

**Meeting of the Central Valley Flood Protection Board  
May 19, 2017**

**Staff Report**

**American River Watershed (Folsom Dam Raise) Project  
Design Agreement and Local Design Agreement**

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**1.0 ITEM**

Consider Central Valley Flood Protection Board (Board) adoption of Resolution 2017-5 (Attachment A) to:

1. Approve the Design Agreement (DA) (Attachment B) between the Board, U.S. Army Corps of Engineers (USACE), and Sacramento Area Flood Control Agency (SAFCA) for the design of the American River Watershed Project, Folsom Dam Raise Project in substantially the form provided; and
2. Approve the Local Design Agreement (LDA) (Attachment C) between the Board, and SAFCA for the design of the American River Watershed Project, Folsom Dam Raise Project in substantially the form provided; and
3. Delegate the Board President to sign the DA and LDA.

**2.0 SPONSORS**

Federal: U.S. Army Corps of Engineers  
State: Central Valley Flood Protection Board  
Local: Sacramento Area Flood Control Agency

**3.0 PROJECT LOCATION**

Folsom Dam and Reservoir are located downstream from the confluence of the north and south forks of the American River, near the city of Folsom. Folsom Dam is located about 20 miles northeast of Sacramento.

**4.0 PROJECT DESCRIPTION**

The Folsom Dam Raise Project is a Flood Risk Management Project implemented jointly by the US Army Corps of Engineers (USACE), the US Bureau of Reclamation (USBR), the State of California and the Sacramento Area Flood Control Agency (SAFCA).

The following project features were described in the USACE Post Authorization Change Report (PACR, March 2017)

- a) Add a top seal bulkhead to the Main Dam's three (3) Emergency Tainter Gates
- b) Add extension to all nine (9) piers supporting the motors and gate hoists
- c) Raise left and right wings of Main Dam by 3.5 feet
- d) Raise eight (8) reservoir dikes and Mormon Island Auxiliary Dike (MIAD) by 3.5 feet
- e) Construct a bridge downstream from Folsom Dam (Completed)
- f) Implement lower American River Ecosystem Restoration features (automated temperature control shutters and active habitat restoration at two sites along the lower American River)

The DA and LDA discussed in this item covers features a through d above. Feature e was completed during prior construction. Feature f was covered in a separate design agreement between USACE and SAFCA.

## **5.0 PROJECT BACKGROUND**

Folsom Reservoir has a capacity of 977,000 acre-feet with a surface area of approximately 11,450 acres. Folsom Dam was originally authorized in 1944 for flood control but was reauthorized in 1949 as a multi-purpose facility. USACE constructed Folsom Dam and transferred it to USBR for coordinated operation as an integral part of the Central Valley Project (CVP). Construction of the dam began in October 1948 and was completed in May 1956. Water was first stored in February 1955.

In the Energy and Water Development Appropriations Act (EWDAA) of 2004, Congress authorized a plan to raise Folsom Dam; the Folsom Dam Raise Project would provide flood benefits while also resolving certain dam safety issues associated with passing the probable maximum flood (PMF).

The Folsom Dam Raise Project and the Folsom Modifications Project were reevaluated together in the PACR for the American River Watershed Project, dated March 2007. This report resulted in the recommendation of a Joint Federal Project (JFP) auxiliary spillway at Folsom Dam (to be constructed jointly with USBR), and a Folsom Dam Raise Project.

The Folsom Dam JFP started its construction in 2008 and is nearing completion of construction. Construction of the next component of the overall project, the Folsom Dam Raise Project, will complete the flood risk reduction components of the plan identified in the 2002 Folsom Dam Long Term Study. This, coupled with downstream levee improvements being completed under various authorizations, will provide the comprehensive flood risk reduction identified as being in the Federal interest in various Federal studies completed since the 1986 flood event.

## **6.0 AUTHORITIES**

Federal:

- Section 566 of the Water Resources Development Act of 1999 (P.L. 106-53)
- Section 128 of the Energy and Water Development Appropriations Act of 2004 (PL 108-137)
- Section 128 of the Energy and Water Development Appropriations Act of 2006 (P.L. 109-103)

State:

- Water Code sections 12670.10, 12670.11, 12670.12, and 12670.14

## **7.0 FUNDING STATUS**

Currently, total design costs are projected to be \$18,876,815, with the USACE's share of such costs projected to be \$12,269,930, the Non-Federal Sponsors' (the Board and SAFCA, collectively) share of such costs projected to be \$6,606,885; and the costs for betterments are projected to be \$0. These amounts are estimates subject to adjustment by the USACE, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors. If these projected amounts are to be increased, such increases shall be subject to the written consent of USACE, the Board and SAFCA.

USACE has been advancing with the project design since the 2004 WRDA authorized the project. The Federal Fiscal Year (FY) 2016 USACE budget included Federal funding (\$18,641,000) to begin design of the Folsom Dam Raise Project. The President's FY2017 Budget also included \$21,040,000 for the project. The State cost-share will be paid from existing Proposition 1E bond funds and general fund.

## **8.0 DESIGN AGREEMENT AND LOCAL DESIGN AGREEMENT**

The DA establishes a 65 percent cost share between the Federal sponsor (USACE) and a 35 percent cost share Non-Federal sponsors. The DA would cover the project design activities from the execution of this DA to the execution of the Project Partnership Agreement, which is anticipated in 2018. Also, entering into the DA with USACE would preserve the Non-Federal Sponsors' eligibility for the in-kind credit for design works.

The LDA includes a 70 percent State cost share and a 30 percent SAFCA cost share of the Non-Federal sponsor's 35 percent cost share. The State will provide 70 percent of the Non-federal share of total design costs, or approximately \$4,624,819.

## **9.0 ENVIRONMENTAL ANALYSIS**

The Draft Supplemental Environmental Impact Statement/ Environmental Impact Report (SEIS/EIR) was circulated for public review and comment between July 19, 2016, and September 1, 2016 (SCH # 2006022091). USACE is the NEPA Lead Agency and the Board is the CEQA Lead Agency.

### **10.0 PUBLIC INVOLVEMENT**

During the public review period, comments received and resulted in significant revisions to the draft. USACE and the Board plan to re-circulate the draft SEIS/EIR in mid-2017.

### **11.0 STAFF RECOMMENDATION**

Staff recommends that the Board:

#### **Approve:**

- The Design Agreement (DA) (Attachment B) between the Board, U.S. Army Corps of Engineers (USACE), and Sacramento Area Flood Control Agency (SAFCA) for the design of the American River Watershed Project, Folsom Dam Raise Project in substantially the form provided; and
- The Local Design Agreement (LDA) (Attachment C) between the Board and SAFCA for the design of the American River Watershed Project, Folsom Dam Raise Project in substantially the form provided; and

#### **Delegate:**

- The Board President to sign the Agreements.

### **11.0 LIST OF ATTACHMENTS**

- A. Resolution 2017-5
- B. DA Agreement
- C. LDA Agreement
- D. Site Map

Prepared By:	Wilbur Huang, PM
DWR Staff Review:	Todd Bernardy
DWR Legal Review:	James Herink
Board Staff:	Preston Shopbell
Board Legal Reviewers:	Jit Dua

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
AMERICAN RIVER WATERSHED  
AMERICAN RIVER WATERSHED (FOLSOM DAM RAISE) PROJECT  
DESIGN AGREEMENT AND  
LOCAL DESIGN AGREEMENT  
RESOLUTION 2017-5

WHEREAS, the Department of the Army, represented by the U.S. Army Corps of Engineers (hereinafter the “USACE”), represented by the U.S. Army Engineer, Sacramento District (hereinafter the “District Engineer”) is the Federal Sponsor for the project. The State of California’s Central Valley Flood Protection Board (hereafter the “CVFPB”), represented by the President, and the Sacramento Area Flood Control Agency (hereinafter the “SAFCA”), represented by the Executive Director, are the Non-Federal Sponsors for the project (hereinafter the “Non-Federal Sponsors”); and

WHEREAS, the Continuing Appropriations Act for 1988 (P.L. 100-202) provides funding for the USACE to conduct reconnaissance studies of the American River Basin – the American River Watershed Investigation began;

WHEREAS, Federal funds were provided in Section 128 of the Energy and Water Development Appropriations Act of 2004, P.L 108-137 to initiate design of the American River Watershed (Dam Raise) Project (hereafter the “Project”), California for flood damage reduction and ecosystem restoration;

WHEREAS, construction of the Project is authorized by Sections 128 and 134 of the Energy and Water Development Appropriations Act of 2004, P.L 108-137 and Section 128 of the Energy and Water Development Appropriations Act of 2006, P.L. 109-103;

WHEREAS, the American River Watershed, California, Long-Term Study (2002) and Environmental Impact Statement /Environmental Impact Report (EIS/EIR) recommended raising Folsom Dam by 7 feet.

WHEREAS, the Post Authorization Change Report (March, 2007), refined the Selected Plan which primarily includes replacement of the three emergency spillway gates and a 3.5-foot Folsom Dam and Dikes raise.

WHEREAS, Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. § 2213), specifies the cost-sharing requirements applicable to construction of the Project, and Section 105(c) of the Water Resources Development Act of 1986 (33 U.S.C. § 2215), provides that the costs of design shall be shared in the same percentages as construction of the Project;

WHEREAS, based on the Project’s primary project purpose of flood damage reduction, the parties agree that the Non-Federal Sponsors shall contribute 35 percent of the total design costs;

WHEREAS, pursuant to Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b(a)), the Non-Federal Sponsors may perform or provide in-kind contributions for credit towards the non-Federal share of the total design costs;

WHEREAS, the Board and SAFCA are authorized and empowered under their organizing acts and other state laws to participate in, fund, and carry out flood control activities.

WHEREAS, the Non-Federal Sponsors’ obligations are set forth in the Design Agreement and the Local Design Agreement that are attached as Attachment B and C.

NOW, THEREFORE, BE IT RESOLVED that the Board:

1. Approves the Design Agreement (DA) (Attachment B) between the Board, U.S. Army Corps of Engineers (USACE), and Sacramento Area Flood Control Agency (SAFCA) for the design of the American River Watershed Project, Folsom Dam Raise Project in substantially the form provided; and
2. Approves the Local Design Agreement (LDA) (Attachment C) between the Board, and SAFCA for the design of the American River Watershed Project, Folsom Dam Raise Project in substantially the form provided; and
3. Delegates to the Board President to sign the DA and LDA.

PASSED AND ADOPTED by vote of the Board on \_\_\_\_\_, 2017.

By: \_\_\_\_\_

William Edgar  
President

Approved as to Legal Form and Sufficiency:

By: \_\_\_\_\_

Kanwarjit Dua  
Board Counsel

By: \_\_\_\_\_

Jane Dolan  
Secretary

DESIGN AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY,  
THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD,  
AND  
THE SACRAMENTO AREA FLOOD CONTROL AGENCY  
FOR  
DESIGN  
FOR THE  
  
AMERICAN RIVER WATERSHED (FOLSOM DAM RAISE) PROJECT,  
CALIFORNIA

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Sacramento District (hereinafter the “District Engineer”) and the State of California’s Central Valley Flood Protection Board, represented by the President, and the Sacramento Area Flood Control Agency, a joint powers authority established pursuant to the laws of the State of California, represented by the Executive Director (hereinafter the “Non-Federal Sponsors”).

WITNESSETH, THAT:

WHEREAS, Federal funds were provided in Section 128 of the Energy and Water Development Appropriations Act of 2004, P.L 108-137 to initiate design of the American River Watershed (Dam Raise) Project, California for flood damage reduction and ecosystem restoration;

WHEREAS, construction of the Project is authorized by Sections 128 and 134 of the Energy and Water Development Appropriations Act of 2004, P.L 108-137 and Section 128 of the Energy and Water Development Appropriations Act of 2006, P.L. 109-103;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to construction of the Project, and Section 105(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2215), provides that the costs of design shall be shared in the same percentages as construction of the Project;

WHEREAS, based on the Project’s primary project purpose of flood damage reduction, the parties agree that the Non-Federal Sponsors shall contribute 35 percent of the total design costs under this Agreement;

WHEREAS, pursuant to Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)), the Non-Federal Sponsors may perform or provide in-kind contributions for credit towards the non-Federal share of the total design costs;

WHEREAS, the Government and Non-Federal Sponsors entered into an In-Kind Memorandum of Understanding (MOU) on February 13, 2017, to preserve the Non-Federal Sponsors' eligibility for credit for design work undertaken prior to the effective date of this Agreement;

WHEREAS, the Government and Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

#### ARTICLE I - DEFINITIONS

A. The term "Project" means those separable elements generally described as raising the top elevation of the main dam and associated wing dams, dikes and other appurtenances by 3.5 feet; installing Bulkhead Top Seals on emergency spillway Tainter gates and Main Spillway Tainter gates; heightening emergency and service spillway piers to support a new gate hoist system and other features as generally described in the American River Watershed Project (Folsom Dam Modifications and Folsom Dam Raise Projects), California, Post Authorization Change Report dated March 2007, approved in accordance with the Record of Decision signed by the Assistant Secretary of the Army (Civil Works) and by the Mid-Pacific Regional Director, Bureau of Reclamation in May 2007.

B. The term "Design" means performing detailed pre-construction, engineering, and design for the complete project and preparation of plans and specifications for the initial construction contract for the Project.

C. The term "total design costs" means the sum of all costs that are directly related to the Design and cost shared in accordance with the terms of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's costs for engineering and design, economic and environmental analyses, and evaluation; for contract dispute settlements or awards; for supervision and administration; for Agency Technical Review and other review processes required by the Government; for response to any required Independent External Peer Review; and the Non-Federal Sponsors' creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation in the Design Coordination Team; audits; an Independent External Peer Review panel, if required; or betterments; or the Non-Federal Sponsors' cost of negotiating this Agreement.

D. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsors that are identified as being integral to design of the Project by the Division Engineer for the South Pacific Division. To be integral, the material or service must be part of the work that the Government would otherwise have undertaken for design of the Project. In-kind contributions also include any investigations performed

by the Non-Federal Sponsors to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

E. The term “fiscal year” means one year beginning on October 1<sup>st</sup> and ending on September 30th of the following year.

F. The term “betterment” means a difference in the design of a portion of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design of that portion.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Design using funds appropriated by the Congress and funds provided by the Non-Federal Sponsors. The Non-Federal Sponsors shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies. If the Government and non-Federal interests enter into a Project Partnership Agreement for construction of the Project, the Government shall include the total design costs in the calculation of construction costs for the Project in accordance with the terms and conditions of the Project Partnership Agreement.

B. The Non-Federal Sponsors shall contribute 35 percent of total design costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors for the initial fiscal year of the Design. No later than 15 calendar days after such notification, the Non-Federal Sponsors shall provide the full amount of such funds to the Government.

2. No later than August 1<sup>st</sup> prior to each subsequent fiscal year of the Design, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors during that fiscal year to meet their cost shares. No later than September 1<sup>st</sup> prior to that fiscal year, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government.

C. The Government shall credit towards the Non-Federal Sponsors’ share of total design costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incur in providing or performing in-kind contributions integral to the Design, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VII to determine reasonableness, allocability, and

allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsors shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees. Failure to provide such documentation in a timely manner may result in denial of credit.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsors; for any items provided or performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding; for any items not identified as integral in the integral determination report; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

3. No reimbursement will be provided for any in-kind contributions that exceed the Non-Federal Sponsors' shares of the total design costs under this Agreement. As provided in Article II.A., total design costs, including credit for in-kind contributions, shall be included in the calculation of construction costs for the Project in accordance with the terms and conditions of the Project Partnership Agreement.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsors shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsors shall not be entitled to any credit or reimbursement for costs they incur in performing their responsibilities under this Agreement.

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsors shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense

Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

H. If Independent External Peer Review (IEPR) is required for the Design, the Government shall conduct such review in accordance with Federal laws, regulations, and policies. The Government's costs for an IEPR panel shall not be included in the total design costs.

I. In addition to the ongoing, regular discussions of the parties in the delivery of the Design, the Government and the Non-Federal Sponsors may establish a Design Coordination Team consisting of Government's Project Manager and the Non-Federal Sponsors' counterpart and one senior representative each from the Government and Non-Federal Sponsors to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsors' costs for participation on the Design Coordination Team shall be included in the total design costs. The Non-Federal Sponsors' costs for participation on the Design Coordination Team shall be paid solely by the Non-Federal Sponsors without reimbursement or credit.

J. The Non-Federal Sponsors may request in writing that the Government perform betterments on behalf of the Non-Federal Sponsors. Each request shall be subject to review and written approval by the Division Engineer for the South Pacific Division. If the Government agrees to such request, the Non-Federal Sponsors, in accordance with Article III.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

### ARTICLE III - METHOD OF PAYMENT

A. As of the effective date of this Agreement, total design costs are projected to be \$18,876,815, with the Government's share of such costs projected to be \$12,269,930, the Non-Federal Sponsors' share of such costs projected to be \$6,606,885; and the costs for betterments are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Government shall provide the Non-Federal Sponsors with quarterly reports setting forth the estimated total design costs and the Government's and Non-Federal Sponsors' estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsors to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Design.

C. The Non-Federal Sponsors shall provide to the Government required funds by delivering a check payable to "FAO, USAED, Sacramento District EROC L2" to the

District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsors to cover the non-Federal share of the total design costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' required shares of the total design costs, the Government shall provide the Non-Federal Sponsors with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional funds.

E. Upon conclusion of the Design and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsors, the Non-Federal Sponsors, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsors have provided funds in excess of required amount, the Government shall refund the excess amount, subject to the availability of funds or if requested by the Non-Federal Sponsors, apply the excess amount towards the non-Federal share of the cost of construction of the Project in the event a Project Partnership Agreement is executed for the Project. Such final accounting does not limit the Non-Federal Sponsors' responsibility to pay their share of total design costs, including contract claims or any other liability that may become known after the final accounting.

F. Payment of Costs for Betterments Provided on Behalf of the Non-Federal Sponsors. No later than 30 calendar days after receiving written notice from the Government of the amount of funds required to cover any such costs, as applicable, the Non-Federal Sponsors shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Sacramento District EROC L2" to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover any such costs, as applicable, the Non-Federal Sponsors shall provide those funds within 30 calendar days from receipt of written notice from the Government.

#### ARTICLE IV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill its obligations under this Agreement, the Government may suspend or terminate Design unless the Assistant

Secretary of the Army (Civil Works) determines that continuation of the Design is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government determines at any time that the Federal funds made available for the Design are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsors in writing, and upon exhaustion of such funds, the Government shall suspend Design until there are sufficient Federal funds appropriated by the Congress and funds provided by the Non-Federal Sponsors to allow Design to resume.

C. In the event of termination, the parties shall conclude their activities relating to the Design and conduct an accounting in accordance with Article III.E. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

D. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsors pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE V – HOLD AND SAVE

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from the Design, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsors of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsors shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Design. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Design shall not be included in total design costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsors to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsors, provide to the Non-Federal Sponsors or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

## ARTICLE VIII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

## ARTICLE IX - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified mail, with return receipt, as follows:

If to the Non-Federal Sponsors:

Central Valley Flood Protection Board  
Executive Officer, Central Valley Flood Protection Board  
3310 El Camino Avenue, ~~Room 151~~Suite 170  
Sacramento, CA 95821

and

The Sacramento Area Flood Control Agency  
Executive Director, Sacramento Area Flood Control Agency  
1007 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

If to the Government:

U.S. Army Corps of Engineers  
District Engineer, Sacramento District  
1325 J Street  
Sacramento, CA 95814-2922

B. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

#### ARTICLE X - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE XI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

#### ARTICLE XII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsors intend to fulfill fully their obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California or the Board of Directors of the Sacramento Area Flood Control Agency, where creating such an obligation would be inconsistent with Section 1 or Section 18 of Article XVI of the California Constitution. If the Non-Federal Sponsors are unable to, or do not, fulfill their obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD

BY: \_\_\_\_\_  
Colonel David G. Ray, P.E.  
District Engineer  
Sacramento District

BY: \_\_\_\_\_  
Mr. William H. Edgar  
President, Central Valley  
Flood Protection Board

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

THE SACRAMENTO AREA FLOOD CONTROL AGENCY

BY: \_\_\_\_\_  
Mr. Richard M. Johnson  
Executive Director, Sacramento  
Area Flood Control Agency

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, Kanwarjit Dua, do hereby certify that I am the principal legal officer of the State of California Central Valley Flood Protection Board, that the State of California Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the State of California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency in connection with the American River Watershed (Dam Raise) Project, California, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the State of California Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Kanwarjit Dua,  
Board Counsel,  
State of California Central Valley Flood Protection Board

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the State of California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency in connection with the American River Watershed (Dam Raise) Project, California , and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Sacramento Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

---

M. Holly Gilchrist  
Agency Counsel,  
Sacramento Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
William H. Edgar  
President  
Central Valley Flood Protection Board

DATE: \_\_\_\_\_

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Richard M. Johnson  
Executive Director  
Sacramento Area Flood Control Agency

DATE: \_\_\_\_\_

**NON-FEDERAL SPONSOR'S  
SELF-CERTIFICATION OF FINANCIAL CAPABILITY  
FOR AGREEMENTS**

I, Leslie Gallagher, do hereby certify that I am the Executive Officer of the State of California Central Valley Flood Protection Board (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Folsom Dam Raise Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Design Agreement Between the Department of the Army, the California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency for Design for the American River Watershed (Dam Raise) Project, California

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY: \_\_\_\_\_

TITLE: Executive Officer

DATE: \_\_\_\_\_

**NON-FEDERAL SPONSOR'S  
SELF-CERTIFICATION OF FINANCIAL CAPABILITY  
FOR AGREEMENTS**

I, Richard M. Johnson, do hereby certify that I am the Executive Director of the Sacramento Area Flood Control Agency (SAFCA) (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the American River Watershed (Dam Raise) Project, California ; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Design Agreement Between the Department of the Army, the California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency for Design for the American River Watershed (Dam Raise) Project, California .

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY: \_\_\_\_\_

TITLE: Executive Director

DATE: \_\_\_\_\_

LOCAL DESIGN AGREEMENT  
BETWEEN  
THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD  
AND  
THE SACRAMENTO AREA FLOOD CONTROL AGENCY  
FOR DESIGN OF THE  
AMERICAN RIVER WATERSHED (FOLSOM DAM RAISE) PROJECT,  
CALIFORNIA

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the State of California, acting through the Central Valley Flood Protection Board (hereinafter the Board), represented by the President, and the Sacramento Area Flood Control Agency (hereinafter “SAFCA”), established pursuant to the laws of the State of California, represented by the Executive Director, and

RECITALS:

WHEREAS, the Department of the Army, represented by the U.S. Army Corps of Engineers (hereinafter the Government) received Federal funds for Fiscal Year 2016 for the Government to initiate design of the Folsom Dam Raise Project (hereinafter the Parent Project); and

WHEREAS, the Sacramento Area Flood Control Agency (SAFCA) and the Board, concurrent with this AGREEMENT are entering into a Design Agreement, titled “Design Agreement Between The Department of the Army, the Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency for Design for the Folsom Dam Raise Project” for the provision of design for the Folsom Dam Raise (an element of the Parent Project and hereinafter the *Project*, as defined in Article I.A. of that Agreement); and

WHEREAS, construction or implementation of the *Project* is authorized by Congress in Section 128 of the Energy and Water Development Appropriations Act (EWDAA) of 2004 (Pub. L. No. 108-137); and

WHEREAS, the California Water Code in Section 8615 authorizes the Board to participate in planning projects for flood control on the Sacramento River and its tributaries; and

WHEREAS, The Board and SAFCA are authorized and empowered under their organizing acts and other state laws to participate in, fund, and carry out flood control activities; and

WHEREAS, CVFPB and SAFCA intend to serve as the nonfederal sponsors of the *Project*; and

WHEREAS, the nonfederal sponsors' obligations are set forth in the Design Agreement, to be executed for this project between the CVFPB, SAFCA and the Government, and a draft of the Design Agreement is attached hereto as Exhibit A and incorporated by this reference; and

WHEREAS, the Board and SAFCA desire to specify their respective contributions and other obligations during the term of the *Project*.

NOW, THEREFORE, The Board and SAFCA agree as follows:

#### SECTION I - DEFINITIONS

- A. The term "*Project*," "*Design*," "*total design costs*," "*in-kind contributions*," "*betterment*," and "*fiscal year*," shall have the same meanings as defined in Article I of the Design Agreement.
- B. The terms "non-federal Sponsor" and "non-federal interest" shall mean The Board and SAFCA.

#### SECTION II – OBLIGATIONS THE BOARD AND SAFCA

- A. The Board and SAFCA each shall afford the other entity the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations provided the Government gives the Board or SAFCA the opportunity to review and comment on such solicitations. Either entity shall also afford the other entity the opportunity to review and comment on all design products, and proposed contract modifications, including change orders, provided the Government gives either entity the opportunity to review and comment on such design products and proposed contract modifications. Either entity shall consider in good faith the comments of the other entity and forward them to the Government, but the contents of solicitations, award of contracts or commencement of design using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.
- B. The Board and SAFCA shall provide, during the period of design a contribution equal to 35 percent of *total design costs*. If the Government projects at any time that the collective value of the Non-Federal Sponsors' contributions under Article II and Article III of the Design Agreement will be less than 35 percent of *total design costs*, the Board and SAFCA shall provide a cash contribution, in accordance with Article III.C. of the Design Agreement, in the amount necessary to meet the non-federal participants' 35 percent share of *total design costs*. SAFCA shall provide 30 percent of the non-federal share of *total design costs*, and the Board shall provide 70 percent of the non-federal share of *total design costs* unless otherwise directed by the State Legislature.

- C. The Board and SAFCA shall not use federal program funds to meet any of the Board's or SAFCA's obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.
- D. The Board or SAFCA may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, the design of *betterments* into the *Project*. Such requests shall be in writing and shall describe the *betterments* to be performed or provided. Upon receipt of such writing, The Board or SAFCA may request the Government to design *betterments* in accordance with Article II.J. of the Design Agreement. The cost for the design of *betterments*, unless otherwise specified by the Board or SAFCA, shall be paid in accordance with the cost share identified above in Paragraph B. The Board and SAFCA shall provide the full amount of funds required to pay for the design of *betterments* in accordance with Section IV of this agreement and Article III.C. of the Design Agreement.
- E. This Agreement shall not be construed as obligating any party to seek funds for, or to participate in, construction or implementation of the *Project* or a separable element thereof or as relieving The Board or SAFCA of any future obligation under the terms of any agreement executed in connection with the *Project* in the future.

### SECTION III - DESIGN COORDINATION TEAM

To provide for consistent and effective communication, the Board and SAFCA, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the *period of design*. The Government's Project Manager and a counterparts named by the Board and SAFCA shall co-chair the Design Coordination Team. The additional provisions of Article II.I. of the Design Agreement regarding the Design Coordination Team shall apply here also.

### SECTION IV - METHOD OF PAYMENT

- A. The Board and SAFCA agree to pay their respective share of the *total design costs* in accordance with Article III. of the Design Agreement. On the effective date of this Agreement, SAFCA's share of the *total design costs* are projected to be \$1,982,066, and the Board's required contribution of the *total design costs* are projected to be \$4,624,819. If these projected amounts are to be increased, such increases shall be subject to the written consent of the Board and SAFCA.
- B. As the design proceeds, The Board and SAFCA, unless otherwise directed by the State Legislature, will attempt to maintain, subject to a final accounting, the 30 percent / 70 percent cost-sharing ratio of expenditures that is required by Section II.B. of this Agreement, in the following manner:

1. **Cash Payments to the Government:** The Board or SAFCA will forward to the Government the cash payments for the non-federal proportionate share of *total design costs* as required by Article III of the Design Agreement. Such payments shall be made by the Board or SAFCA as provided in Section IV. of this Agreement.
2. **Design Costs incurred by the Board or SAFCA:** The Board or SAFCA will provide to the other nonfederal sponsor a summary of actual costs it has incurred for design of the *Project* on a quarterly basis each July, October, January, and April, until the end of the *period of design*. The other nonfederal sponsor will submit itemized invoices bearing the appropriate contract number, no more frequently than monthly in arrears, for its expenditures for design, as determined to be eligible for credit in accordance with the provisions of Article II.C. of the Design Agreement to the addresses provided in Section XIII of this Agreement.
3. **Request for Payment:** Either the Board or SAFCA may make a written request for payment to maintain the 30 percent / 70 percent cost-sharing ratio for costs incurred as described in Paragraph B of this Section.

C. If the Government, The Board or SAFCA fail to make timely payments as required in the Design Agreement and this Agreement, the Agreements will be subject to termination or suspension under the provisions of Article IV. of the Design Agreement.

## SECTION V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. These costs for services of a third party shall not be included as part of *total design costs* defined in Article I of the Design Agreement. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## SECTION VI – INDEMNIFICATION

SAFCA shall hold and save the Government and the Board free from all damages arising from design of the *Project* and design of any additional work pursuant to Section II.D. of this Agreement, except for claims and damages due to the fault or negligence of the Government, the Board, or their contractors.

## SECTION VII - MAINTENANCE OF RECORDS; AUDIT

Within 60 calendar days of the effective date of this Agreement, the Board and SAFCA shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. The Board and SAFCA shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after the *period of design* or completion of *Project* construction, whichever is later, and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement, and by the Government in accordance with Article VII of the Design Agreement.

## SECTION VIII – FINAL ACCOUNTING

The Board and SAFCA, upon completion or termination of design for the *Project*, shall each prepare an accounting of all costs incurred and credits claimed hereunder. This accounting shall be tabulated by the Board and used in reaching a final accounting with the Government and with SAFCA for creditable design costs as set forth in Article III.B. of the Design Agreement.

## SECTION IX – COMPLIANCE WITH STATE AND FEDERAL LAW

In carrying out the provisions of this Agreement, the Board and SAFCA agree to comply with all applicable federal and State laws and regulations, including: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, and Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”.

## SECTION X – TERM OF AGREEMENT; AMENDMENT

The term of this Agreement shall be coextensive with that of the Design Agreement, but the Agreement shall not become effective until approved by the California Department of General Services. This Agreement may be amended only upon consent of all parties and the approval of the California Department of General Services. If the final Design Agreement executed between the Government, the Board, and SAFCA differs from the draft Design Agreement that is attached as Exhibit A hereto, The Board and SAFCA agree to renegotiate those provisions of this Agreement that are affected by any changes in the final Design Agreement. If this project is authorized by the State legislature, the parties acknowledge that the provision of that authorization will be applicable to this agreement and agree to make any necessary amendments to incorporate those provisions.

## SECTION XI – OBLIGATION OF FUTURE APPROPRIATIONS

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by SAFCA or the Legislature of the State of California.

SECTION XII – CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

SECTION XIII - NOTICES

All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the CVPFB:

Executive Officer  
Central Valley Flood Protection Board  
3310 El Camino Avenue, Suite 170  
Sacramento, CA 95821

If to SAFCA:

Executive Director  
Sacramento Area Flood Control Agency  
1007 7th Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814-3407

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

SECTION XIV – SEVERABILITY CLAUSE

If any provision of this Agreement that is held invalid or unenforceable by any court of final jurisdiction it is the intent of the parties that all other provisions of this Agreement can be construed to remain fully valid, enforceable and binding on the parties.

SECTION XV – STANDARD CLAUSES

The special terms and conditions attached hereto as Exhibit A are incorporated by this reference. The general terms and conditions attached hereto as Exhibit B are incorporated by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement,  
as of the day and year first above written.

**THE CENTRAL VALLEY FLOOD  
PROTECTION BOARD OF THE STATE OF  
CALIFORNIA**

Approved for legal form and sufficiency

By: \_\_\_\_\_  
William H. Edgar  
President  
Central Valley Flood Protection Board

\_\_\_\_\_  
Kanwarjit Dua  
Board Counsel  
Central Valley Flood Protection Board

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SACRAMENTO AREA FLOOD CONTROL  
AGENCY, CALIFORNIA**

Approved for legal form and sufficiency

By: \_\_\_\_\_  
Richard M. Johnson  
Executive Director  
Sacramento Area Flood Control Agency

\_\_\_\_\_  
M. Holly Gilchrist  
Agency Counsel  
Sacramento Area Flood Control Agency

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, a joint powers authority of the State of California, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Sacramento Area Flood Control Agency in connection with design of the ring levee system surrounding the Natomas Basin, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Sacramento Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
**M. Holly Gilchrist**  
**Agency Counsel**  
**Sacramento Area Flood Control Agency**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Richard M. Johnson  
Executive Director  
Sacramento Area Flood Control Agency

DATE: \_\_\_\_\_

## **EXHIBIT A –Special Terms and Conditions for Department of Water Resources (Local Project Design Agreement Receivable (LPDA))**

1. WORKER'S COMPENSATION CLAUSE: Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms that it will comply with such provisions before commencing the performance of the work under this contract.
2. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
3. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
4. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
5. AVAILABILITY OF FUNDS: Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
6. AMERICANS WITH DISABILITIES ACT: By signing this contract, Contractor assures the State that it complies with the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
7. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
8. DRUG-FREE WORKPLACE CERTIFICATION: By signing this contract, the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the Contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
    1. The dangers of drug abuse in the workplace,
    2. The person's or organization's policy of maintaining a drug-free workplace,
    3. Any available counseling, rehabilitation and employee assistance programs, and
    4. Penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on the proposed contract or grant:
    1. Will receive a copy of the company's drug-free policy statement, and
    2. Will agree to abide by terms of the company's statement as a condition of employment on the contract or grant.

This contract or grant may be subject to suspension of payments or termination, or both, and the Contractor or grantee may be subject to debarment if the department determines that: (1) the Contractor or grantee has made a false certification, or (2) the Contractor or grantee violates the certification by failing to carry out the requirements noted above.

9. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
10. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
11. POTENTIAL SUBCONTRACTORS: Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
12. SUBCONTRACTING: The Contractor is responsible for any work it subcontracts. Subcontracts must include all applicable terms and conditions of this Agreement. Any subcontractors, outside associates, or consultants required by the Contractor in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified in the bid or agreed to during negotiations for this Agreement, or as are specifically authorized by the Contract Manager during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates or consultants shall be subject to the prior written approval of the Contract Manager. Contractor warrants, represents and agrees that it and its subcontractors, employees and representatives shall at all times comply with all applicable laws, codes, rules and regulations in the performance of this Agreement. Should State determine that the work performed by a subcontractor is substantially unsatisfactory and is not in substantial accordance with the contract terms and conditions, or that the subcontractor is substantially delaying or disrupting the process of work, State may request substitution of the subcontractor.
13. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
14. REPORT RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 12200-12217, et seq. and 12153-12156, et seq. the contractor must complete and return the form DWR 9557, Recycled Content Certification, for each required product to the Department at the conclusion of services specified in this contract. Form DWR 9557 is attached to this Exhibit and made part of this contract by this reference.
15. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: N/A
16. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

17. **TIMELINESS:** Time is of the essence in this Agreement.
18. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
19. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
20. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
  - a. The Government Code Chapter on Antitrust claims contains the following definitions:
    - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
    - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
  - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
  - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery (Government Code Section 4553).
  - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action (Government Code Section 4554).
21. **CHILD SUPPORT COMPLIANCE ACT:** "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance therewith, that:
  - a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
22. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.
23. **PRIORITY HIRING CONSIDERATION:** If this Contractor includes in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

24. UNION ORGANIZING: For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement, Contractor hereby acknowledges the applicability of Government Code Section 6645 through Section 16649 to this agreement and agrees to the following:

- a. Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b. No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- b. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

25. CONTRACTOR COOPERATION DURING INVESTIGATION: Contractor agrees to cooperate fully in any investigation conducted by or for DWR regarding unsatisfactory work or allegedly unlawful conduct by DWR employees or DWR contractors. The word "cooperate" includes but is not limited to, in a timely manner, making Contractor staff available for interview and Contractor records and documents available for review.

26. CONFLICT OF INTEREST:

- a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

(1) Current State Employees: (PCC §10410)

- (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

(2) Former State Employees: (PCC §10411)

- (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- (c) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

- (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

- (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

a. Representational Conflicts of Interest:

The Contractor must disclose to the DWR Program Manager any activities by contractor or subcontractor personnel involving representation of parties, or provision of consultation services to parties, who are adversarial to DWR. DWR may immediately terminate this contract if the contractor fails to disclose the information required by this section. DWR may immediately terminate this contract if any conflicts of interest cannot be reconciled with the performance of services under this contract.

e. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

“Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

f. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

27. ORDER OF PRECEDENCE: In the event of any inconsistency between the terms, specifications, provisions or attachments which constitute this Contract, the following order of precedence shall apply:

- a) The Std. 213;
- b) The Scope of Work;
- c) Any other attachments incorporated in the Contract by reference.

GTC 610

## EXHIBIT B

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)