to the Memorandum of Understanding
between ACRCDD and SFPUC to plan, design and implement
coordinated natural resources management projects**

July 12, 2011

consistent with ACRCDD's mission and Public Resource Code Section 9151.
Projects may include but not be limited to:

- Assist in the development of partnerships with local, state, and federal agencies and private landowners to develop and implement land use strategies that further the goals of both agencies.
- Work closely with SFPUC tenants in developing conservation plans which address range management techniques to improve sustainable forage production and species composition and to promote proper grazing methods to protect against soil erosion and to protect water quality.
- Develop and implement an inventory and monitoring strategy to determine natural resources conditions and trends and to assist in prioritizing conservation efforts in the watershed, including but not limited to water quality sampling, creek surveys and vegetation monitoring.
- Develop conservation and restoration practices to protect and enhance riparian and wetland areas for ecological resource protection.
- Develop strategies for enhancement of native species and their habitats.
- Develop conservation and restoration practices to protect from surface soil erosion and improve and protect water quality.
- Provide assistance in the planning and design of restoration Projects and necessary environmental review.
- Development of designs for bridges over low water creek crossings.
- Design of fencing along creeks and designs for alternative, off-site livestock and wildlife water sources.
- Development of Project descriptions for native plant nurseries, seed collection and propagation in the Alameda Creek and Peninsula Watersheds.
- Development of a vegetation management plan including: fire management, non-native invasive species and special status species.
- Conduct a Historical Ecology study of the Alameda Creek Watershed.
- Development of a mini-grant program to fund small research and conservation Projects.
- Development of Plans and Specifications for enhancement Projects, including compensation actions.
- Preparation of CEQA documents for enhancement Projects.

Such section is hereby amended in its entirety to read as follows:

First Amendment to the Memorandum of Understanding (MOU)

Dated

July 12, 2011

by and between

ALAMEDA COUNTY RESOURCE CONSERVATION DISTRICT

and the

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

to plan, design and implement

COORDINATED NATURAL RESOURCES MANAGEMENT PROJECTS

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**First Amendment to the Memorandum of Understanding
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**First Amendment to the Memorandum of Understanding
between ACRCDD and SFPUC to plan, design and implement
coordinated natural resources management projects**

July 12, 2011

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- Conduct a Historical Ecology study of the Alameda Creek Watershed.
- Development of a mini-grant program to fund small research and conservation Projects.
- Development of Plans and Specifications for enhancement Projects, including compensation actions.
- Preparation of CEQA documents for enhancement Projects.
- Coordinate implementation, monitoring and management of construction activities for enhancement projects on SFPUC watershed lands, based the terms of revocable permits for construction issued by the SFPUC.
- Assist with development of an easement conservation program for SFPUC and develop easement related documents for SFPUC program, including,

**First Amendment to the Memorandum of Understanding
between ACRC and SFPUC to plan, design and implement
coordinated natural resources management projects**

July 12, 2011

but not limited to: Deed of Conservation Easement, Baseline Inventory Reports, Management Plans, and other documents as needed.

C. The first sentence of Section 6.1, TERM, currently reads as follows:

The term of the MOU shall be for sixty (60) months from the date of execution by the Parties.

Such sentence is hereby amended in its entirety to read as follows:

The term of the MOU shall be for fourteen years (14) from the date of execution by the Parties.

III. Legal Effect

Except as expressly modified by this Amendment, all terms and conditions of the Agreement shall remain unchanged and in full force and effect.

**First Amendment to the Memorandum of Understanding
between ACRC and SFPUC to plan, design and implement
coordinated natural resources management projects**

July 12, 2011

Signatures

Sign: _____ Date: _____
Alameda County Resource Conservation District
Name: Paul Banke
Title: Board President

Sign: _____ Date: _____
San Francisco Public Utilities Commission
Name: Ed Harrington
Title: General Manager

Commission Resolution No. _____ Dated _____

Attest: _____
Secretary

Approved by Board of Supervisors by Resolution No. _____ Dated _____.



SFPUC BOS Resolution WSIP ACRD MOU

Purkiss, Nathan

to:

BOS Legislation

10/11/2011 03:16 PM

Show Details

3 Attachments



image001.jpg ACRCMOU amend board reso Final.doc ACRCMOU first amendment FINAL.DOC

Clerk of the Board of Supervisors,

Attached is a Board of Supervisors resolution submitted to the Clerk on Wednesday, October 5th, for introduction at the Board on October 18th, authorizing the General Manager of the SFPUC to execute the first amendment to the MOU with Alameda County Resource Conservation District (ACRD) for \$775,000.

Also, there was a typo in the hardcopy of the ACRD MOU that was submitted to the Clerk on Wednesday, October 5th. Attached is a digital copy of the ACRD MOU with the typo fixed.

Please let me know if you need any additional information,

Nathan Purkiss

Government Affairs Manager

1155 Market Street, 11th Floor

San Francisco, CA 94103

Office: (415) 554-3404 | Mobile: (415) 823-9895

Fax: (415) 554-3424 | npurkiss@sfgwater.org

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**San Francisco
Water Power Sewer**

Services of the San Francisco Public Utilities Commission



SFPUC BOS Resolution WSIP ACRD MOU

Purkiss, Nathan

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image001.jpg



ACRCD MOU amend board reso Final.doc



ACRCD MOU first amendment FINAL.DOC

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Please let me know if you need any additional information,

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San Francisco

Water Power Sewer

Services of the San Francisco Public Utilities Commission

**First Amendment to the Memorandum of Understanding
between ACRCDD and SFPUC to plan, design and implement
coordinated natural resources management projects**

July 12, 2011

Signatures

Sign: _____

Date: _____

Alameda County Resource Conservation District

Name: Paul Banke

Title: Board President

Sign: _____

Date: _____

San Francisco Public Utilities Commission

Name: Ed Harrington

Title: General Manager

Commission Resolution No. _____

Dated _____

Attest: _____

Secretary

Approved by Board of Supervisors by Resolution No. _____ Dated _____.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0120

WHEREAS, San Francisco Public Utilities Commission ("SFPUC") staff have developed a project description for Projects CUW36801 Bay Division Pipeline Reliability Upgrade Project-Tunnel ("Bay Tunnel"), CUW36802 Bay Division Pipeline Reliability Upgrade Project-Pipeline ("Pipeline"), and CUW36803 Bay Division Pipeline Reliability Upgrade Project-Relocation of BDPL Nos. 1 & 2 ("Relocation") (collectively, the "Projects") under the Water System Improvement Program ("WSIP") for improvements to the regional water supply system; and

WHEREAS, The objectives of the Projects are to provide a seismically reliable conduit between Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and configure the Bay Division Pipeline (BDPL) transmission system for carrying water across the Bay for distribution to customers and to replenish local reservoirs, and to contribute toward meeting estimated average annual demand under conditions of both planned and unplanned facility outages; and

WHEREAS, On July 9, 2009, the Planning Commission reviewed and considered the Final Environmental Impact Report ("Final EIR") in Planning Department File No. 2005.0146E, consisting of the Draft EIR and the Comments and Responses document, and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the provisions of the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, and is adequate, accurate, and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines in its Motion No. _____; and

WHEREAS, This Commission has reviewed and considered the information contained in the Final EIR, all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the Project and the EIR; and

WHEREAS, The Project and Final EIR files have been made available for review by the SFPUC and the public, in File No. 2005.0146E at 1650 Mission Street, Fourth Floor, San Francisco, California, and those files are part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA ("CEQA Findings") in Attachment A to this Resolution and a proposed Mitigation, Monitoring, and Reporting Program ("MMRP") in Attachment B to this Resolution, which material was made available to the public and this Commission for the Commission's review, consideration, and action; and

WHEREAS, The Projects are capital improvement projects approved by this Commission as part of the WSIP; and

WHEREAS, A Final Program EIR ("PEIR") was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, this Commission approved the WSIP and adopted findings and a MMRP as required by CEQA on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The Final EIR prepared for the Projects tiers from the PEIR, as authorized by and in accordance with CEQA; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The SFPUC staff will comply with Government Code Section 7260 et seq. statutory procedures for possible (a) acquisition of interests in real property in: (1) Assessor's Parcels # 525-0784-018-00, 525-0784-015-00, and 525-0784-014-01 owned by the City of Fremont for the Pipeline, and real property owned by FMC Corporation, located adjacent to City and County of San Francisco ("City") fee-owned parcels west of Willow Street in the City of Newark; and (2) Assessor's Parcel # 537-0852-008, 537-0551-028 owned by Cargill, Incorporated, Assessor's Parcels 063-590-060, 096-230-110, owned by Midpeninsula Regional Open Space District, and Assessor's Parcel # 537-0551-021-01 in Alameda County and property located in San Mateo County where the SFPUC right of way crosses the SAMTRANS right of way at Ravenswood, east of University Avenue, both owned by SAMTRANS, for the Bay Tunnel; and (b) long-term Lease Agreements with United States Fish and Wildlife Service ("USFWS") and California State Lands Commission ("CSLC") for property within each agency's jurisdiction for the Bay Tunnel. The total combined purchase price for the acquisition of these property interests is estimated to not exceed \$500,000.; and

WHEREAS, A portion of the Pipeline Project will be located beneath a segment of Bay Road in Menlo Park, in lieu of following the alignment of Bay Division Pipeline Nos. 1 and 2 in that area, and SFPUC staff will seek to negotiate and enter into easement agreements with Menlo Park and San Mateo County with respect to that portion of the alignment; and

WHEREAS, The Pipeline Project includes work located in the Cities of Fremont, Newark, East Palo Alto, Menlo Park, and Redwood City, the County of San Mateo, and on SFPUC property either leased or under permit or license to the Fremont Unified School District, the Newark Unified School District, the Ravenswood City Elementary School District, and the Redwood City School District, and SFPUC staff will seek to enter into Memoranda of Agreement ("MOAs") with these local jurisdictions, , addressing such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain improvements owned by the respective local jurisdictions (as further described in the proposed term sheets on file with the Commission Secretary), (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Pipeline construction, (c) the form of necessary encroachment permits or other property licenses for Project construction, and (d) the parties' respective indemnification and insurance obligations; and

WHEREAS, The Projects will require the SFPUC General Manager to apply for and execute various necessary permits and encroachment permits with the City of Fremont, City of Newark,

City of East Palo Alto, City of Menlo Park, City of Redwood City, and County of San Mateo, which permits shall be consistent with SFPUC existing fee or easement interests, where applicable, and will include terms and conditions including, but not limited to, maintenance, repair and relocation of improvements and possibly indemnity obligations; and

WHEREAS, The construction of the Bay Tunnel will require the construction of a new substation that will connect to Pacific Gas and Electric's ("PG&E") 115 KV transmission line between the cities of Mountain View and Menlo Park, and SFPUC staff is negotiating an amendment to a Letter Agreement with PG&E, a draft of which is on file with the Commission Secretary; and

WHEREAS, SFPUC has issued leases, permits, or licenses to certain parties to use for various purposes portions of City-owned property along the SFPUC right of way where the Project work will occur, and in some instances, there is apparent use of City-owned property by other parties for which there is no evidence of SFPUC authorization, and it may be necessary for the Project for the General Manager to (a) exercise rights under any such deed, lease, permit, or license or (b) negotiate and execute new or amended lease, permit, license, or encroachment removal agreements (each, a "Use Instrument") with owners or occupiers of property on, or adjacent to, City property; and

WHEREAS, Implementation of the Project mitigation measures will involve consultation with, or required approvals by, state and federal regulatory agencies, including but not limited to the following: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California State Lands Commission, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, San Francisco Bay Regional Water Quality Control Board and Bay Area Air Quality Management District.; now, therefore, be it

RESOLVED, This Commission has reviewed and considered the Final EIR, finds that the Final EIR is adequate for its use as the decision-making body for the actions taken herein, and hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Attachment B and incorporated herein as part of this Resolution by this reference thereto, and authorizes a request to the Board of Supervisors to adopt the same CEQA Findings, Statement of Overriding Considerations and MMRP; and be it;

FURTHER RESOLVED, That this Commission hereby approves Project Nos. CUW36801 Bay Division Pipeline Reliability Upgrade Project-Tunnel, CUW36802 Bay Division Pipeline Reliability Upgrade Project-Pipeline, and CUW36803 Bay Division Pipeline Reliability Upgrade Project-Relocation of BDPL 1 & 2, and authorizes staff to proceed with actions necessary to implement the Projects; and be it,

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to undertake the process, in compliance with Government Code Section 7260 et seq., with the San Francisco Charter and all applicable laws, for possible: (a) acquisition of interests in real property in (1) Assessor's Parcels # 525-0784-018-00, 525-0784-015-00, and 525-0784-014-01 owned by the City of Fremont for the Pipeline, and real property owned by FMC Corporation,

located adjacent to City and County of San Francisco ("City") fee-owned parcels west of Willow Street in the City of Newark; and (2) Assessor's Parcel # 537-0852-008, 537-0551-028 owned by Cargill, Incorporated, Assessor's Parcels 063-590-060, 096-230-110, owned by Midpeninsula Regional Open Space District, and Assessor's Parcel # 537-0551-021-01 in Alameda County and property located in San Mateo County where the SFPUC right of way crosses the SAMTRANS right of way at Ravenswood, east of University Avenue, both owned by SAMTRANS, for the Bay Tunnel; and (b) long term lease agreements with the United States Fish and Wildlife Service (USFWS) and California State Lands Commission (CSLC) for property within each agency's jurisdiction for the Bay Tunnel project, and to work with the Director of Real Estate to seek Board of Supervisors' approval of, and if approved, to accept and execute final agreements, and any other related documents necessary to consummate the transactions contemplated therein, in such form, approved by the City Attorney; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager to negotiate and seek Board of Supervisors' approval of, and if approved, to accept and execute easement agreements with the City of Menlo Park and County San Mateo, as necessary to allow a portion of the Pipeline Project to be located beneath the segment of Bay Road described in the documents on file with the Commission Secretary, in lieu of following the alignment of Bay Division Pipeline Nos. 1 and 2 in that area, which easement agreements shall be in such form, approved by the City Attorney, that the General Manager determines is in the public interest, is acceptable, necessary or advisable to effectuate the purposes and intent of this Resolution and is in compliance with the Charter and all applicable laws, and shall include SFPUC indemnity obligations only if such obligations have been reviewed and approved by the San Francisco Risk Manager; and be it

FURTHER RESOLVED, The General Manager will confer with the Commission during the negotiation process on real estate agreements as necessary, and report to the Commission on all agreements submitted to the Board of Supervisors for approval; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager to negotiate and execute Memoranda of Agreement to facilitate and coordinate the Project work with the City of Fremont, City of Newark, City of East Palo Alto, City of Menlo Park, City of Redwood City, County of San Mateo, Fremont Unified School District, Newark Unified School District, Ravenswood City Elementary School District, and Redwood City School District (collectively the "Project MOAs") in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, and in compliance with the Charter and all applicable laws, and approved as to form by the City Attorney. The Project MOAs will address such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain improvements owned by the respective local jurisdictions, (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Project construction, (c) the form of necessary encroachment permits or other property licenses required to permit Project construction, and (d) the parties' respective indemnification and insurance obligations, subject to the San Francisco Risk Manager's approval; and, be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his

designee, to apply for and execute various necessary permits and encroachment permits with the City of Fremont, City of Newark, City of East Palo Alto, City of Menlo Park, City of Redwood City and County of San Mateo, which permits shall be consistent with SFPUC's existing fee or easement interests, where applicable. To the extent that the terms and conditions of the permits will require SFPUC to indemnify the respective jurisdictions, those indemnity obligations are subject to review and approval by the San Francisco Risk Manager. The General Manager is authorized to agree to such terms and conditions, including but not limited to those relating to maintenance, repair and relocation of improvements, that are in the public interest, and in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested use as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to execute an amendment to the letter agreement with PG&E that is substantially similar to the form of the draft amendment on file with the Commission Secretary, providing for the construction of a new substation that will connect to PG&E's 115 KV transmission line between the cities of Mountain View and Menlo Park, with such amendments that the General Manager determines, in consultation with the City Attorney, are in the public interest and acceptable, necessary and advisable to effectuate the purposes and intent of this Resolution; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to exercise any right as necessary under any Use Instrument and negotiate and execute new or amended Use Instruments, if necessary for the Project, with owners or occupiers of property interests on, or adjacent to, the SFPUC right of way, in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, in compliance with the Charter and all applicable laws, and in such form approved by the City Attorney; and be it

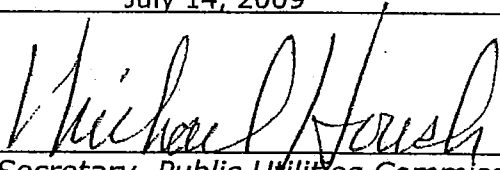
FURTHER RESOLVED, That this Commission authorizes the General Manager to consult with, or apply for, and, if necessary, seek Board of Supervisors' approval, and if approved, to accept and execute permits or required approvals by state and federal regulatory agencies, including but not limited to: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California State Lands Commission, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, San Francisco Bay Regional Water Quality Control Board and Bay Area Air Quality Management District, including terms and conditions that are within the lawful authority of the agency to impose, in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested permit or approval, as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to work with the Director of Real Estate to seek Board approval, and if approved, to accept and execute the real property agreements authorized herein; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to enter into any subsequent additions, amendments or other modifications to the permits, licenses, encroachment removal agreements, pipeline crossing agreements, leases, easements and other

real property agreements, or amendments thereto, as described herein, that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City, and do not materially increase the obligations or liabilities of the SFPUC or the City, such determination to be conclusively evidenced by the execution and delivery of any such additions, amendments, or other modifications.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 14, 2009


Secretary, Public Utilities Commission