

COOPERATIVE AGREEMENT
BETWEEN
ASSOCIATION OF BAY AREA GOVERNMENTS
AND
THE CITY OF PALO ALTO
FOR
PALO ALTO HORIZONTAL LEVEE PILOT PROJECT CONSTRUCTION

This COOPERATIVE AGREEMENT (“Agreement”) entered into and effective as of _____, is 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.”

RECITALS

- A. WHEREAS, ABAG and the Metropolitan Transportation Commission (“MTC”) entered into a Contract for Services under which MTC provides administrative and program services to ABAG. Effective July 1, 2017, the staffs of ABAG and MTC were consolidated. MTC staff now serve both the Association of Bay Area Governments and the Metropolitan Transportation Commission. As such, all interactions between ABAG and City contained within this Agreement, shall be conducted by MTC staff on behalf of ABAG; and
- B. WHEREAS, ABAG serves as the host to the San Francisco Estuary Partnership, established in 1988 by the State of California and the U.S. Environmental Protection Agency under the Clean Water Act’s National Estuary Program when the San Francisco Estuary was designated as an estuary of national significance; and
- C. WHEREAS, the Palo Alto Horizontal Levee Pilot Project (“PROJECT”), which is fully described in Appendix A, attached hereto and incorporated by reference, is a jointly sponsored project by the ABAG and City, to construct a 315 linear foot horizontal levee and irrigated ecotone, construct a 500 linear foot levee berm, install a new pump at the City of Palo Alto’s Regional Water Quality Control Plant (“RWQCP”), trench a buried pipeline (approximately 1,650 linear feet of effluent line) along Harbor Road and Embarcadero Road in Palo Alto, and vegetate the area with native species; and
- 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 (\$8,658,918.00) and 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 (\$3,782,818.00) a portion of which will be used in the completion of this PROJECT, and Grant #98T45901 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. All three grants allow for no-cost extensions possible up to approximately four years beyond the completion dates as contemplated by the Grants; and

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)	Integrated Regional Water Management Program Grant and State Coastal Conservancy Proposition 1 Grant	\$275,000 (paid)	Wastewater Treatment Plant Fund and Secondary Treatment Upgrades Project ^a
Design & Permitting (99% complete)	\$763,661 (paid)	EPA NBS for Resilient Shorelines Grant and Bipartisan Infrastructure Law Funding from EPA	\$1,316,794.29 (paid)	Wastewater Treatment Plant Fund and Secondary Treatment Upgrades Project ^a
Construction	\$2,573,882 (pending)	EPA NBS for Resilient Shorelines Grant and EPA Breaking Ground Grant	\$3,429,459 (pending)	Local Advanced Water Purification Facility Project ^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.

- F. WHEREAS, for preliminary design and design phases, ABAG has contributed a total of \$1,384,334 while the City has contributed a total of \$1,591,794.29 (including the required \$1,266,409 matching funds needed for the NBS for Resilient Shorelines Grant) towards the PROJECT; and
- G. WHEREAS, for construction and post-construction phases, ABAG will contribute a total of \$2,573,882 towards the PROJECT, as further described in Appendix A; and
- H. WHEREAS, for construction and post-construction phases, the City will contribute a total of \$4,206,514 (including the required \$3,429,459 matching funds for the Breaking Ground Grant); and
- I. WHEREAS, 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; and

- J. WHEREAS, the City owns the property at 2375 Embarcadero Road, Palo Alto, CA, 94303 and APN: 008-05-005, (“City Property” or “Property”) where the PROJECT will be located; and
- K. WHEREAS, the PROJECT is consistent with (1) Federal Executive Order 14072 (April 27, 2022): Strengthening the Nation’s Forests, Communities, and Local Economies; (2) California State guidance in the California Executive Order N-82-20 (October 7, 2020) on Nature-based Shorelines; and (3) regional guidance in the Bay Adapt Joint Platform and the San Francisco Estuary Partnership’s Estuary Blueprint; and
- L. WHEREAS, ABAG entered into an agreement on June 1, 2023, with Save the Bay to assist in native plant propagation and installation to vegetate the freshwater and riparian habitat in the Palo Alto Baylands with funding provided by the NBS for Resilient Shorelines Grant; and,
- M. WHEREAS, the purpose of this Agreement is to outline the responsibilities of the Parties for the PROJECT delivery; and

NOW, THEREFORE, the Parties agree as follows:

SECTION I ABAG OBLIGATIONS

1.1 Subject to the City fulfilling its responsibilities under this Agreement, ABAG, on behalf of the San Francisco Estuary Partnership, will design and construct, or cause to be designed and constructed, the PROJECT, at the Property, as described in Appendix A, as it may be amended from time to time solely with the funds from the Breaking Ground Grant and NBS for Resilient Shorelines Grant (collectively referred to as “EPA Grants”) and in accordance with the requirements of the EPA Grants.

1.2 ABAG will implement, or cause to be implemented, Avoidance and Minimization Measures (A&M Measures) and permit conditions during construction, including the qualified biological surveys. The A&M Measures will be finalized by the applicable regulatory agencies for the PROJECT as part of permit issuance. In addition to construction permit conditions and requirements, the A&M Measures will inform activities performed by the construction management and construction firm to ensure regulatory compliance and will be coordinated between ABAG and the City.

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 Grants’ funding, the Parties may, individually or collectively, terminate proceeding with the PROJECT. Should EPA 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.

1.4 ABAG will be the recipient of the EPA Grants. ABAG shall disburse the EPA Grants’ funds as required or permitted by the agreements for the Breaking Ground Grant and NBS for Resilient Shorelines Grant. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to City

and is not obligated to disburse any other funds until such are authorized and disbursed by the EPA to ABAG.

1.5 Upon the acceptance of the PROJECT as complete by the ABAG Executive Board, all rights and title to the PROJECT including, without limitation, all structures, plantings and documentation will become the property of the City, provided that ABAG retains the right to make, retain, use and distribute copies of all documents related to the PROJECT without limitation.

1.6 ABAG agrees to indemnify, defend, and hold harmless City and its elected and appointed officers, employees, and agents from and against any and all liability resulting from ABAG's act(s) and/or omission(s) arising from and/or relating to this Agreement. Such liability includes, without limitation, the following: any funding disallowance; audits; demands; claims; actions; liabilities; damages; fines; fees, costs, and expenses, including attorney, auditor, and/or expert witness fees.

1.7 ABAG will require any Contractors and sub-Contractors performing work on tasks related to this PROJECT to maintain for term of this Agreement insurance policies for the coverages and amounts specified in APPENDIX B – Insurance Requirements. ABAG will furnish a copy of all certificates of insurance to City in accordance with the Notice provisions contained herein.

SECTION II CITY OBLIGATIONS

2.1 The City is, and at all times will continue to be, in full compliance with the terms and conditions of the EPA Grants that are applicable to it for the PROJECT. The City understands, agrees, and acknowledges that any requirements imposed upon ABAG under the EPA Grants that are applicable to the PROJECT are hereby passed-through and adopted by the City as the City's obligations, excepting only ABAG's obligations as defined in this Agreement.

2.2 The City shall not cause ABAG to be in violation of either or both EPA Grants, whether by act or omission.

2.3 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).

2.4 Should EPA Grants' funding be cancelled or approval withdrawn before construction of the PROJECT is complete, the City shall be fully and solely responsible for remaining costs to complete the PROJECT.

2.5 With respect to the design and construction of the PROJECT, the City will (a) attend PROJECT Kick-Off meeting, (b) meet with design team to verify the Property is suitable for the PROJECT, (c) provide to the design, construction and construction management teams the best available information regarding features within and under the Property including, without limitation, utility locations, (c) process and pay for, all permits and licenses needed for the construction of the Project, (d) participate in the review and approval of the design for the PROJECT at the 30%, 60%, 90% and 100% plan levels, and (e) assist with any public outreach efforts in connection with construction of

the PROJECT, including attendance and participation at public meetings and use of the City’s logo in connection with outreach efforts and PROJECT signage.

2.6 The City will comply with the Monitoring and Adaptive Management Plan (“MAMP”) as approved on September 14, 2023, by the San Francisco Bay Restoration Regulatory Integration Team for the PROJECT. City is responsible for any and all costs associated with MAMP compliance.

2.7 After completion of construction of the PROJECT and acceptance of the PROJECT as complete by the ABAG Executive Board, by way of execution of this Agreement, the City accepts all rights and title to the PROJECT including, without limitation, all structures, plantings and documentation will become the property of the City, subject to ABAG retaining the right to make, retain, use and distribute copies of all documents related to the PROJECT without limitation. Upon ABAG Executive Board’s acceptance of the PROJECT as complete, the City shall be fully and solely be responsible for all future costs associated with the PROJECT including, without limitation, PROJECT compliance with MAMP, post-construction A&M Measures, as well as operation and maintenance costs.

2.8 The City shall provide ABAG, MTC, and Construction Manager, Project contractors / subcontractors and their employees, representatives, consultants, and other necessary Project participants with access to the Property and an area in the vicinity for construction staging, and storage of any equipment or site-specific materials during construction of the PROJECT. Prior to commencing construction activities, the Parties agree to execute a construction license agreement in a form to be furnished by City.

2.9 Indemnification

2.9.1 Notwithstanding any provision to the contrary, whether expressly or by implication, to the furthest extent permitted by California law, the City shall indemnify, defend, and hold harmless ABAG, MTC, and their elected and appointed officers, employees, and agents from and against any and all liability resulting from the City’s act(s) and/or omission(s) arising from and/or relating to this Agreement. Such liability includes, without limitation, the following: any grant or other funding disallowance; audits; demands; claims; actions; liabilities; damages; fines; fees, costs, and expenses, including fees and expenses for attorneys, auditors, and/or expert witnesses.

2.9.2 The City’s defense, indemnification, and hold harmless obligations hereunder shall survive the PROJECT’s completion and termination of the Contract.

**SECTION III
MUTUAL OBLIGATIONS OF THE PARTIES**

3.1 Subject to reimbursement of such costs as may be allowed the Parties under the EPA Grants, and except as otherwise provided in this Agreement, each Party shall be separately and solely responsible for their respective PROJECT costs including, without limitation, for employees, consultants, subconsultants, contractors, and officers.

3.2 Each Party to this Agreement shall, at its own expense, perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement. Each Party shall pay its own attorneys’ fees and other expenses in connection with the negotiation or execution of this Agreement.

3.3 Each Party will promptly notify the other party of any notices given or actions taken by the EPA or any authority having jurisdiction over the Property that relates to or impacts the PROJECT. To the extent practicable, the Parties agree to cooperate and work together in responding to and promptly addressing and resolving such notice or action.

3.4 This Agreement shall serve to establish the Parties' good faith effort to work together to bring the PROJECT to completion through any unforeseen obstacles, delays, cost overruns, or unpredicted circumstances that affect the scope, PROJECT budget, or timeline. ABAG and the City pledge to work separately and together cooperatively, as needed, to address issues as they arise to ensure the PROJECT is completed and that it is of benefit to the region.

3.5 City understands and acknowledges that ABAG's sole source of financial resources to fund the PROJECT is through the EPA Grants and that ABAG has no separate financial resources to contribute to the PROJECT costs. City further understands, acknowledges, and agrees that City is responsible for any PROJECT costs that exceed the available EPA Grants funding. ABAG will, therefore, coordinate and cooperate with City in advance on any PROJECT issues arising during the PROJECT's construction that may increase the PROJECT price or time.

3.6 City shall have the right to review and approve the PROJECT design. During the design and approval process, should it become apparent that the PROJECT is not feasible within the PROJECT budget, the Parties shall meet and confer regarding the redesign of the PROJECT in order to maintain the cost of the PROJECT within the PROJECT budget. Should the PROJECT design and construction cost estimate(s) exceed the Parties respective funding contributions as described in Recital E, ABAG will work in good faith with City to identify additional funds to cover all costs of the PROJECT, but the City, not ABAG, is responsible to fund any costs that exceed ABAG's contribution. In no event, shall ABAG be obligated to complete design and construction of the PROJECT if the design and construction cost estimate(s) exceed the PROJECT's EPA Grants' funding. Should cost estimates exceed the EPA Grants' funding, the Parties may, individually or collectively, terminate proceeding with the PROJECT.

3.7 Should actual construction costs exceed the Parties' respective funding contributions as described in Recital E, ABAG will work in good faith with City to identify additional funds to cover all costs of the PROJECT, but the City, not ABAG, is responsible to fund any costs that exceed ABAG's contribution. City, in its sole discretion, shall have the right to modify the PROJECT based upon availability of additional funding.

3.7.1 Any change in the approved design or in work by the construction contractor performed pursuant to this Agreement shall be made by a Change Order Request approved in advance by both Parties. A Change Order Request is a written instrument prepared and issued by ABAG's representative, the construction contractor, the City, and/or the Engineer or construction manager requesting revisions or deviations to the approved PROJECT design. Neither ABAG, the City, nor any other entity, shall have the authority to order any changes in the approved design or to perform work inconsistent with the approved design without ABAG and the City's prior written authorization.

3.8 Both Parties agree to cooperate with one another to accomplish the purposes of this Agreement, and to confer in advance on policy matters and proposed changes in PROJECT scope, cost, and schedule as it relates to this Agreement.

SECTION IV MISCELLANEOUS

4.1 Each Party shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time. Any such laws, rules, regulations, ordinances, and directives required thereby to be included in this Agreement are incorporated herein by reference.

4.2 This Agreement shall commence on the effective date and shall remain in effect until the PROJECT is accepted as complete by the ABAG Executive Board or if terminated as provided in this Agreement.

4.3 Assignment. No rights of any Party under this Agreement may be assigned, transferred, hypothecated or otherwise alienated, whether voluntarily or by operation of law, and shall be null and void except with the express written prior consent of the Party against which such rights are enforceable.

4.4 The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of California. Venue shall be the County of Santa Clara.

4.5 No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto. This Agreement shall be binding upon each Party, their legal representatives, and successors.

4.6 Each Party agrees to respond in a timely manner to all reasonable requests from the other Party for any rights, material, and information as may be required by the requesting Party to successfully fulfil its obligations under this Agreement. Each Party further agrees to promptly provide documentation, reports, and information pursuant to such reasonable requests. Notwithstanding this commitment, the Parties may withhold material and information subject to any claims of privilege or limitations any Party may have as a result of agreements with other persons or entities.

4.7 Any substantive material changes in the activities to be performed under this Agreement, or in the terms thereof, shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in schedule. All amendments shall be executed by each Party's authorized representative.

4.8 Each individual executing this Agreement on behalf of a Party represents and warrants that he or she is duly authorized to execute this Agreement on behalf of said Party and that this Agreement is binding upon the Party in accordance with its terms.

4.9 Except as specifically provided herein, nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.

4.10 No Party shall assign this Agreement, or any part thereof without the other Party's prior written consent; any attempts to assign this Agreement without the other Party's' prior written consent shall be void and unenforceable.

4.11 Any Party's failure to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of such right or remedy or any other right or remedy set forth herein. Any Party's waiver of any right or remedy under this Agreement shall not be effective unless made

in a writing duly executed by an authorized officer of the Party, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this Agreement.

4.12 Disputes

4.12.1 In case of a dispute over the meaning or performance of this Agreement or a dispute during construction including, without limitation, contractor Change Order Requests, contractor defective work, failure of the Parties to agree on design revisions, construction schedule changes or delays, the Parties will first attempt to resolve such dispute at the PROJECT team level. If they cannot resolve the dispute themselves, the MTC Executive Director and City Manager of the City, or their designees, will attempt to negotiate a resolution. If the Parties do not reach a resolution, the Parties' legal counsel will initiate mediation. The Parties agree to participate in mediation in good faith, mutually agree on a mediator, and will share equally in mediation fees and expenses.

4.12.2 Neither the dispute nor the mediation process relieves Parties from full and timely performance of the Agreement's scope in accordance with its terms. However, if any Party stops fulfilling its obligations, any other Party may seek equitable relief to ensure that the work continues.

4.12.3 Except for equitable relief, no Party may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first. The Parties maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

4.12.4 This dispute resolution process shall be undertaken in good faith and exhausted prior to commencing an action or legal proceeding. However, compliance with this process does not waive any Party's obligation to comply with, or right to assert as a defense, any applicable statute of limitations. The Parties may agree in writing to toll any applicable statute of limitations for such period as may reasonably be necessary to complete the dispute resolution process.

4.13 Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys' fees.

4.14 Termination.

4.14.1 Upon termination of either EPA Grant, either Party may terminate this Agreement effective the same date as the termination of the EPA Grant, as the case may be, and by delivering notice to the other Party within thirty (30) days of the Grant termination.

4.14.2 Either Party may terminate this Agreement upon ten (10) business days prior written notice to the other Party of a breach of this Agreement that allows the other Party to cure said breach prior to the effective date of the termination.

4.15 Notices and Administrative Contacts. All notices or notifications under this PROJECT Agreement shall be in writing addressed to the persons set forth in this section:

4.16 Project Manager. Heidi Nutters, heidi.nutters@sfestuary.org, or other individual designated by the MTC Executive Director, will serve as the ABAG Project Manager. Samantha Engelage, samantha.engelage@cityofpaloalto.org or other individual designated by the City Manager will serve as the City Project Manager.

4.17 All notices, or other communication, to either party by the other shall be deemed given when made in writing and delivered, mailed, or emailed to such party at their respective addresses as follows:

To ABAG:	Caitlin Sweeney Association of Bay Area Governments 375 Beale Street, Suite 800 San Francisco, CA 94105 caitlin.sweeney@sfestuary.org
To City of Palo Alto:	Karin North Assistant Director of Public Works, City of Palo Alto 2501 Embarcadero Way Palo Alto, CA 94303 karin.north@cityofpaloalto.org

4.18 This Agreement, including all attachments, constitutes the complete agreement between the Parties and supersedes any prior written or oral communications. The Parties represent that in entering into the Agreement they have not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by all of the Parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail. This Agreement may be executed in multiple counterparts, each which will be deemed as an original, and electronic signatures shall have the same force and effect as original signatures.

4.19 Should all or any portion of any provision of this Agreement be held unenforceable or invalid for any reason, the remaining portions or provision shall be unaffected.

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

ASSOCIATION OF BAY AREA
GOVERNMENTS (ABAG)

CITY OF PALO ALTO (CITY)

By:

By:

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

Project Description

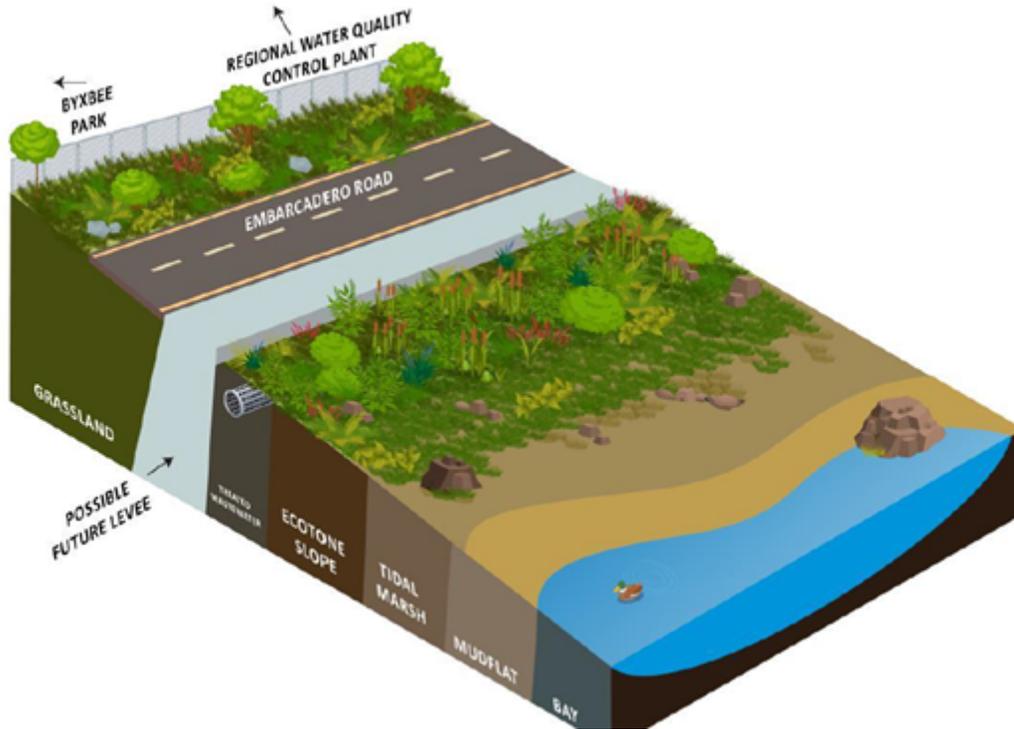


Figure 1 Palo Alto Horizontal Levee Rendering

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:

- USACE Nationwide Permit 27 (SPN-2019-00445)
- NMFS Letter of Concurrence (with 'not likely to adversely affect' determination) (WCRO-2023-00141)
- USFWS Signed/approved ESA Section 7(a)(2) Review Form (2022-0005149-S7) (take coverage under the Programmatic Biological and Conference Opinion (PBO) for the California Statewide Programmatic Restoration Effort)
- SWRCB Water Quality Certification for Small Habitat Restoration Projects (WDID# 2 CW451131)
- Restoration Management Permit (No. RMP 2023-0008-R3)

The City of Palo Alto expects issuance of the following permits in early 2024:

- BCDC Major Permit Amendment
- City of Palo Alto Street Work Permit and Parks Improvement Ordinance

Finally, a Notice of Exemption is expected under the California Environmental Quality Act (“CEQA”) (Cal. Public Resources Code § 21000, et seq.) pursuant to CEQA Guideline Section 15333.

Table A: Outstanding Work to be Paid for by ABAG

Party Name	Service Provided	Responsible Entity	Budgeted Amount
TBD	Construction Management Services Contract	ABAG	\$371,449
TBD	Construction Services Contract	ABAG	\$1,859,543.00
Save The Bay	Plant propagation, planting, community outreach	ABAG	\$162,890.00
TBD	Contingency	ABAG	\$180,000.00
TOTAL			\$2,573,882

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 - 2023		
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	Submitted – permit issuance expected Fall 2023	
Permit Fees	Completed	City of Palo Alto
CEQA - Categorical Exemption	Completed	City of Palo Alto
QAPP	Scheduled for completion in Winter 2023	EPA Water Quality Improvement Fund Grant # W9-98T55001
100% Design, including final design specifications, bid package and bid period support	Scheduled for completion end of 2023	
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)
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

APPENDIX B

Insurance Requirements for Work on City of Palo Alto Property

ABAG, at their expense, shall for the term of the Agreement, obtain and maintain insurance in the amounts and for the coverage specified below, afforded by companies with AM Best’s key rating of A-:VII, or higher, licensed or authorized to transact insurance business in the State of California.

Agreement is contingent on compliance with City’s insurance requirements as specified herein:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER’S COMPENSATION EMPLOYER’S LIABILITY	STATUTORY STATUTORY	STATUTORY	STATUTORY
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$2,000,000	\$5,000,000
		PROPERTY DAMAGE	\$2,000,000	\$5,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$2,000,000	\$5,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONSULTANT AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. Contractual liability endorsement providing insurance coverage for ABAG’s agreement to indemnify the City.

II. SUBMISSION OF CERTIFICATES:

- A. ABAG must submit certificate(s) of insurance evidencing required coverage to City of Palo Alto to: Samantha.engelage@cityofpaloalto.org

III. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO
ADDITIONAL INSUREDS:

- A. Primary Coverage: With respect to claims arising out of the operations of the named insured, insurance as afforded by this policy is primary and is not additional to, or contributing with, any other insurance carried by, or for the benefit of, the additional insureds.
- B. Cross Liability: The naming of more than one person, firm, or corporation as insureds under the policy shall not, for that reason alone, extinguish any rights of the insured against another, but this endorsement, and the name of multiple insureds, shall not increase the total liability of the company under this policy.
- C. Notice of Cancellation:
 - 1. If the policy is canceled before its expiration date for any reason other than the non-payment of premium, ABAG shall provide City at least thirty (30) day written notice before the effective date of cancellation.
 - 2. If the policy is cancelled before its expiration date for the non-payment of premium, ABAG shall provide City at least ten (10) days written notice before the effective date of cancellation.