

**First Amendment to and Restated
Memorandum of Understanding
for the
Bay Area Flood Protection Agencies Association
October 2022**

This First Amended and Restated Memorandum of Understanding (“MOU”) is entered into as of October 1, 2022, (“Effective Date”) by and among the Bay Area Flood Protection Agencies Association’s member agencies listed in Exhibit A attached hereto (“Member Agencies” and each a “Member Agency;” the Member Agencies are sometimes collectively referred to as the “Association”).

Recitals

Whereas, in 2007, a Charter Article was developed regarding formation of the Bay Area Flood Protection Agencies Association (BAFPAA, or Association);

Whereas, the Bay Area Flood Protection Agencies Association was established to coordinate and provide mutual support in planning and implementing flood protection services amongst the flood protection agencies in the Bay Area; and

Whereas, the Association also provides a unified voice for Bay Area flood protection agencies in developing and implementing regional plans and working with other regional agencies at the State and Federal level and participates in the Integrated Regional Water Management Planning efforts in the Bay Area to integrate projects and programs across all functional service areas; and

Whereas, the Association members desire to establish an expenditure account to pay for or procure agreed-upon services or supplies; and

Whereas, in September of 2011, Member Agencies entered into the original memorandum of understanding (Original MOU) for the purpose of defining the roles and responsibilities of each of these entities in establishing, maintaining and utilizing an expenditure account (Association Account); and

Whereas, the Member Agencies now wish to amend the Original MOU to provide for the inclusion of new members, among other changes, while restating the unchanged terms; and

Whereas, the Member Agencies have adopted Rules of Governance for the Association, which are incorporated herein by reference and which may be amended from time to time by a unanimous vote of the Member Agencies.

1. Parties and Effective Date; New Members

This MOU is entered into as of the Effective Date by and between the Member Agencies identified in Exhibit A. A Member Agency may withdraw from this MOU pursuant to Section 9.

New Member Agencies may become a party to this MOU following (a) a written request to the Chair of BAFPAA to become a member and specifying if they will be a paying or non-paying member (refer to Section 2.c.iv), (b) the unanimous approval of all then-current Member Agencies, (c) New Member Agency's submittal of a copy of Exhibit B to this MOU with a signature block signed by the New Member Agency's authorized representative, and a copy of the New Member Agency's official action approving their membership. Membership is effective upon satisfactory completion of these elements. By Members signing this MOU, and New Members signing Exhibit B of this MOU, each agrees to the terms of this MOU and to the principles contained in the 2007 Charter Article and to the current edition of the Rules of Governance.

2. Association Account and Role of Treasurer Agency

The Member Agencies agree to the following provisions to establish and maintain an expenditure account:

a. Association Account - The Association hereby establishes an expenditure account (Association Account) in which the Member Agencies will place funds for the sole purpose of paying for activities that the Association deems appropriate.

b. Account Amount - The maximum amount in the Association Account will be determined, as necessary, by a unanimous vote of the Member Agencies, as warranted by the planned expenses in the near future.

c. Account Deposits

i. At the beginning of each calendar year, the Association, by a unanimous vote of Member Agencies, will identify the anticipated activities for the year that the Association will fund and the Association Account balance needed to pay for those activities. This information will be made available for Member Agencies to set their annual budget (Fiscal Year beginning July 1). At any time during the year, the Association, by unanimous vote of Member Agencies, may identify a need for an increase in the Association Account balance to respond to required or desired needs.

ii. The Treasurer Agency may accept funds from any Member Agency. The Treasurer Agency may also accept funds from an entity that is not a Member Agency, provided the Association agrees by unanimous vote of Member Agencies.

iii. Whenever the Association approves an Association Account balance or an increase, each Member Agency shall forward its pro rata share to the Treasurer Agency within thirty days of receiving an invoice for its pro rata share from the Treasurer Agency.

iv. Notwithstanding the above provisions, a Member Agency may elect in advance to not contribute to funding the Association Account, in which case the Member Agency will not be entitled to vote on matters affecting the Association Account or activities funded from the Association Account.

d. Treasurer Agency - Any Member Agency may act as the Treasurer Agency, which shall have the duty to invoice, collect, and otherwise manage and maintain the Association Account.

e. Treasurer Agency Duties

i. The Treasurer Agency shall collect, be the depository of, and have custody of, all Association Account funds from whatever source.

ii. The Treasurer Agency shall be accountable for all funds and for reporting all receipts and disbursements.

iii. The Treasurer Agency shall perform all duties required to be performed by an auditor.

iv. The Treasurer Agency agrees to hold the Association Account funds in one or more separate, interest-bearing accounts.

v. Except as otherwise provided in Subsection 2.e.vi (grant or subgroup funds), the costs to the Treasurer Agency to maintain, monitor and report on the Association Account will be covered by the Treasurer Agency.

vi. If the Treasurer Agency is holding funds from a grant to the whole Association or is holding funds for a subgroup of Member Agencies, which funds are from a grant or are for a project or program for the benefit of the subgroup, then the costs to the Treasurer Agency to maintain, monitor, and report on those grant or project/program funds will be paid to the Treasurer Agency directly from the grant or project/program funds.

vii. The Treasurer Agency may return all funds to the Member Agencies pro rata if the balance of the Association Account is less than \$500.

f. Expenditure Approval - Any disbursement of Association funds from the Association Account by the Treasurer Agency must be approved by a unanimous vote of Member Agencies.

g. Regional Expenditure Activities - Expenditures from the Association Account should be for activities of a regional nature that will benefit all Member Agencies, except as otherwise provided in Subsection h (Subgroup Expenditure Activities).

h. Subgroup Expenditure Activities - A subgroup of Member Agencies may want to utilize the Association Account as a means to facilitate funding activities that only benefit a subgroup of Member Agencies. All costs associated with these subgroup activities, including the Treasurer Agency's administrative costs, will be funded by the subgroup. The subgroup must first submit a written proposal and proposed terms for use of the Association Account for any subgroup purpose. A unanimous vote of the Member Agencies is required to approve this type of use of the Association Account.

i. Account Reporting - The Treasurer Agency will report on the Association Account balance, expenditures, encumbrances, and accounts receivable once a quarter at a regularly-scheduled Association meeting.

j. Association Duties - Once each year, or more often if needed, the Association shall designate one of the Member Agencies to be the Treasurer Agency. This designation shall require unanimous approval of the Member Agencies. Member Agencies shall hold the Treasurer Agency harmless from all claims and liability arising from the reasonable performance of its duties in accordance with generally accepted governmental procedures and accounting practices.

3. Voting

Voting on matters related to the Association Account shall be conducted in accordance with the Association's Rules of Governance, with each Member Agency entitled to one vote, except as provided otherwise in Section 2.c.iv (non-contributing Member Agencies).

4. Amendments

This MOU may be amended only with the written approval of all Member Agencies. Any Member Agency may propose amendments that it considers desirable or necessary.

5. Limitations

Performance under this MOU is subject to the availability of resources to the parties to this MOU for the described purposes, and is subject to revised administrative and personnel policies, which may affect the terms of this MOU. Each party shall assume full control and sole responsibility only for its respective personnel and activities incident to the performance of this MOU consistent with its law(s).

6. Incurring Debt

Except as authorized by unanimous vote of the Member Agencies under Section 3.f (Expenditure Approval) or Section 3.h (Subgroup Expenditure Activities), neither the Association nor the Treasurer Agency shall have the power to incur debt or enter into contracts on behalf of the Association, any Member Agency, or any subgroup of Member Agencies.

7. Exercise of Power

The powers to be exercised under this MOU shall be subject to those restrictions upon the manner of exercising powers that pertain to the Member Agency then serving as Treasurer Agency in accordance with Section 2.

8. Term

This MOU becomes effective as of the Effective Date following the full execution by all parties and, and it expires 25 years after the Effective Date.

9. Withdrawal

Any Member Agency may withdraw from this MOU upon 90 days' written notice to all other Member Agencies then party to this MOU. Said 90-day period shall commence on the date of mailing. Withdrawal of a Member Agency shall comply with Section 8 of the Association's Rules of Governance. A withdrawing Member Agency shall remain responsible for funding its pro rata share of any contracts, expenditures, or activities previously approved by the withdrawing Member Agency, except to the extent such previously-approved contracts, expenditures, or activities can be legally terminated or amended without adversely affecting the remaining Member Agencies.

10. Termination

Termination of this MOU shall require written approval of all Member Agencies then party to this MOU. Upon termination of this MOU, any surplus money on hand or property acquired with collected funds shall be divided and distributed to the Member Agencies in accordance with the formula for collection of funds that is in place at the time of termination of this MOU.

11. Miscellaneous Provisions

a. Compliance: All Member Agencies will comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

b. Waiver: The waiver by any Member Agency of a breach of any provision of this Agreement shall not be deemed a continuing waiver of any subsequent breach of that or any other provision of this Agreement. The Member Agencies' waiver of any term, condition or covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition of covenant or breach of any other term, condition or covenant.

c. Integration: This MOU, including all exhibits attached hereto, represents the entire understanding of the Member Agencies as to those matters contained herein. No prior oral or written understanding, promises, negotiations or representations shall be of any force or *effect* with respect to those matters covered hereunder. This MOU may only be amended by written unanimous agreement by all Member Agencies.

d. Severability: If any term, condition, covenant or provision of this MOU, or the application thereof, to any person or circumstance, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this MOU shall remain in full force and effect and shall be valid and binding on the Member Agencies.

e. Third Parties: This MOU is entered into only for the benefit of the Member Agencies executing this MOU and not for the benefit of any other individual, entity, or person.

APPROVED AS TO FORM: County Counsel By: _____ Name: Title:	ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district By: _____ Name: Title: ATTEST: Clerk of the Board of Supervisors By: _____
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APPROVED AS TO FORM: By: _____ Name: Title:	ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a zone formed by a California special district (Zone 7) By: _____ Valerie Pryor, General Manager ATTEST: By: _____
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APPROVED AS TO FORM: Mary Ann McNett Mason County Counsel By: _____ Name: Stephen M. Siptroth Title: Deputy County Counsel	CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (CCCFCWCD) By: _____ Brian M. Balbas Chief Engineer ATTEST: Clerk of the Board of Supervisors By: _____
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First Amendment to and Restated MOU for the Bay Area Flood Protection Agencies Association
October 2022

APPROVED AS TO FORM: County Counsel By: _____ Name: Title:	MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (MCFCWCD) By: _____ Name: Title: ATTEST: Clerk of the Board of Supervisors By: _____
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APPROVED AS TO FORM: District Counsel By: _____ Shana A. Bagley	NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (NCFCWCD) By: _____ Name: Title: ATTEST: District Secretary By: _____
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APPROVED AS TO FORM: District Counsel By: _____ Name: Title:	SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT, a California special district, (OneShoreline) By: _____ Name: Title: ATTEST: By: _____ Name: Title:
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APPROVED AS TO FORM: County Counsel By: _____ Name Title:	SANTA CLARA VALLEY WATER DISTRICT, a California special district, (Valley Water) By: _____ Name: Title: ATTEST: Clerk of the Board of Supervisors By: _____
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APPROVED AS TO FORM: District Counsel By: _____ Name: Justin Graham Title:	SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7, a zone formed by a California special district, (SCCFCWCD Zone 7) By: _____ Name: Zach Friend Title: Chairperson ATTEST: Clerk of the Board of Directors By: _____
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APPROVED AS TO FORM: County Counsel By: _____ Name Title:	SONOMA COUNTY WATER AGENCY, a California special district, (Sonoma Water or SW) By: _____ Name: Title: Authorized per Sonoma County Water Agency's Board of Directors Action on July 12, 2022
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October 2022

<p>APPROVED AS TO FORM: County Counsel</p> <p>By: _____ Name: Title:</p>	<p>VALLEJO FLOOD AND WASTEWATER DISTRICT, a California special district, (VFWD)</p> <p>By: _____ Name: Title:</p> <p>ATTEST: Clerk of the Board of Supervisors By: _____</p>
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Exhibit A: Member Agencies
Last Updated: September 2022

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district (ACFCWCD)

ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a zone formed by a California special district (Zone 7)

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (CCCFCWCD)

MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (MCFCWCD)

NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California special district, (NCFCWCD)

SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT, a California special district, (OneShoreline)

SANTA CLARA VALLEY WATER AGENCY, a California special district, (Valley Water)

SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7, a zone formed by a California special district (SCCFCWCD Zone 7)

SONOMA COUNTY WATER AGENCY, a California special district, (Sonoma Water or SW)

VALLEJO FLOOD AND WASTEWATER DISTRICT, a California special district, (VFWD)

Exhibit B: New Member Signature Block

By Members signing Exhibit B of this MOU, New Members agree to the terms of this MOU and to the principles contained in the 2007 Charter Article and to the current edition of the Rules of Governance.

APPROVED AS TO FORM:	
By: _____ Name: Title:	By: _____ Name Title ATTEST: By: _____