TO:       HONORABLE CITY COUNCIL
FROM:     CITY MANAGER                          DEPARTMENT: PUBLIC WORKS
DATE:     DECEMBER 18, 2006                      CMR:439:06

SUBJECT:  APPROVAL OF AN AGREEMENT BETWEEN THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY AND ITS MEMBER AGENCIES WITH RESPECT TO ROLES AND RESPONSIBILITIES REGARDING THE ARMY CORPS OF ENGINEERS’ FEASIBILITY STUDY

RECOMMENDATION
Staff recommends that Council approve and authorize the City Manager to sign the attached agreement between the San Francisquito Creek Joint Powers Authority (JPA) and its member agencies with respect to roles and responsibilities regarding the Army Corps of Engineers’ feasibility study.

BACKGROUND
In April 1999, the cities of Palo Alto, Menlo Park, and East Palo Alto, the Santa Clara Valley Water District, and the San Mateo County Flood Control District formed the JPA in order to cooperatively pursue a flood damage reduction and ecosystem restoration project for San Francisquito Creek. Due to the substantial cost and complexity of a comprehensive watershed-wide flood control solution for San Francisquito Creek, the JPA has partnered with the U.S. Army Corps of Engineers (Corps) on a General Investigation (GI) project to plan and implement the improvements. Through this cooperative arrangement, a substantial portion of the project costs will be funded by the federal government and supplemented by local matching funds. The project is currently in the feasibility phase, during which the Corps and the JPA will jointly develop project alternatives and analyze their technical, environmental, and financial merits and impacts.

On November 17, 2005, the JPA Board of Directors approved a Feasibility Cost Share Agreement (FCSA) with the Corps to initiate the feasibility study phase of the project. The FCSA commits the JPA to participate in the feasibility phase of the GI project as the local sponsor. This commitment includes an agreement to pay 50% of the cost of the feasibility study (either in cash or in-kind services) and to work closely with the Corps in the execution and review of the study. The FCSA includes descriptions of the scope, schedule, and cost of the feasibility study that serve as a roadmap for implementation of the study. The FCSA contains a provision that the feasibility study will analyze the cost and impacts of alternatives that address both fluvial (creek-related) and tidal flooding in the San Francisquito Creek watershed.
On November 29, 2005, the Santa Clara Valley Water District (Water District) and the San Mateo County Flood Control District entered into an agreement with the JPA to provide up to $1.5 million each to fund the local share of the fluvial flooding portion of the feasibility study. The agreement contains provisions detailing the amount, method and timing of financial contributions to be applied towards the cost of the study. The Water District and the cities of East Palo Alto and Menlo Park have also agreed by action of their governing bodies to contribute up to $74,100, $33,000, and $32,500 respectively to fund the local share of the tidal flooding portion of the feasibility study. Palo Alto has not been asked to contribute funding towards the study, since the Water District has primary responsibility for flood control in the County and collects benefit assessments and special taxes from Palo Alto residents and businesses that are being used to fund its contribution to the study.

DISCUSSION
The attached agreement defines and describes the roles and responsibilities of the JPA and each of its member agencies with respect to the feasibility study (Attachment A). The following is a summary of the key elements of the agreement:

- Commits the Water District and the cities of East Palo Alto and Menlo Park to provide funding for the tidal flooding portion of the feasibility study
- Outlines a set of mutual objectives for the feasibility study
- Assigns the JPA Executive Director primary responsibility for performing the obligations required of the local sponsor in the Feasibility Cost Share Agreement
- Commits the JPA member agencies to assign staff members to participate on a Management Team that provides advice and guidance to the JPA Executive Director during the feasibility study
- Outlines a consensus-based approach to be used for decision making during implementation of the feasibility study
- Requires the development and implementation of a local outreach plan to solicit input from the general public during the environmental review and alternatives analysis process, to be funded separately from the existing funding agreement. The Management Team is meeting on a regular basis to develop the scope of the local outreach plan and to identify options for funding it.
- Defines the mechanisms for modifying the agreement to reflect changes in financial contributions or contributions of in-kind services towards the feasibility study by JPA member agencies. Future changes that are of a technical or planning nature and have a value less than or equal to $100,000 can be approved as an addendum signed by the chief executive of each member agency. Changes exceeding the limitations cited above must be executed by an amendment to contract subject to approval by the governing body of each member agency.

Staff from the City Attorney’s Office and the Public Works Department have reviewed the agreement and recommend its approval.

RESOURCE IMPACT
Palo Alto will be an active participant in the feasibility study and will contribute staff time as an in-kind service, but it will not make a cash contribution to the study. The Water District is providing funding of $1.575 million in cash and services for the study on behalf of the Santa
Clara County portion of the San Francisquito Creek watershed, including the City of Palo Alto. It is appropriate that the Water District provide full project funding for the Santa Clara County portion of the watershed, as the Water District has primary responsibility for flood control in the County. The Water District funds are generated by benefit assessments and special taxes collected by residents and businesses in Palo Alto and throughout the County for flood control purposes.

**POLICY IMPLICATIONS**

Council’s adoption of the attached agreement is consistent with the following Comprehensive Plan policies and programs:

Policy N-9: Avoid fencing, piping, and channelization of creeks when flood control and public safety can be achieved through measures that preserve the natural environment and habitat of the creek.

Policy N-10: Work with the Santa Clara Valley Water District and other relevant regional agencies to enhance riparian corridors and provide adequate flood control by use of low impact restoration strategies.

Policy N-11: Preserve the integrity of riparian corridors.

**ENVIRONMENTAL REVIEW**

Council’s adoption of the attached agreement is not considered a project under the California Environmental Quality Act (CEQA). Environmental review of the proposed San Francisquito Creek Flood Damage Reduction and Ecosystem Restoration project alternatives will be conducted jointly by the Corps and the JPA during the feasibility study. The environmental review process will involve significant input from local residents, businesses, and stakeholders. Due to the Corps’ involvement in the project, the process will be conducted in accordance with the requirements of both CEQA and the federal National Environmental Policy Act (NEPA).

**ATTACHMENT**

Attachment A: Agreement

PREPARED BY: JOE TERESI
Senior Engineer

DEPARTMENT HEAD: GLENN S. ROBERTS
Director of Public Works

CITY MANAGER APPROVAL: EMILY HARRISON
Assistant City Manager
cc: Cynthia D’Agosta, San Francisquito Creek Joint Powers Authority
Pam Sturner, San Francisquito Watershed Council
Norman Beamer, Crescent Park Neighborhood Association
Karen White, Duveneck/St. Francis Neighborhood Association