

AMENDMENT NO. 1
To COOPERATIVE AGREEMENT
Between ASSOCIATION OF BAY AREA GOVERNMENTS
And CITY OF PALO ALTO
For PALO ALTO HORIZONTAL LEVEE PILOT PROJECT CONSTRUCTION

This AMENDMENT, effective January 1, 2025, is Amendment No. 1 to the COOPERATIVE AGREEMENT (“Agreement”) entered into and effective as of January 26, 2024, by and between the ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”) and the CITY OF PALO ALTO (“City”), individually referred to herein as “Party” and together as “Parties.”

NOW, THEREFORE, the parties agree to modify the subject Agreement as indicated below. Where modifications have been made, added text is indicated in *italics*, deleted text is indicated in strikethrough format.

1. Recital D. is revised to include a new funding source, as follows:

- D. WHEREAS, ABAG has received funding via
- United States Environmental Protection Agency (EPA) Grant #W9-98T55001 (“Breaking Ground Grant”), Date of Award May 8, 2023, in the amount of eight million, six hundred fifty-eight thousand, nine hundred eighteen dollars (\$8,658,918),
 - EPA Grant #W9-98T20401 (“Nature Based Solutions (NBS) for Resilient Shorelines Grant”), Date of Award September 13, 2021, in the amount of three million, seven hundred eighty-two thousand, eight hundred eighteen dollars (\$3,782,818) a portion of which will be used in the completion of this project,
 - EPA Grant #4T-98T45901 (“*National Estuary Program Bipartisan Infrastructure Law Grant*”) in the amount of nine hundred nine thousand eight hundred dollars (\$909,800), a portion of which will be used in the completion of this project, *and*
 - *State of California Coastal Conservancy (SCC) Grant G24-046 in the amount of two million dollars (\$2,000,000).*
- All ~~three-four~~ grants allow for no-cost extensions possible up to approximately four (4) years beyond the completion dates as contemplated by the Grants; and

2. Recital E is revised to include a new funding source, as follows:

- E. WHEREAS, Parties’ respective funding contributions to the PROJECT (excluding City staff time) are as follows:

Project Phase	ABAG Contribution	Source(s) of ABAG Funding	City Contribution	Source(s) of City Funding
Preliminary Design (completed)	\$620,673 (paid)	<ul style="list-style-type: none"> Integrated Regional Water Management Program Grant State Coastal Conservancy Proposition 1 Grant 	\$275,000 (paid)	Wastewater Treatment Plant Fund and Secondary Treatment Upgrades Project
Design & Permitting (99% complete)	\$763,661 \$563,660 (paid)	<ul style="list-style-type: none"> EPA NBS for Resilient Shorelines Grant EPA Bipartisan Infrastructure Law Funding 	\$1,316,794.29 (paid)	Wastewater Treatment Plant Fund and Secondary Treatment Upgrades Project ^a
Construction & Construction Management	\$3,073,882 \$4,860,846 (pending)	<ul style="list-style-type: none"> EPA NBS for Resilient Shorelines Grant EPA Breaking Ground Grant EPA NEP Bipartisan Infrastructure Law Funding State Coastal Conservancy 	\$3,429,459 \$1,429,459 (pending)	Local Advanced Water Purification Facility Project Long Range Facilities Plan Update ^a
Post-construction Monitoring & Reporting	\$0	Not Applicable	\$777,055 (pending)	Wastewater Treatment Plant Fund
Operation & Maintenance	\$0	Not Applicable	Unknown	Wastewater Treatment Plant Fund

^aCity is leveraging funds spent on planned Capital Improvements that are occurring upstream of the PROJECT at the wastewater treatment plant; actual out-of-pocket expenses for this project are lower than reported in this table.

3. Recital G is revised to adjust ABAG's contribution:

G. WHEREAS, for construction and post-construction phases, ABAG will contribute a total of ~~\$3,073,882~~ \$4,860,846 towards the PROJECT, as further described in Appendix A; and

4. Recital H is revised to adjust City's contribution:

H. WHEREAS, for construction and post-construction phases, the City will contribute a total of ~~\$4,206,514~~ \$2,206,514 (including the required ~~\$3,429,459~~ \$1,429,459 in matching funds for the Breaking Ground Grant); and

5. Section 1, ABAG Obligations, Article 1.3 is revised as shown:

1.3 ABAG will promptly notify City of the discovery of hazardous materials at the Property. ABAG and the City will jointly evaluate the severity and extent of the hazardous materials contamination at the Property and decide on the appropriate course of action to remediate the contamination pursuant to federal and state laws and regulations. ABAG and the City will reassess the feasibility of the PROJECT and mutually agree on a course of action prior to the commencement of additional work. Should the Parties conclude the PROJECT is no longer feasible financially with the available EPA and *State Coastal Conservancy Grants*' funding, the Parties may, individually or collectively, terminate proceeding with the PROJECT. Should EPA and *State Coastal Conservancy Grants*' funding be cancelled, or approval withdrawn as a result of such termination, the City shall be fully and solely responsible for all costs incurred for the PROJECT.

6. Section II, City of Palo Alto Obligations, Article 2.3 is revised as shown:

The City shall provide appropriate documentation to ABAG of the required Breaking Ground Grant funding match obligation in the amount of ~~three million, four hundred twenty-nine thousand, four hundred fifty-nine dollars (\$3,429,459)~~. one million, *four hundred twenty-nine thousand, four hundred fifty-nine dollars (\$1,429,459)*.

7. Appendix A: Project Description and Scope of Work is removed in its entirety and replaced with Appendix A: Project Description and Scope of Work, (Revised January 1, 2025).

8. Retention of Contract Provisions. Except as provided herein, all other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the date first above written.

ASSOCIATION OF BAY AREA GOVERNMENTS

CITY OF PALO ALTO

Andrew B. Fremier, Metropolitan Transportation
Commission Executive Director, Acting pursuant to
the Contract for Services dated May 30, 2017

Ed Shikada, City Manager

APPENDIX A

Project Description and Scope of Work

(Revised January 1, 2025)

Project Description

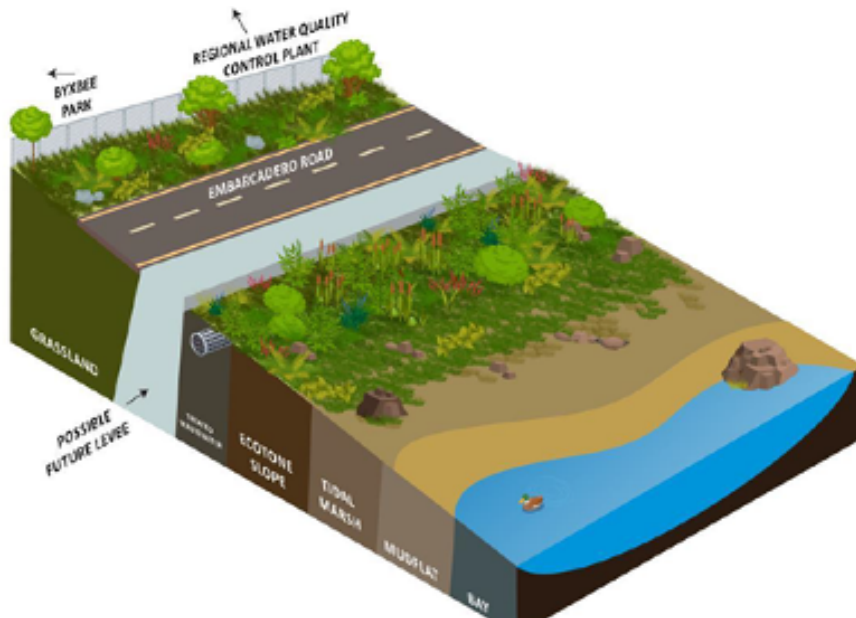


Figure 1 Palo Alto Horizontal Levee Rendering

The Palo Alto Horizontal Levee Pilot (PAHLP) project is a novel initiative led by the City of Palo Alto and the San Francisco Estuary Partnership. The goals of the Project are to enhance the ecological function of the project site and improve resilience to sea level rise. The project objectives include:

- Improve habitat along the perimeter of Harbor Marsh for native species;
- Restore rare and historic broad ecotone that supports a variety of transitional plant assemblages;
- Determine design standards, permitting requirements, and extent of maintenance for incorporation into the future larger levee improvement project (i.e., SAFER Bay/Shoreline Study);
- Adapt to sea level rise by providing a transitional slope that will support freshwater plants, which in turn build organic soils, all of which is aimed at keeping pace with sea level rise;
- Maintain public access to the existing trail system while providing opportunities for compatible low-impact recreation, increased social infrastructure, and educational opportunities on sea level rise and other topics;
- Ensure perspectives of marginalized communities are incorporated into social infrastructure and educational components; and

- Provide polishing treatment to discharged treated wastewater.

The Project site is directly adjacent to the City’s Regional Water Quality Control Plant (“RWQCP”) and Byxbee Park. The Project location is also adjacent to the existing Harbor Marsh, an approximately 90-acre tidal saltmarsh that was established within the former Palo Alto Yacht Harbor. The Project site is bounded by Harbor Marsh to the east, Embarcadero Road to the north, the RWQCP and Harbor Road to the west, and the Byxbee Park parking lot entrance to the south. The project location includes a 500-linear-foot (LF) proposed levee berm, including 315 linear feet of treatment zone irrigated with treated wastewater to create a transitional freshwater wetland slope with upland/riparian transitional plantings in adjacent areas supported with limited irrigation. A 1,650-LF treated wastewater pipeline will be buried along Harbor Road and Embarcadero Road north and west of the proposed levee, connecting to a new supply pump at the City of Palo Alto Regional Water Quality Control Plant (RWQCP), located at 2501 Embarcadero Way, Palo Alto, California 94303. The horizontal levee itself would have a variety of freshwater marsh, wet meadow, and riparian/upland scrub ecotypes. As the freshwater inputs enter the marsh plain, a brackish marsh ecotone band is expected to form within the salt marsh immediately adjacent to the horizontal levee.

The horizontal levee would be divided into four primary areas: (1) an engineered levee berm to support the horizontal levee slope; (2) a treatment zone designed to support polishing of treated wastewater via subsurface seepage through a drainage layer while supporting native transitional habitats; (3) a downslope habitat zone designed to support a variety of ecotypes where polished wastewater would seep toward the adjacent Harbor Marsh as shallow surface/subsurface flow; and (4) transitional slopes north and south of the treatment zone where the project conforms to the existing bank line. The horizontal levee is designed to be a freshwater ecotone transition zone to the tidal marsh.

The City of Palo Alto is the permittee on all permits which have been issued:

Permit	Dated
Federal Aviation Administration (FAA) – Determination of No Hazard to Air Navigation (Aeronautical Study No. 2023-AWP-6606-OE)	5/11/2023
Federal Aviation Administration (FAA) – Determination of No Hazard to Air Navigation for Temporary Structure (Aeronautical Study No. 2023-AWP-12517-OE)	8/29/2023
National Marine Fisheries Service (NMFS) – Letter of Concurrence (with 'not likely to adversely affect' determination) (WCRO-2023-00141)	4/20/2023
SF Bay Regional Water Quality Control Board – Clean Water Action Section 401 General Water Quality Certification for Small Habitat Restoration Projects (File No. SB12006GN; WDID# 2 CW451131)	8/1/2023
San Francisco Bay Conservation and Development Commission – Amendment to Major Permit (M1999.043, Amendment No. 6)	4/5/24

United States Army Corps of Engineers (USACE) – Nationwide Permit 27 (SPN-2019-00445) Aquatic Habitat Restoration, Enhancement, and Establishment Activities	5/5/2023
United States Fish and Wildlife Service (USFWS) – Programmatic Biological and Conference Opinion ESA Section 7(a)(2) Review Form (2022-0005149-S7)	3/31/2023
California Department of Fish and Wildlife – Restoration Management Permit (RMP 2023-0008-R3)	12/15/2023
City of Palo Alto – Minor Architectural Review (23PLN-00043)	11/30/2023
City of Palo Alto – Street Work Permit (to be obtained by the construction firm)	PENDING
State Water Resources Control Board – General Permit for Discharges of Storm Water Runoff Associated with Construction Activity (to be obtained by the construction firm)	PENDING

On December 19, 2023, the City issued a Notice of Exemption that the PROJECT was exempt from review under the California Environmental Quality Act (“CEQA”) (Cal. Public Resources Code § 21000, et seq.) pursuant to CEQA Guideline Section 15333 because the PROJECT qualifies as a small habitat restoration project.

Table A: Outstanding Work to be Paid for by ABAG

Party Name	Service Provided	Responsible Entity	Projected Budget Amount
Zoon Engineering	Construction Management Services Contract	ABAG	\$427,937
TBD	Construction Services Contract	ABAG	\$4,121,055
Save The Bay	Plant propagation, planting, community outreach	ABAG	\$131,854
TBD	Contingency	ABAG	\$180,000
TOTAL			\$4,860,846

Table B: Palo Alto Horizontal Levee Pilot – Design, Community Engagement, and Implementation Process

Task	Status	Funder
Phase 1 – Early Design Concepts and Stakeholder Engagement - 2017 - 2020		
Feasibility Study	Completed	Oro Loma Sanitary District

30% Design	Completed	EPA Climate Ready Estuaries
Planning and Stakeholder Outreach (carried over from Phase 1 and 2)	Completed	State Coastal Conservancy
Phase 2 – Design and Permitting – 2020-2025		
Permitting studies, Geotechnical Report	Completed	City of Palo Alto
60% Design, Construction Budget and Permitting Memo	Completed	State Coastal Conservancy and EPA Water Quality Improvement Fund Grant # #W9-98T55001
BRRIT Consultations – including pre-permitting consultation in June, 2022	Completed	
Permit Applications	See Permit Table	
Permit Fees	Completed	City of Palo Alto
CEQA - Categorical Exemption	Completed	City of Palo Alto
QAPP	Completed	EPA Water Quality Improvement Fund Grant # #W9-98T55001
100% Design, including final design specifications, bid package and bid period support	Scheduled for completion early 2025	
Phase 3 – Construction, Stewardship, Monitoring and Outreach – 2024-2026		
Plant Propagation, Community Outreach and Planting – Save The Bay	In progress	EPA Water Quality Improvement Fund (#W9-98T55001)
Construction management and monitoring		
Construction	In progress	EPA Water Quality Improvement Fund (#W9-98T20401) State Coastal Conservancy Grant (Grant #G24-046)
Phase 4 – Monitoring & Reporting – 2023-2029		
Community Science & Monitoring	In progress	EPA Water Quality Improvement Fund (#W9-98T20401)
Salt Marsh Harvest Mouse Site Utilization Studies	In progress	City of Palo Alto
Sediment Accretion Study	In progress	City of Palo Alto
Photo-point Monitoring	In progress	City of Palo Alto

Vegetation Surveys, Vegetation Establishment, and Habitat Type Evaluations	To be started after construction	City of Palo Alto
Benthic Community Monitoring	To be started after construction	City of Palo Alto
Wastewater Effluent and Volume Monitoring	In progress	City of Palo Alto