

Meeting of the Central Valley Flood Protection Board

June 24, 2016

Staff Report

American River Watershed Project, Natomas Basin

Sacramento and Sutter Counties

Project Partnership Agreement and Local Project Partnership Agreement

1.0 ITEM

Consider Central Valley Flood Protection Board (Board) adoption of Resolution 2016-13 (Attachment A) to:

1. Adopt responsible agency California Environmental Quality Act (CEQA) findings and statement of overriding considerations for the American River Watershed Common Features Project / Natomas Post-Authorization Change Report / Natomas Levee Improvement Program, Phase 4B Landside Improvements Project; and
2. Approve the Project Partnership Agreement (PPA) (Attachment B) between the Board, U.S. Army Corps of Engineers (USACE), and Sacramento Area Flood Control Agency (SAFCA) for the construction of the American River Watershed Project, Natomas Basin (Natomas Basin Project) in substantially the form provided; and
3. Approve the Local Project Partnership Agreement (LPPA) (Attachment C) between the Board and SAFCA for the construction of the Natomas Basin Project; and
4. Delegate the Board President to sign the PPA and LPPA; and
5. Direct the Executive Officer to file a Notice of Determination pursuant to CEQA with the State Clearinghouse.

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

The project is located in Sacramento and Sutter counties. The Natomas Basin is bounded by the Natomas Cross Canal (NCC) on the north, Sacramento River on the west, American River on the south, and Pleasant Grove Creek Canal and the Natomas East Main Drainage Canal (NEMDC) on the east.

4.0 PROJECT DESCRIPTION

The Natomas Basin Project will provide flood damage reduction improvements along the NCC, Sacramento River, Lower American River, NEMDC, and Pleasant Grove Creek Canal. Proposed improvements include strengthening or widening levees to reduce the chance of failure due to seepage and levee instability and increase flood conveyance capacity of channels surrounding the basin to 200-year level of protection.

5.0 PROJECT BACKGROUND

Since 2007, the Department of Water Resources (DWR) and SAFCA have been improving levees in the Natomas Basin that have been critical in returning the basin to its previous certified status. The Natomas community has been at great risk of levee failure due to serious seepage and stability concerns for nearly 15 years. A three party PPA is needed among the USACE, Board and SAFCA, and a LPPA is needed between the Board and SAFCA, for the construction of the Natomas Basin Project. SAFCA's Board approved the PPA and LPPA on June 16, 2016. Once implemented, this project will help alleviate flood concerns in the basin due to levee failure. This project, in combination with the NCC, the Sacramento River East Levee, Folsom Dam Modification projects and the North Sacramento Streams (Arcade Creek, Dry Creek and Robla Creek) will provide the Natomas Basin with 200-year level of flood protection.

The Natomas Basin consists of 42 miles of levee, of which 18 miles have been improved through the Natomas Levee Improvement Program (NLIP) under the Early Implementation Program (EIP) projects. DWR and SAFCA have contributed approximately \$400,000,000 toward the levee improvements needed in the basin prior to, and in anticipation of, a federally sponsored project. The non-federal partners are working to secure credits from USACE on NLIP to use on the Natomas Basin Project. USACE and SAFCA estimate the unfinished design and construction work for the remaining 24 miles of levee to cost \$827,100,000. The funding relationship between NLIP - EIP projects and the Natomas Basin Project is illustrated in Figure 1. All of the

work done on the Natomas Basin Project, thus far, has been preconstruction engineering and design work due to anticipation of a PPA. In March 2014, the Federal Government provided its first design funds toward the project. SAFCA entered into the Design Agreement (DA) in May 2014, and provided cost-share funds in June 2014 to initiate those design efforts. In May 2014, the Board also entered into a Local Design Agreement (LDA) with SAFCA to cost-share on the project, but the Board was not a direct non-federal sponsor with USACE.

In June 2014, the Water Resources Reform and Development Act (WRRDA) authorized the Natomas Basin Project with a total project cost of approximately \$1,147,760,000. The scope of the federal authorization includes design and construction of improvements around the entire basin. The new total project cost estimate has increased to \$1,227,100,000. In FY 2015, additional federal funding was appropriated to USACE as part of the President's budget and required a non-federal cost share. DA Amendment #1 added the Board as the primary non-federal partner. DA Amendment #2 in FY2015 and DA Amendment #3 in FY2016 increased the total design costs, scope of design, and funds available. The corollary LDA amendments further clarify the cost increases to the DA and cost shares between the non-federal partners.

Only a small portion of the overall project design was funded under DA Amendment #3 to leverage the additional \$3,500,000 in federal funding recently allocated for the project from the FY 2016 President's Budget. A PPA and LPPA need to be in place for construction to begin and for USACE to continue receiving federal funds for the project improvements. The remaining flood control improvements needed to protect the Natomas Basin are primarily on the southern and eastern boundaries of the basin, but include unfinished work and gaps along the Sacramento River and the NCC (Attachment D). The remaining work in the gaps includes pump stations and bridge crossings at Interstate 5 and Highway 99, with some unfinished seepage cutoff wall work on the NCC. Proposed improvements include strengthening or widening levees to reduce the chance of failure due to seepage and levee instability.

The Natomas Basin Project will provide flood damage reduction improvements along the NCC, Sacramento River, Lower American River, NEMDC, and Pleasant Grove Creek Canal. Once the PPA and LPPA are executed, USACE can begin construction on the remaining 24 miles of levee. The first construction contract is planned to be awarded in December 2016 for Reach I Contract 1 (RIC1), for construction in FY 2017. Both construction and mitigation contracts will be awarded at the same time for RIC1. Reach I is broken up into two contracts, RIC1, for waterside work, and Reach I Contract 2 (RIC2), for landside work, to address issues on each side separately. Each reach will

be designed and constructed separately. Some work may be performed simultaneously, however, dependent on federal capability and funding capacity.

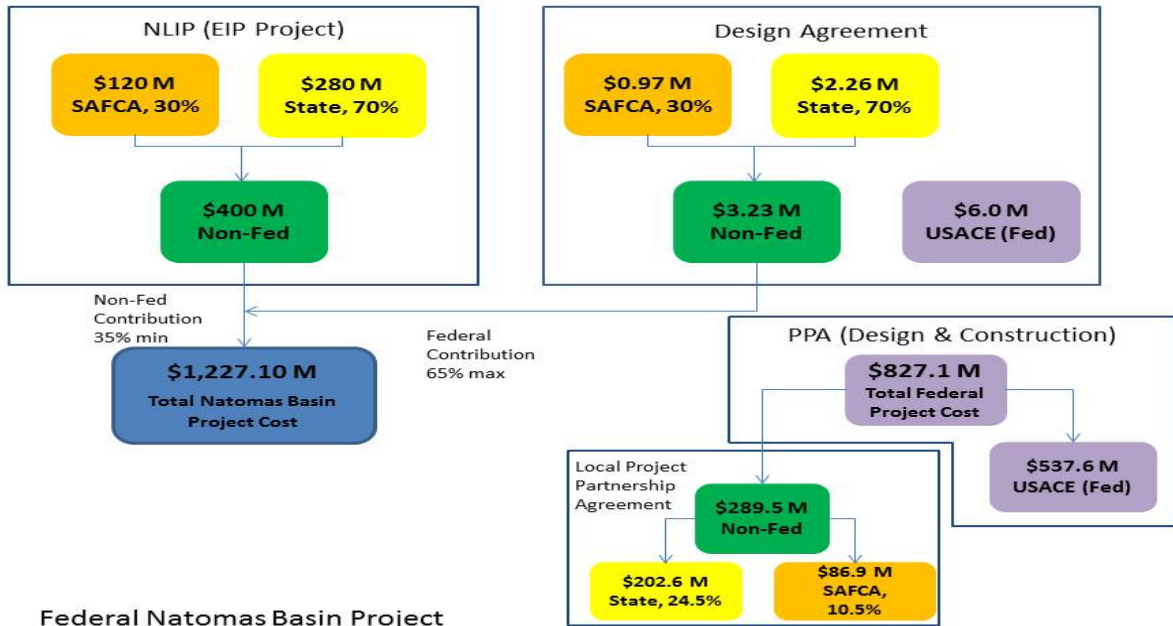


Figure 1: Approximate Funding Relationship between the NLIP-EIP Project and the Federal Natomas Basin Project

6.0 AUTHORITIES

WRRDA 2014

California Water Code 8615, 12657, 12670.12 and 12670.14

7.0 FUNDING STATUS

Funds added via the DA Amendment # 3 were \$5,384,615 and were shared 65% federal (\$3,500,000), and 35% non-federal (\$1,884,615), bringing the total DA funding to \$9,230,770. The State cost-share will be paid from existing Proposition 1E Bond funds, which has \$1.4M funds remaining, and will be subsumed into the overall project when the PPA is in place. The Board previously signed the State support letter for the Natomas Basin Project along with the self-certification of Financial Capability under the PPA (Attachment E).

8.0 ENVIRONMENTAL ANALYSIS

Refer to Resolution 2016-13 (Attachment A) for the Board's CEQA findings.

9.0 PUBLIC INVOLVEMENT

Public involvement has been occurring on the DWR and SAFCA portion of the Natomas levee work since 2006. Many public outreach meetings, environmental scoping meetings, and environmental document comment periods have occurred in the last 8 years in the community. The Board has also held several public meetings, at which flood system alteration permits have been issued to SAFCA to construct State and locally-funded EIP projects along the NCC and Sacramento River in advance of the Natomas Basin Project. Looking forward, more public outreach is planned to inform the public of the construction traffic delays and alternate routes. An updated environmental document is being worked on to discuss any changes to impacts previously analyzed.

10.0 STAFF RECOMMENDATION

Staff recommends that the Board:

Adopt (in substantially the form provided):

- Responsible agency CEQA findings, statements of overriding considerations, and Resolution 2016-13 (Attachment A);

Approve:

- The Project Partnership and Local Project Partnership Agreements;

Delegate:

- The Board President to sign the Agreements; and

Direct the Executive Officer to:

- Prepare and file a Notice of Determination pursuant to CEQA with the State Clearinghouse.

11.0 LIST OF ATTACHMENTS

- A. Resolution 2016-13
- B. PPA Agreement
- C. LPPA Agreement
- D. Site Map
- E. Signed Letter of Support and Self-Certification

Prepared By: Reena Jawanda, PM
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Legal Review: James Herink, Robin Brewer, Laurence Kerckhoff
Board Staff
Reviewers: Deb Biswas, Eric Butler, Andrea Buckley, Jit Dua

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
AMERICAN RIVER WATERSHED
NATOMAS BASIN PROJECT

Project Partnership Agreement and Local Project Partnership Agreement
RESOLUTION 2016-13

WHEREAS, the Central Valley Flood Protection Board (Board, formerly known as the Reclamation Board of the State of California) is the non-federal sponsor and a responsible agency under the California Environmental Quality Act (CEQA) for the American River Watershed Natomas Basin Project, the U.S. Army Corps of Engineers (USACE) is the federal sponsor and Lead Agency under the National Environmental Policy Act (NEPA), and the Sacramento Area Flood Control Agency is the local sponsor and lead agency under CEQA; and

WHEREAS, SAFCA's Natomas Levees Improvement Program Landside Improvements Project ("NLIP Landside Improvements Project") consists of improvements to the levee system in the Natomas Basin and related landscape modifications and drainage and infrastructure improvements to reduce the risk of flooding in a significant portion of the Sacramento metropolitan area, thereby implementing a portion of the flood control program analyzed at the program level in the Environmental Impact Report on Local Funding Mechanisms for Comprehensive Flood Control Improvements for the Sacramento Area (State Clearinghouse No. 2006072098) ("Local Funding EIR"); and

WHEREAS, on May 14, 2014 the Central Valley Flood Protection Board (hereinafter the Board) entered into a Local Design Agreement titled "Local Design Agreement Between the Sacramento Area Flood Control Agency (SAFCA) and the Central Valley Flood Protection Board (Board) for Design of the American River Watershed Project – Natomas Basin" for the provision of cost sharing in the then pending Design Agreement between the Sacramento Area Flood Control Agency (SAFCA) and the U.S. Army Corps of Engineers (USACE) for design of flood control improvements for the Natomas Basin (herein after the Project); and

WHEREAS, on May 19, 2014 the SAFCA entered into a Design Agreement with USACE titled "Design Agreement Between The Department of the Army and the Sacramento Area Flood Control Agency for Design for the American River Watershed Project – Natomas Basin" for the provision of design for the Natomas Basin as defined in Article I.A. of that Agreement; and

WHEREAS, on June 10, 2014 the Water Resources Reform and Development Act authorized the Project including design and construction of flood control improvements for the Natomas Basin with an estimated total project cost of \$1,147,760,000 substantially in accordance with the December 30, 2010 Report of the Chief of Engineers for the Project; and

WHEREAS, USACE has received additional Federal funds for Fiscal Year 2016 for USACE to continue design of the Project; and

WHEREAS, the Board and SAFCA entered into Amendment Number 1 to the Design Agreement and Local Design Agreement on December 17, 2014; and

WHEREAS, SAFCA as lead agency under CEQA, Public Resources Code sections 21000 *et seq.* prepared a joint Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) (State Clearinghouse No. 2009112025, July 2010), Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) (State Clearinghouse No. 2009112025, October 2010) and Mitigation Monitoring and Reporting Program (MMRP) for the NLIP Phase 4b Project (incorporated herein by reference and available at the Board or SAFCA offices); and

WHEREAS, the Phase 4b FEIS/EIR is tiered from the Local Funding EIR and the Natomas Levees Improvement Program Landside Improvements Projects EIR (State Clearinghouse No. 2006072098); and

WHEREAS, the SAFCA Board approved the NLIP Phase 4b Project (SAFCA Resolution 2010-145), the FEIR/EIS, and MMRP, and approved findings and a Statement of Overriding Considerations pursuant to the CEQA Guidelines (incorporated herein by reference), and filed a Notice of Determination with the State Clearinghouse on November 15, 2010; and

WHEREAS, a Record of Decision (ROD) was signed on May 18, 2011, by the USACE Assistant Secretary of the Army; and

WHEREAS, the Board, as a responsible agency pursuant to CEQA, has independently reviewed the analyses in the Phase 4b FEIR/EIS (State Clearinghouse No. 2009112025, October 2010), and Mitigation Monitoring and Reporting Program (MMRP) for the NLIP Phase 4b Landside Improvement Project submitted by SAFCA, and has reached its own conclusions regarding them; and

WHEREAS, USACE, SAFCA and the Board entered into Amendment Number 2 to the Design Agreement and Local Design Agreement on June 26, 2015; and

WHEREAS, USACE, SAFCA and the Board entered into Amendment Number 3 to the Design Agreement and Local Design Agreement on September 25, 2015; and

NOW, THEREFORE, BE IT RESOLVED that the Board:

Findings of Fact.

1. The Board hereby adopts as findings the facts set forth in the Staff Report.
2. The Board has reviewed all Attachments, Exhibits, Figures, and References listed in the Staff Report.

CEQA Findings.

3. The Board, as a responsible agency, has independently reviewed the analyses in the DEIS/EIR (SCH No. 2009112025, July 2010) and the FEIS/EIR (October 2010), which

includes the Mitigation Monitoring and Reporting Program, SAFCA Lead Agency findings and Board Responsible Agency Findings and has reached its own conclusions.

4. The Board, after consideration of the DEIS/EIR (SCH No. 2009091125, July 2010) and the FEIS/EIR (October 2010) on the Natomas Levee Improvement Program (NLIP), Phase 4b Landside Improvements Project, submitted by SAFCA, and the SAFCA Lead Agency findings, has reached its own conclusions, prepared responsible agency findings, adopts the project description, analysis and findings which are relevant to the project.
5. **Findings regarding Significant Impacts.** Pursuant to CEQA Guidelines sections 15096(h) and 15091, the Board determines that the SAFCA findings, incorporated herein by reference, summarize the FEIS/EIR determinations regarding impacts of the NLIP Phase 4b Landside Improvements Project, before and after mitigation. Having reviewed the FEIS/EIR, the SAFCA findings, the Board makes its findings as follows:

a. **Findings Regarding Significant and Unavoidable Impacts.**

The Board finds that the NLIP Phase 4b Landside Improvements Project may have the following significant, unavoidable impacts, as more fully described in the SAFCA findings. Mitigation has been adopted for each of these impacts, although it does not reduce the impacts to less than significant. The impacts and mitigation measures are set forth in more detail in the SAFCA findings.

Agricultural Resources - The project would convert important farmland from agricultural production to nonagricultural uses, as well as temporary and permanent cancellation of lands under Williamson Act contracts.

Land Use - The project would be potentially inconsistent with the Airport Master Plan, Airport Comprehensive Land Use Plan, Airport Wildlife Hazard Management Plans, American River Parkway Plan and Wild and Scenic Rivers Act.

Biological Resources - The project would result in the loss of shaded riverine aquatic habitats and landside and waterside woodland habitats (short-term [10–15 years] would result until replacement plantings mature), as well as impacts on Swainson's hawk and other special-status birds. The project would also result in the disruption to and loss of existing wildlife corridors.

Cultural Resources - The project may result in potential damage or disturbance to known prehistoric resources or previously undiscovered cultural resources, including human remains, from ground-disturbance or other construction-related activities.

Transportation - The project will result in a temporary increase in traffic on local roadways. Residents and businesses would experience temporary disruption due to road closures, detours, construction, and boat launch facility temporary closure.

Air Quality - The project would result in temporary construction related emissions of reactive organic gases, nitrogen oxides, and particulate matter.

Noise - The project would result in generation of temporary, short-term construction noise, exposure of sensitive receptors to excessive groundborne vibration and increased traffic noise from construction and hauling activities.

Recreation - The project would result in both temporary and permanent impacts to a number of public and private recreational facilities adjacent to the project, including the proposed Natomas Levee Class I Bike Trail Project.

Visual Resources - The project would result in the alteration of scenic vistas, scenic resources, and existing visual character of the project area and new sources of light and glare (during construction).

Finding: The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the SAFCA findings, but that each of the above impacts remains significant after mitigation. Such mitigation measures are within the responsibility of another agency (SAFCA), and SAFCA should implement the described mitigation measures. Specific economic, legal, social, technological or other considerations, rendered infeasible mitigation or alternatives that would have reduced these impacts to less than significant.

b. Findings regarding Significant Impacts that can be Reduced to Less Than Significant.

The significant impacts and the mitigation measures to reduce them to less than significant are described in the FEIR and in SAFCA's Resolution No. 2010-145, dated November 12, 2010. This Resolution includes a Statement of Facts, Findings, Impacts and Mitigation Measures, Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. Based on its independent review of the FEIR and SAFCA Resolution No. 2010-145, the Board finds that for each of the significant impacts described, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the FEIR. Moreover, such changes or alterations are within the responsibility and jurisdiction of another public agency (SAFCA) and such changes have been adopted by that agency. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less-than-significant level or avoided by incorporation of these mitigation measures into the project.

As a responsible agency pursuant to CEQA, the Board has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. The Board confirms that it has reviewed the MMRP, and confirmed that SAFCA has adopted and committed to implementation of the measures identified therein. The Board agrees with the analysis in the MMRP and confirms that there are no feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. However, the measures in the MMRP may be modified to accommodate changed circumstances or new information not triggering the need for subsequent or supplemental analysis under CEQA Guidelines sections 15062 or 15063.

6. **Statement of Overriding Considerations.** Pursuant to CEQA Guidelines sections 15096(h) and 15093, the Board has balanced the economic, social, technological and other benefits of the Project described in Permit Application No. 19004, against its significant and unavoidable impacts, listed in paragraph 5(a) above, and finds that the benefits of the Project outweigh these impacts and they may, therefore, be considered “acceptable”.

The Board finds that there is an immediate need to protect the people and property at risk in the project area. The Natomas Basin floodplain is occupied by over 83,000 residents and \$10 billion in damageable property. The area is presently vulnerable to flooding in a less than 100-year flood event along the Sacramento River or American River. The Natomas Basin is a deep floodplain and depending on the circumstances, flood depths in the Natomas Basin could reach life-threatening levels. The disruption in transportation that would result from a major flood would affect the Sacramento International Airport, interstate and state highways, and rail service.

The health and safety benefits of the project, which would significantly reduce the risk of an uncontrolled flood in the Natomas Basin that would result in a catastrophic loss of property and threat to residents of the area, outweigh the remaining unavoidable environmental impacts.

Custodian of Record

The custodian of the CEQA record for the Board is its Executive Officer located at the Board's offices located at 3310 El Camino Avenue, Room 151, Sacramento, California 95821. These documents may be viewed or downloaded from the Board website at <http://cvfpub.ca.gov/meetings/2016/06-24-2016.cfm> on the June 24, 2016 Board meeting page. The documents are also available for review in hard copy at the Board and SAFCA offices.

NOW, THEREFORE, BE IT RESOLVED that the Board:

1. Adopts (in substantial form) responsible agency CEQA findings; statements of overriding considerations, and Resolution 2016-13 for the American River Watershed Common Features Project / Natomas Post-Authorization Change Report / Natomas Levee Improvement Program, Phase 4B Landside Improvements Project.
2. Approves, in substantial form, the Project Partnership Agreement with USACE and SAFCA for the American River Watershed – Natomas Basin Project; and
3. Approves, in substantial form, the Local Project Partnership Agreement with SAFCA for the American River Watershed – Natomas Basin Project; and
4. Delegates the Board President to sign the Agreements; and
5. Directs the Executive Officer to prepare and file a Notice of Determination pursuant to CEQA with the State Clearinghouse.

PASSED AND ADOPTED by vote of the Board on _____, 2015.

By: _____

William Edgar

President

Approved as to Legal Form and Sufficiency:

By: _____

Kanwarjit Dua

Board Counsel

By: _____

Jane Dolan

Secretary

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY,
THE STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD,
AND
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
CONSTRUCTION
OF THE
AMERICAN RIVER WATERSHED PROJECT
NATOMAS BASIN

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the Assistant Secretary of the Army (Civil Works), the State of California Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency, represented by its Executive Director (hereinafter collectively referred to as the “Non-Federal Sponsors”).

WITNESSETH, THAT:

WHEREAS, construction of the American River Watershed Project, Natomas Basin for flood risk management (hereinafter the “*Project*”, as defined in Article I.A. of this Agreement) at the Natomas Basin levees in Sacramento and Sutter Counties, California was authorized by Congress in Section 7002 of the Water Resources Reform and Development Act of 2014 (Pub. L. No. 113-121, § 7002, 128 Stat. 1193, 1366 (2014));

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Partnership Agreement (hereinafter the “Agreement”) for construction of the *Project*;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, the Non-Federal Sponsors do not qualify for a reduction of the non-Federal cost share for flood control pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(m));

WHEREAS, Section 104 of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2214), authorizes the Secretary of the Army to provide for crediting the cost of work carried out by a non-Federal interest against the non-Federal share of the costs of an authorized project for flood control;

WHEREAS, Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), establishes the maximum amount of costs for the *Project* and sets forth procedures for adjusting such maximum amount;

WHEREAS, the Government and a non-Federal interest entered into an agreement, dated May 19, 2014, for engineering and design of the *Project* (hereinafter the “Design Agreement”), under the terms of which the non-Federal interest contributed a portion of the costs for engineering and design;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsors have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsors, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsors through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevents disputes, fosters a cooperative bond between the Government and the Non-Federal Sponsors, and facilitates the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree as follows:

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean Natomas Basin levee improvement construction as generally described in the American River Common Features Project, Natomas Post Authorization Change Report and Interim General Reevaluation Report, dated December 2010 and approved by the Chief of Engineers on December 30, 2010. The term includes the *Section 104 work* described in paragraph M. of this Article.

B. The term “*total project costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s share of Preconstruction Engineering and Design costs pursuant to the terms of the Design Agreement; the value of the contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; the Government’s engineering and design costs during

construction; the Non-Federal Sponsors' and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIII.A. of this Agreement; the Government's costs of historic preservation activities except for data recovery of historic properties; the Government's actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the costs of the *Section 104 work* determined in accordance with Article II.B.5. of this Agreement; the Government's supervision and administration costs; the Government's costs of contract dispute settlements or awards; and the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.G.2. of this Agreement; any costs of dispute resolution under Article VI of this Agreement; or the Non-Federal Sponsors' costs of negotiating this Agreement.

C. The term "*period of construction*" shall mean the time from the date the Government issues the solicitation for the first construction contract for the *Project* or commences construction of the *Project* using the Government's own forces, whichever is earlier, to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XII.C. of this Agreement, whichever is earlier.

D. The term "*financial obligations for construction*" shall mean the financial obligations of the Government and the costs for the *Section 104 work*, as determined by the Government, that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the sum of the costs included in *total project costs* for *Section 104 work*, as determined by the Government, and the Non-Federal Sponsors' total contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement to *financial obligations for construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the *Project* or any report referenced therein. Providing a

functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term “*functional portion of the Project*” shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Sacramento District (hereinafter the “District Engineer”) in writing, although the remainder of the *Project* is not complete.

I. The term “*betterment*” shall mean a difference in the construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element. The term does not include any construction for features not included in the *Project* as defined in paragraph A. of this Article.

J. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

K. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

L. The term “*fiscal year of the Non-Federal Sponsors*” shall mean one year beginning on July 1 and ending on June 30.

M. The term “*Section 104 work*” shall mean the Natomas Levee Improvement Project Phases 1, 2, 3, and 4A, as described in the American River Common Features Project, Natomas Post Authorization Change Report and Interim General Reevaluation Report, dated December 2010 and approved by the Chief of Engineers on December 30, 2010. The term includes the planning, engineering, design, supervision and administration, and other activities associated with such work, but does not include the construction of *betterments* or the provision of lands, easements, and rights-of-way, the performance of *relocations*, or the construction improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with the Section 104 work.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsors, expeditiously shall construct the *Project* (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto) except for the *Section 104 work*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Project* or commence construction of the *Project* using the Government's own forces until the Non-Federal Sponsors have confirmed in writing their willingness to proceed with the *Project*.

2. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsors with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project*, except for the *Section 104 work*, shall be exclusively within the control of the Government.

3. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsors.

B. The Non-Federal Sponsors shall contribute a minimum of 35 percent, but not to exceed 50 percent, of *total project costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsors shall provide a contribution of funds equal to 5 percent of *total project costs* in accordance with Article V.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsors shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

3. The Non-Federal Sponsors shall provide additional funds in accordance with Article V.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsors' required minimum share of 35 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required minimum share: (a) the value of the Non-Federal Sponsors' contributions under paragraph B.1. of this Article and the amount of credit to be afforded for the

Section 104 work pursuant to paragraph B.6. of this Article; (b) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (c) the value of the Non-Federal Sponsors' contributions under paragraph B.2. of this Article, as determined in accordance with Article IV of this Agreement; and (d) the value of the Non-Federal Sponsors' contributions under Article XIII.A. of this Agreement.

4. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsors any contributions in excess of 45 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 45 percent of *total project costs*: (a) the value of the Non-Federal Sponsors' contributions under paragraph B.3. of this Article; (b) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (c) the value of the Non-Federal Sponsors' contributions under paragraph B.2. of this Article, as determined in accordance with Article IV of this Agreement; and (d) the value of the Non-Federal Sponsors' contributions under Article XIII.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non-Federal Sponsors. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for any costs of cleanup and response in accordance with Article XIII.C. of this Agreement.

5. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsors for *Section 104 work*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsors in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *Section 104 work*.

a. *Section 104 work* shall be subject to an on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

b. The Non-Federal Sponsors' costs for *Section 104 work* that may be eligible for inclusion in *total project costs* pursuant to this Agreement shall be subject

to an audit in accordance with Article IX.B. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

c. The Non-Federal Sponsors' costs for *Section 104 work* that may be eligible for inclusion in *total project costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *Section 104 work* was completed and the time the costs are included in *total project costs*.

d. The Government shall not include in *total project costs* any costs for *Section 104 work* paid by the Non-Federal Sponsors using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

6. The Government, in accordance with this paragraph, shall afford credit toward the Non-Federal Sponsors' share of *total project costs* for the costs of the *Section 104 work* determined in accordance with paragraph B.5. of this Article. However, the maximum amount of credit that can be afforded for the *Section 104 work* shall not exceed the least of the following amounts as determined by the Government: 45 percent of *total project costs*; the value of the Non-Federal Sponsors' contributions required under paragraph B.2. and paragraph B.3. of this Article and Article XIII.A. of this Agreement; or the Government's estimate of the costs of the *Section 104 work* if the work had been accomplished by the Government. The credit for the *Section 104 work* shall be afforded in the manner described below.

a. First, the credit shall be afforded toward any additional contribution of funds required by paragraph B.3. of this Article.

b. Secondly, should any unafforded portion of the credit amount remain after credit was afforded pursuant to paragraph B.6.a. of this Article, the Government, subject to the availability of funds and in its sole discretion, may, on behalf of the Non-Federal Sponsors, acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project*, equal in value to such unafforded portion of the credit amount. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for any costs of cleanup and response in accordance with Article XIII.C. of this Agreement.

c. Finally, should any unafforded portion of the credit amount remain after credit was afforded pursuant to paragraph B.6.a. of this Article and the

Government, in its sole discretion, acquired, performed, or constructed any remaining *Project* lands, easements, rights-of-way, *relocations*, or improvements pursuant to paragraph B.6.b. of this Article, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsors an amount equal in value to such unafforded portion of the credit amount.

7. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to reimbursement of any costs of *Section 104 work* determined in accordance with paragraph B.5. of this Article and included in *total project costs* that exceed the amount of credit afforded for the *Section 104 work* determined in accordance with paragraph B.6. of this Article.

C. When the District Engineer determines that the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsors in writing and furnish the Non-Federal Sponsors with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the “OMRR&R Manual”) or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsors a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsors with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsors, and the Government and the Non-Federal Sponsors shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government’s Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsors.

D. Upon notification from the District Engineer in accordance with paragraph C. of this Article, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VIII of this Agreement.

E. Upon conclusion of the *period of construction*, the Government shall conduct an accounting, in accordance with Article V.C. of this Agreement, and furnish the results to the Non-Federal Sponsors.

F. The Non-Federal Sponsors shall not use *Federal program funds* to meet any of their 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*.

G. The Non-Federal Sponsors may request the Government to perform or provide, on behalf of the Non-Federal Sponsors, one or more of the services (hereinafter the “additional work”) described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article V.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for any costs of cleanup and response in accordance with Article XIII.C. of this Agreement.

2. Inclusion of *betterments* in the construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

H. Not less than once each year the Non-Federal Sponsors shall inform affected interests of the extent of protection afforded by the *Project*.

I. The Non-Federal Sponsors agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.

J. The Non-Federal Sponsors shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *Project*. The Non-Federal Sponsors shall provide an information copy of the plan to the Government upon its preparation.

K. The Non-Federal Sponsors shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the *Project*.

L. The Non-Federal Sponsors shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the *Project* affords, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

M. In addition to the ongoing, regular discussions of the parties in the delivery of the *Project*, the Government and the Non-Federal Sponsors may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared but shall be included in calculating the maximum cost of the *Project* pursuant to Article XVIII of this Agreement. The Non-Federal Sponsors' costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

N. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in design and construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effects of construction are determined adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, the Government and Non-Federal Sponsors shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including

maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsors must provide, in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsors must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsors shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsors are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion

of the *Project* using the Government's own forces, the Non-Federal Sponsors shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall provide all improvements set forth in such descriptions.

D. The Non-Federal Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsors' share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsors must provide pursuant to Article III.A. of this Agreement; for the value of the *relocations* that the Non-Federal Sponsors must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsors must provide pursuant to Article III.C. of this Agreement. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

B. The Non-Federal Sponsors in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total*

project costs and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsors provide the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement that are required for the *Section 104 work*, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsors awarded the first construction contract for the *Section 104 work*, or, if the Non-Federal Sponsors performed the construction with their own forces, the date that the Non-Federal Sponsors began construction of the *Section 104 work*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsors shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors and the Government. The Non-Federal Sponsors shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsors provide the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsors' appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' appraisal, the Non-Federal Sponsors may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsors' second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' second appraisal, the Non-Federal Sponsors chooses not to obtain a second appraisal, or the Non-Federal Sponsors do not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsors. In the event the Non-Federal Sponsors do not

approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsors, shall consider the Government's and the Non-Federal Sponsors' appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsors for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsors, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors, prior to instituting such proceedings, shall submit to the Government notification in writing of their intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsors shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsors shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal Sponsors shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsors cannot agree as to an appropriate amount, then the Non-Federal Sponsors may use the amount set forth in their appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction,

operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsors within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsors for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsors in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsors must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsors, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of California Central Valley Flood Protection Board would

apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with their obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsors pursuant to Article II.G.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsors in accordance with Article V.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsors in accordance with the terms and conditions agreed upon in writing pursuant to Article II.G.1. of this Agreement subject to an audit in accordance

with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

ARTICLE V - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsors current projections of costs, financial obligations, contributions provided by the parties, and the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement, the costs included in *total project costs* for the *Section 104 work* determined in accordance with Article II.B.5. of this Agreement, and the credit to be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$1,227,100,000; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$392,591,000; the value of the Non-Federal Sponsors' contributions under Article XIII.A. of this Agreement is projected to be \$0; the Non-Federal Sponsors' contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement is projected to be \$61,355,000; the *non-Federal proportionate share* is projected to be 42.4 percent; the costs included in *total project costs* for the *Section 104 work* determined in accordance with Article II.B.5. of this Agreement are projected to be \$292,744,000; the credit to be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement is projected to be \$292,744,000; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsors' contribution of funds for such costs required by Article II.G. of this Agreement are projected to be \$0. These amounts and percentage 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.

2. By April 1 of each year and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; the value of the Non-Federal Sponsors' contributions under Article XIII.A. of this Agreement; the Non-Federal Sponsors' total contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement; the *non-Federal proportionate share*; the total contribution of funds required

from the Non-Federal Sponsors for the upcoming *fiscal year*; the maximum amount determined in accordance with Article XVIII of this Agreement; the costs included in *total project costs* for the *Section 104 work* determined in accordance with Article II.B.5. of this Agreement; the credit to be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsors' contribution of funds for such costs required by Article II.G. of this Agreement.

B. The Non-Federal Sponsors shall provide the contributions of funds required by Article II.B.1. and Article II.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *Project* or commencement of construction of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement and any credit the Government projects will be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement, to meet: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; and (b) the projected *non-Federal proportionate share of financial obligations for construction* to be incurred in the first quarter; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected *non-Federal proportionate share of financial obligations for construction* through the first quarter. Not later than such scheduled date, the Non-Federal Sponsors shall provide the Government with the full amount of such 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 presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of the *Project* is complete, the Government shall notify the Non-Federal Sponsors in writing of the funds the Government determines to be required from the Non-Federal Sponsors, and the Non-Federal Sponsors shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make *financial obligations for construction* of the *Project*, the Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsors, after

consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement and any credit the Government projects will be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* for that quarter for such continuing contract. No later than 30 calendar days prior to the beginning of that quarter, the Non-Federal Sponsors shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract for the *Project* where the Government will not use a continuing contract to make *financial obligations for construction*, the Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement and any credit the Government projects will be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsors shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make *financial obligations for construction* of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement and any credit the Government projects will be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement, to meet: the projected *non-Federal proportionate share of financial obligations for construction* using the Government's own forces for that quarter. No later than 30 calendar days prior to the beginning of that quarter, the Non-Federal Sponsors shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary, after consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement and any credit the Government projects will be afforded for the *Section 104 work* pursuant to Article II.B.6. of this Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; and (b) the *non-Federal proportionate share of financial obligations for construction* as *financial obligations for construction* are incurred. If at any time the Government determines that additional funds will be

needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' share of such financial obligations in the current quarter, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required. Within 45 calendar days from receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsors' total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsors' total contributions provided thereto, the Non-Federal Sponsors, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Sacramento District EROC L2" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsors for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsors' total required shares thereof, the Government, subject to the availability of funds, shall refund or reimburse the excess amount to the Non-Federal Sponsors within 90 calendar days of the date of completion of such accounting. However, the Non-Federal Sponsors shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.B.1. of this Agreement. In the event the Non-Federal Sponsors are due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsors shall provide the contribution of funds required by Article II.G. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsors to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsors shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsors must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsors with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsors' contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsors for such additional work, the Non-Federal Sponsors, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Sacramento District EROC L2" to the District

Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsors for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsors within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsors are due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund.

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 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. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.C. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsors, pursuant to Article II.D. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsors shall conduct their operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal laws as provided in Article X of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsors for any reason are failing to perform their obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsors. If, after

30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsors continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsors of responsibility to meet the Non-Federal Sponsors' obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE VIII – HOLD AND SAVE

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - 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 *Project*. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in *total project costs*, but shall be included in calculating the maximum cost of the *Project* pursuant to Article XVIII of this Agreement.

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 X - FEDERAL LAWS

In carrying out their obligations under this Agreement, the Non-Federal Sponsors shall comply with all requirements of applicable Federal laws and implementing

regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (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); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto; and 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act).

ARTICLE XI - RELATIONSHIP OF PARTIES

A. 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.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the *Project* 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. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsors in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsors in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation

in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsors elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsors determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsors agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsors on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsors to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsors reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsors provide funds necessary to pay for cleanup and response costs and otherwise discharges their responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsors in accordance with Article II.B.1., Article II.B.3., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsors 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 XIII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsors shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsors determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and

rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsors for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsors and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsors should proceed.

C. The Government and the Non-Federal Sponsors shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsors do not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the

Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsors and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIV - 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 sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsors:

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

and

Sacramento Area Flood Control Agency
Executive Director, Sacramento Area Flood Control Agency
1007 7th Street, 7th 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 address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XV - 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 XVI - 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 XVII - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsors, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XVIII - SECTION 902 MAXIMUM COST OF PROJECT

The Non-Federal Sponsors understand that Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280) establishes the maximum amount of *total project costs* for the *Project*. On the effective date of this Agreement, the maximum amount of *total project costs* for the *Project* is estimated to be \$1,227,100,000, as calculated in accordance with Engineer Regulation 1105-2-100, using October 1, 2013 price levels and including allowances for projected future inflation. The Government shall adjust such maximum amount of *total project costs* for the *Project*, in

accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), when necessary.

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

DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA CENTRAL
VALLEY FLOOD PROTECTION BOARD

BY: _____
Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

BY: _____
William Edgar
President, Central Valley
Flood Protection Board

DATE: _____

DATE: _____

THE SACRAMENTO AREA FLOOD
CONTROL AGENCY

BY: _____
Richard M. Johnson
Executive Director, Sacramento
Area Flood Control Agency

DATE: _____

CERTIFICATE OF AUTHORITY

I, Robin Brewer, do hereby certify that I am the principal legal officer of The State of California's Central Valley Flood Protection Board, that The State of California's 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 Project, Natomas Basin, 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 the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of The State of California's 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____.

Robin Brewer
Assistant Chief Counsel, Office of the Chief Counsel,
California Department of Water Resources

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's Central Valley Flood Protection Board, 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 Project, Natomas Basin, 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 the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 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,
The 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 Edgar
President
Central Valley Flood Protection Board

DATE: _____

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(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.

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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
The Sacramento Area Flood Control Agency

DATE: _____

**LOCAL PROJECT PARTNERSHIP
AGREEMENT
BETWEEN THE STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION
BOARD
AND
THE SACRAMENTO AREA FLOOD CONTROL
AGENCY FOR THE
AMERICAN RIVER WATERSHED PROJECT,
NATOMAS BASIN**

This Agreement is entered into by and between the Central Valley Flood Protection Board of the State of California, hereinafter referred to as the "Board," and the Sacramento Area Flood Control Agency, hereinafter referred to as "SAFCA," on the ____ day of _____, 2016 in view of the following circumstances:

WHEREAS, construction of the American River Watershed Project, Natomas Basin for flood risk management (hereinafter the "Project") as described in the Post-Authorization Change Report and Interim General Reevaluation Report, American River Watershed Common Features Project, Natomas Basin, Sacramento and Sutter Counties, California, dated October 2010 and approved by the U.S. Army Corps of Engineers Chief of Engineers on December 30, 2010, was authorized by Section 7002 of the Water Resources Reform and Development Act of 2014 (Public Law 113 -121);

WHEREAS, on June 16, 2008 the California Department of Water Resources (DWR) and SAFCA entered into a Funding Agreement for the Natomas Cross Canal South Levee and on May 1, 2009 the State and SAFCA entered in to a Funding Agreement for the Natomas Levee Improvement Program which agreements were funded under the State-Federal Flood Control System Modification Program (Early Implementation Program) (Funding Agreements);

WHEREAS, pursuant to these Funding Agreements, SAFCA and the DWR designed, acquired property and constructed portions of the Project and agreed to proportionally share in any federal credits afforded by the Government for such design, acquisition of property and construction;

WHEREAS, Water Code Sections 8617, 12657 and 12670.14 authorize the State of California (hereinafter the "State") acting through the Board, to cooperate on the Project, and authorize the Board to give satisfactory assurances to the United States Department of the Army (hereinafter the "Government") that the required local cooperation will be furnished by the State in connection with the Project;

WHEREAS, Water Code Section 12670.14 authorizes SAFCA to join the Board in providing the Government with assurances of nonfederal cooperation in connection with the

Project;

WHEREAS, the Board intends to serve as the nonfederal sponsor of the Project on the condition that SAFCA provides the Board with the assurances that are specified in this Agreement and required under Water Code Sections 12657 and 12670.14;

WHEREAS, the Board's and SAFCA's obligations as nonfederal sponsors of the Project are set forth in the Project Partnership Agreement (hereinafter the "PPA") to be executed for the Project between the Board, SAFCA, and the Government. A draft of the PPA is attached as Exhibit A and incorporated by this reference.

WHEREAS, the Project is within SAFCA's geographical jurisdiction;

WHEREAS, the Board and SAFCA have the power and authority to do all things required of the nonfederal participants for the Project;

NOW, THEREFORE, IT IS HEREBY AGREED:

SECTION I: Definitions

The terms defined in Article I of the PPA shall have the equivalent meaning in this Agreement.

SECTION II: Obligations of the Board and SAFCA

- A. The Board and SAFCA will act as nonfederal sponsor of the Project and will provide the assurances of nonfederal cooperation required by the Government for the Project.
- B. Sites where Project work will be performed are shown on the Site Map, Exhibit B, which is attached hereto and incorporated by this reference. Sites may be modified or added during the course of performance of this Agreement without amendment of this Agreement.
- C. As authorized by Water Code Section 12670.12, the Board shall pay 70 percent of the following Project costs in accordance with the terms and conditions set forth in the PPA: the nonfederal capital costs required by Section 103(a) of Public Law 99-662; the nonfederal planning, engineering and construction costs required by Section 105(b) and the nonfederal design costs required by Section 105(c) of PL 99-662, and as may be reduced by credits afforded by the Government for Section 104 work as set forth in the PPA.
- D. The Board and SAFCA shall furnish to the Government, according to the terms and conditions of Article III of the PPA, those lands, easements, rights of way,

and relocations determined by the Government to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project.

- E. The Board shall pay the entire cost of betterments requested solely by the Board. Plans and specifications for betterments may be prepared by Board and approved by SAFCA. Upon such approval, the Board may request the Government to accomplish betterments in accordance with Article II.G of the PPA. The Board shall provide all lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas and perform relocations associated with such betterments in accordance with Section II of this Agreement. The Board will establish a cost accounting system that will separately identify and document all costs attributable to such betterments and will provide the Government with the full amount of funds required to pay for betterments in accordance with Section IV of this Agreement and Article VI.D of the PPA.
- F. SAFCA shall:
1. Pay 30 percent of the following Project costs: the nonfederal capital costs required by Section 103(a) of PL 99-662; and as may be reduced by credits afforded by the Government for Section 104 work as set forth in the PPA. If the total nonfederal contribution exceeds 50 percent of total Project costs and the Board receives a refund from the Government in accordance with Article VI.D.3 of the PPA, a fractional portion of this refund, in proportion to the amount paid by the Board and SAFCA to the Government, shall be returned by the Board to SAFCA;
 2. Operate, maintain, repair, replace, and rehabilitate, or cause to be operated, maintained, repaired, replaced and rehabilitated, by its own forces or pursuant to contract, the facilities and related features constructed pursuant to the Project at no cost to the State in accordance with the regulations or directions prescribed by the Secretary of the Army and the Board;
 3. Hold and save the Government free from all claims and damages arising from the construction, operation, maintenance, repair, replacement, or rehabilitation of the Project, except for claims and damages due to the fault or negligence of the Government or its contractors without exception;
 4. Hold, defend, indemnify and save the State and the Board, their officers, agents, and employees, and successors or assigns, to the extent required by State law, free and harmless from any and all claims or damages arising out of or in connection with the obligations herein assumed by SAFCA, including any responsibility for claims or damages arising out of work performed by the Government for which the State or the Board may be held liable under the

terms of the PPA, except for claims or damages due to the fault or negligence of the Government or its contractors or the State, Board or its contractors. SAFCA agrees that it will levy and collect assessments or user charges as may be necessary and permissible under State law to satisfy its obligations to the State and the Board as required by this Agreement; and

5. Pay the entire cost of betterments requested solely by SAFCA. Plans and specifications for betterments may be prepared by SAFCA and approved by the Board. Upon such approval, SAFCA may request the Government to accomplish betterments in accordance with Article II.G of the PPA. SAFCA shall provide all lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas and perform relocations associated with such betterments in accordance with Section II of this Agreement. SAFCA will establish a cost accounting system that will separately identify and document all costs attributable to such betterments and will provide the Government with the full amount of funds required to pay for betterments in accordance with Section IV of this Agreement and Article VI.D of the PPA.
- G. To the extent of its powers, SAFCA agrees to participate in and comply with applicable federal floodplain management and flood insurance programs.
- H. In order to facilitate nonfederal participation in the Project, the Board and SAFCA agree that the following actions and/or decisions shall be made only upon mutual consent of both the Board and SAFCA:
 1. The issuance of a letter to the Government indicating that the nonfederal sponsor is willing to proceed with the Project (PPA Article II.A.I);
 2. The decision as to the maximum cumulative financial obligation for construction of the Project (PPA Article XVIII);
 3. The decision to request betterments (PPA Article II.G), provided that the party requesting the betterments will be solely responsible for any additional cost associated with such betterments; and
 4. The appointment of representatives to the Project Coordination Team (PPA Article II.M.)
- I. Subject to the Board's authority in Water Code Section 8710, SAFCA shall prescribe and enforce, to the extent of its powers, regulations preventing obstruction of or encroachment on Project works that would reduce the level of protection afforded or hinder operation, maintenance, repair, replacement, and rehabilitation.
- J. The development and implementation of a betterment that is required to meet the Urban

Level of Flood Protection shall be cost shared as between the Board and SAFCA as if it were a necessary Project component.

SECTION III: Acquisition of Project Rights of Way

- A. Subject to the limitations of Paragraph III K of this Agreement, SAFCA or its contractors may acquire the lands, easements, rights of way (including those required for relocations, borrow material, and/or excavated material disposal) and perform relocations that are necessary for the Project, as determined by the Government, within its area of jurisdiction or within the Project's geographic limits ("Project rights of way"). If SAFCA or its contractors provide Project rights of way, it will furnish the personnel, services, and materials necessary to accomplish the following tasks:
1. Final surveying and preparation of legal descriptions of the parcels that are to be acquired for Project rights of way, hereinafter referred to as "all parcels, in compliance to State Standards."
 2. Preparation of deeds and contracts for all parcels, in compliance to State Standards.
 3. Appraisal of all parcels, in compliance to State Standards.
 4. Examination of title to all parcels, including the obtaining of litigation guarantees and/or preliminary reports on title and final policies of title insurance.
 5. Acquisition of all parcels by deed and contract and/or condemnation by a date which shall be specified by the Board. For parcels being acquired by condemnation, an Order of Possession shall be deemed "acquisition" for purposes of meeting the above date.
 6. Relocation of public utilities, private utilities, and other facilities, as required by the Project, which will not be included in the Government's Project construction contract(s).
 7. Providing relocation assistance for qualified occupants of acquired property, as required by State and federal statutes, rules, and regulations.
 8. Phase I and Phase 2 Environmental Site Assessment Reports to determine the existence and potential presence of hazardous and toxic waste materials.

- B. The Board shall provide SAFCA with appraisal guidelines, appraisal format, geodetic guidelines and standards, sample copies of right-of-way contracts and deed language to be used for acquisition activities. All such activities shall conform to the State's established procedures for land acquisition.
- C. Record Title to all parcels acquired for the Project's operation and maintenance purposes, other than mitigation lands, that are not vested in the Federal Government will be ultimately be vested in the Sacramento and San Joaquin Drainage District. The Board shall ensure that SAFCA is able to maintain the Project by its own forces or pursuant to contract, by, as needed, either granting an easement for operation and maintenance to SAFCA or entering into a joint-use agreement with SAFCA. Any such agreement shall be executed no later than six months after all required real property interests for the Project have been acquired.
- D. If SAFCA or its contractors provide Project rights of way, SAFCA acknowledges that pursuant to Article II of the PPA, the Board and SAFCA are obligated to certify to the Government that Project rights of way have been acquired. The date by which certification will be required will be set by the Government after the PPA and this Agreement have been executed. SAFCA agrees to use its best efforts to provide, by no later than 30 days before the date on which certification to the Government is required, a certification to the Board specifying that: (a) SAFCA holds sufficient legal rights to allow Project construction to proceed in the form of fully executed deeds or Superior Court orders for immediate possession; and (b) that the Board, the Government, and their contractor's agents are permitted to utilize those legal rights for the purpose of constructing the Project.
- E. The actual reasonable costs of Project rights of way incurred by SAFCA and its contractors, and their reasonable costs of performance, as defined in this paragraph, shall be eligible for credit toward SAFCA's portion of the nonfederal share of total Project costs. The method of calculating that credit is set forth in Section IV of this Agreement. For purposes of this Agreement, the term "costs of performance" shall include: fees and expenses payable to SAFCA's contractors pursuant to their contracts; reasonable court costs and attorney's fees incurred in pursuing the acquisition of Project rights of way; title insurance company escrow fees and premiums for title insurance preliminary reports, policies, and litigation guarantees; and engineering fees and other incidental expenses and costs properly attributable to the acquisition of Project rights of way.
- F. SAFCA shall (1) keep Board staff apprised of its right-of-way acquisition activities and the activities of its contractors, (2) consult with Board staff on matters concerning compliance with State and federal acquisition rules and regulations, and (3) provide complete access as requested to its records relating to such right-of-way acquisition. SAFCA shall provide to Board staff a

copy of all litigation guarantees, preliminary title reports and policies of title insurance reasonably promptly following receipt thereof.

- I. If SAFCA is using a contractor to acquire Project rights of way, the contractor's performance shall be subject to review by the Board. If in the opinion of the Board the contractor's performance is not sufficient to allow SAFCA to comply with the terms of this Agreement, then after the Board has consulted with SAFCA regarding its opinion, the Board may request SAFCA to terminate the contractor pursuant to the terms of SAFCA's contract with the contractor.
- J. Before SAFCA or its contractor makes a written offer to an owner, SAFCA shall provide to the Board for review and approval the appraisal, proposed right-of-way contract, and deed for each parcel. The Board's review shall be accomplished and the results reported to SAFCA reasonably promptly following receipt of those documents, and in no event later than 60 days following receipt. If no results are reported within 60 days, SAFCA may proceed to make a written offer, which offer shall be deemed approved by the Board. Before the close of escrow for any parcel, SAFCA shall provide to the Board the memorandum of settlement and either a litigation guarantee or a preliminary title report. The Department of General Services will review and approve each individual acquisition before the close of escrow, except as provided in Department of General Services' Exemption No. 34.3, dated October 1, 1991, and any revisions thereto.
- K. SAFCA may elect to purchase lands, easements, and rights of way prior to precise definition of those required for the Project. In accordance with Article IV of the PPA, the Board will provide SAFCA with credits toward the share of total Project costs for the fair market value of Project rights of way. SAFCA will be credited only for the State's share of required Project rights of way determined to be eligible for credit under the terms of the PPA. For these reasons, payment to SAFCA for any lands, easements, or rights of way purchased, and relocations made prior to execution of the PPA, and/or prior to final determination by the Government of the extent of real property interests necessary for the Project, is subject to adjustment during the final accounting of nonfederal costs shared between the Board and SAFCA. No credit shall be given for lands, easements, and rights of way that, as determined by the Government, were previously obtained for purposes of a prior project built in cooperation with the Government. Any costs associated with the purchase of land, easement, rights of way, and relocations in excess of the minimum required acreage required by the Government shall not be eligible for reimbursement by the State unless the State is afforded credit or reimbursed by the Government. For lands, easements, and rights of way that were acquired not more than five years prior to the date on which the PPA will be signed, the credit provided hereunder shall include the incidental costs of acquiring the lands, easements, and rights of way.

- L. Pursuant to Government Code Section 895.4, SAFCA shall defend, indemnify, and hold the Board harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SAFCA, its officers, agents, and employees under or in connection with any work, authority, or jurisdiction delegated to SAFCA under this Section.

SECTION IV: Method of Payment

- A. The following table is appended hereto as Exhibit C and made a part of this Agreement by this reference: Allocation Table for American River Watershed Project (Natomas Basin) at Natomas, California.
- B. The Board and SAFCA will establish a cost accounting system that will separately identify and document all nonfederal costs attributed to the Project.
- C. The amounts contained in Exhibit C are estimates and may change as the design of the Project, the acquisition of rights of way, and construction proceed. The parties agree to make payments during the course of this Project, not to exceed the amounts shown on those tables, unless this Agreement is amended in accordance with Section XII of this Agreement. After all contracts awarded by the Government have been completed or terminated and claims settled, a final allocation of the total Project costs will be performed based on the actual costs of the Project.
- D. The Parties agree to pay their respective share of Project costs in accordance with Article V "Method of Payment" of the PPA, and in accordance with Exhibit D, Budget Detail and Payment Provision, attached hereto and incorporated by this reference. No federal funds may be used to meet the nonfederal share of costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the federal granting agency.
- E. As the Project proceeds, the Board will attempt to maintain, subject to a final accounting, the 70/30 percent (Board/SAFCA) cost-sharing ratio of expenditures that is required by Sections II.C and II.G.I of this Agreement, in the following manner:
 - 1. Cash Payments to the Corps of Engineers - The Board will forward to the Corps of Engineers the cash payments for the nonfederal share of costs of construction contracts as required by Article VI "Method of Payment" of the PPA, and in accordance with Exhibit D. Upon written request by the Board, SAFCA will pay the Board 30 percent of the nonfederal share of costs for its portion of the payment on the same schedule as the Board is required to make payments to the Corps. SAFCA shall provide its share of construction costs within 30 days after receipt of payment notice. SAFCA is to inform the Board if it cannot pay its share of costs and provide Board with a schedule of when it is able to do so no more than 120 days after receipt of the payment

notice.

2. Project Costs incurred by SAFCA – SAFCA will submit itemized invoices bearing the Agreement Number xx/xx, in triplicate, no more frequently than monthly in arrears, for its Project costs to the Central Valley Flood Protection Board addressed as follows:

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

If SAFCA becomes an acquiring agency for Project rights of way, then the Board will pay SAFCA 70 percent of the expenditures for lands, easements, rights of way, and relocations as determined to be eligible for credit under Project requirements in accordance with the provisions of Article IV of the PPA. Any costs associated with the purchase of land, easement, rights of way, and relocations in excess of the minimum required acreage required by the Government shall not be eligible for reimbursement by the State unless the State is afforded credit or reimbursed by the Government.

SAFCA will provide to the Board a summary of actual costs it has incurred for the Project on a quarterly basis each July, October, January, and April, until Project completion. The summary shall separate costs as follows: (1) cash payments, (2) relocation payments included in Corps construction contracts, (3) land costs, and (4) relocations performed by SAFCA as requested by the Government.

3. Project Costs incurred by the Board - Upon written request, SAFCA will pay to the Board 30 percent of the Board's expenditures for lands, easements, rights of way, and relocations for its reach of the Project as determined to be eligible for credit under Project requirements in accordance with the provisions of Article IV of the PPA. SAFCA shall provide its cost share within 30 days after receipt of payment notice. SAFCA is to inform the Board if it cannot pay its share of costs and provide Board with a schedule of when it is able to do so, no more than 120 days after receipt of the payment notice.

- F. The Board and SAFCA share a common goal of maximizing the flexibility with which payments may be made pursuant to this Agreement. The parties intend to cooperate in Project funding based on appropriations available to them. In order that the Project is not delayed due to one party's funding constraints, any party may fund all or any percentage of the items above during the course of the

Project, provided that the overall cost-sharing obligation is met, and with the understanding that payments made in excess of a party's obligation will be subject to reimbursement. Any reimbursement by the State shall be made only upon specific appropriation by the Legislature.

- G. The estimated nonfederal cash contribution by federal fiscal year is shown on the table in Exhibit C. In the event that SAFCA's cash contribution exceeds the State's reimbursement authority in any given year, SAFCA may make payments directly to the Government to meet the required cash contribution in accordance with Article V.B of the PPA.
- H. If the Government, State, or SAFCA fail to make timely payments as required in the PPA, this Agreement will be subject to Termination or Suspension under the provisions of Article XII.A and XII.B of the PPA.

SECTION V: Operation and Maintenance of the Environmental Mitigation Site

Compensation for all significant adverse environmental habitat impacts resulting from Project construction may be performed by establishing one or more environmental mitigation sites. In the event a mitigation site is required, it will be considered to be a functional unit of the Project. The Government's contractor shall construct the mitigation site as directed by the Government to meet the mitigation requirements approved for the Project by the Board and SAFCA and the Government. In that event, the Government's contractor shall perform maintenance, which includes irrigation, weed control, and plant replacement, for the three-year plant establishment period prior to acceptance of the work by the Government. When the three-year period has elapsed, the Government shall turn the mitigation site over to the Board for maintenance, if the site has been established

In the event that a mitigation site is required and after satisfactory completion of the three year establishment period by the Government's Contractor and acceptance by the Government, SAFCA will perform or cause to be performed the post establishment operation, maintenance, repair, replacement, and rehabilitation of the mitigation site and will bear the entire cost of these obligations. The specific work necessary to operate, maintain, repair, replace, and rehabilitate the mitigation site will be specified by the Board in accordance with the permits and other regulatory approvals issued for the Project.

SECTION VI: Disputes

Before either party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties. Any costs of dispute resolution shall be shared evenly by the parties. The existence of a dispute shall not excuse the parties from performance pursuant to the Agreement.

SECTION VII: Maintenance of Records; Audit

Within 60 days of the date of this Agreement, the Board and SAFCA shall develop procedures for keeping books, records, documents and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Project costs. The Board and SAFCA shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of Project construction and right of way acquisition 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. Pursuant to California Government Code Section 8546.7, the parties shall be subject to the examination and audit by the State Auditor for the State of California for a period of three years after final payment under this Agreement.

SECTION VIII: Final Accounting

The Board and SAFCA, upon completion or termination of 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 Project costs.

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 Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 55000.11, issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations; and Army Regulations 600-7, entitled "Non-Discrimination on the Basis of Handicapped in Programs and Activities Assisted or Conducted by the Department of the Army." In acquiring Project rights of way, the Board and SAFCA shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in Title 49, Part 24 of the Code of Federal Regulations, and shall inform all affected persons of applicable

benefits, policies, and procedures in connection with said Acts.

SECTION X: Obligation of Future Appropriations

- A. Nothing in this Agreement shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State.
- B. SAFCA intends to satisfy its obligations under this Agreement. SAFCA shall include in its budget requests or otherwise propose funding for each year, and will use all reasonable and lawful means to secure the appropriations for that year, sufficient to make the payments necessary to fulfill its obligations hereunder. SAFCA reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, SAFCA shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if SAFCA is unable to satisfy its obligations hereunder, the State may exercise any legal rights it has to protect the State's interests related to this Agreement.
- C. In the event that the State is unable to secure the appropriations for any year sufficient to make the payments necessary to fulfill the State's obligations hereunder, SAFCA shall use its best efforts to satisfy any requirements for payments that are the obligation of the State under this Agreement from any source of funds legally available for this purpose until such time as State funding is appropriated. Funds so advanced by SAFCA shall be reimbursed by the State or reflected in future cost share payment requests.

SECTION XI: Hazardous Substances

Pursuant to Article XIII of the PPA, the Board and SAFCA may incur certain obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601-9675, on lands necessary for Project construction. SAFCA agrees that:

- D. In the event that the Government pursuant to Article XIII of the PPA, determines that it will initiate or continue with construction of the Project at any site necessary for Project construction, operation, or maintenance at which hazardous substances regulated under CERCLA have been found, then, at the direction of the Board staff and after consultation with SAFCA, SAFCA shall initiate and complete any and all necessary response and cleanup activity required under CERCLA, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA shall be made by SAFCA. In the

event that SAFCA fails to provide the funds necessary for response and cleanup activity required under CERCLA or to otherwise discharge SAFCA's responsibilities under this paragraph C, but the Government determines that it will proceed with work at the site, then the Board may perform the necessary response and cleanup activity, and SAFCA will reimburse the Board for its costs. If the Board performs the necessary response and cleanup activity required under CERCLA, the Board shall consult with SAFCA concerning the selection of the person(s) or entity to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity, prior to commencement of any necessary response and cleanup activity.

- E. The Board and SAFCA shall consult with the Government in accordance with Article XIII of the PPA, in order to ensure that responsible persons under CERCLA ultimately bear all necessary response and cleanup costs as defined in CERCLA.
- F. SAFCA shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control the intentional or negligent release or threatened release of hazardous substances regulated under CERCLA on lands necessary for Project construction.
- G. In the event that the Government or the Board are found to be liable under CERCLA for the release or threatened release of hazardous substances arising out of the construction of the Project, then SAFCA shall indemnify the Government or the Board for any response or cleanup costs for which the Government or the Board is found liable under CERCLA, except for such response or cleanup costs which result from negligence of the Government or its contractors, or Board during construction.
- H. No decision made or action taken pursuant to any provision of this Section of this Agreement shall relieve any responsible person from any liability that may arise under CERCLA, nor shall such decision or action be considered a waiver by the Board or SAFCA of any right to seek from any responsible person as defined by CERCLA, the recovery or contribution of or indemnification from costs incurred by the Board or SAFCA for response or cleanup activity required under CERCLA, nor shall such decision or action be considered a waiver by the Board or SAFCA of any other right or remedy provided by law.
- I. As between the Board and SAFCA, SAFCA shall be considered the operator of its reach of the Project for purposes of CERCLA liability, except during the periods when the Government operates, maintains, repairs, replaces or rehabilitates the Project. To the maximum extent practicable, SAFCA shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

SECTION XII: Term of Agreement; Amendment

The term of this Agreement shall be coextensive with that of the PPA, 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 Department of General Services. If the final PPA executed between the Government and the Board materially differs from the draft PPA 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 PPA.

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 Central Valley Flood Protection Board:

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

If to SAFCA:

Executive Director
SAFCA
1007 7th Street, 7th 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 XIII: Standard Clauses

The Standard Clauses attached hereto as Exhibit E, General Terms and Conditions for

Department of Water Resources (Local Public Entities Receivables), are incorporated by this reference.

Officials or employees of local agencies determined to be consultants under the Political Reform Act are required to file a Statement of Economic Interests with the Fair Political Practices Commission. The Standard Contract Provisions Regarding Political Reform Act Compliance, attached hereto as Exhibit F, and the Certification Regarding Lobbying, attached hereto as Exhibit G, are incorporated by this reference.

SECTION XIV: Severability

If any provision of this Agreement 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 be construed to remain fully valid, enforceable, and binding on the parties.

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

**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

Exhibit B - Site Map (See Staff Report Attachment D)

American River Watershed, Common Features Project, Natomas Basin
ER 1165-2-131 Cost Allocation Table
Note: All costs in \$1,000s

	1	2	A	3	4	B	C	5	D	E	F	6	G	H
Year	TPC ^{a/} _	NF LERRDs	NF 104 Const.	Sched. Const.	Percentage _{c/} _	Affording Credit ^{d/} _		Non-Fed Contribution				Fed Contribution		
						Fed LERRDs	Remaining Credit	NF Cash _{e/} _	Adjusted NF LERRDs _{f/} _	Section 104 Work	Total _{g/} _	Sched. Const.	LERRDs	Total _{h/} _
Pre 2014 _{b/} _	380,558	68,814	292,744	19,000	37.36	0	292,744	10,230	68,814	292,744	371,788	8,770	0	8,770
2014	840	0		840	0.10	0	292,744	82	0	0	82	758	0	758
2015	6,588	206		6,382	0.76	0	292,744	624	206	0	830	5,758	0	5,758
2016	16,191	4,950		11,241	1.35	4,950	287,794	1,099	0	0	1,099	10,142	4,950	15,092
2017	97,412	53,538		43,874	5.26	53,538	234,256	4,291	0	0	4,291	39,583	53,538	93,121
2018	93,582	26,982		66,600	7.98	26,982	207,274	6,513	0	0	6,513	60,087	26,982	87,069
2019	73,245	43,887		29,358	3.52	43,887	163,387	2,871	0	0	2,871	26,487	43,887	70,374
2020	158,579	99,986		58,593	7.02	99,986	63,401	5,730	0	0	5,730	52,863	99,986	152,849
2021	346,426	79,444		266,982	31.99	63,401	0	26,110	16,043	0	42,153	240,872	63,401	304,273
2022	13,203	3,275		9,928	1.19	0	0	971	3,275	0	4,246	8,957	0	8,957
2023	38,077	11,440		26,637	3.19	0	0	2,605	11,440	0	14,045	24,032	0	24,032
2024	2,399	69		2,330	0.28	0	0	228	69	0	297	2,102	0	2,102
2025	0	0		0	0.00	0	0	0	0	0	0	0	0	0
Total	1,227,100	392,591	292,744	541,765	100			61,355	99,847	292,744	453,946 36.99%	480,410	292,744	773,154 63.01%

Notes:

a/ TPC equals Non-Fed LERRDs (Col. 2) plus NF 104 Construction plus Schedule Construction (Col. 3).

b/ Pre 2014 work includes the Section 104 work completed by the non-Federal sponsors. Col. A represents the Section 104 work completed by the sponsors and Col. 2 represents the LERRDs necessary in order to complete the Section 104 work.

c/ The percentage is based on the proportion of scheduled construction cost to total construction cost. NF 104 Const. is included in this calculation.

d/ With the Section 104 work completed by the sponsor, per Section 104 IG, the Federal government may take on LERRDs. Col. A represents the amount of potential credit that may be afforded. Column B represents the LERRDs taken on by the Fed. Gov. on behalf of the sponsor. Col. C represents the remaining potential credit.

e/ Non-Fed Cash based on total non-Fed cash (TPC times 5%).

f/ Adjusted non-Fed LERRDs is the remaining portion of LERRDs the non-Fed sponsor will be responsible for after Fed LERRDs acquisition to afford credit has been completed.

g/ Total non-Fed contribution includes 5% cash, remaining LERRDs after Fed affording of credit, and their Section 104 work.

h/ Total Fed contribution includes Schedule Construction less 5% cash contribution from non-Fed sponsor plus affording Section 104 credit by taking on a like amount of LERRDs activities.

Exhibit D

Budget Detail And Payment Provisions

- I. **INVOICING AND PAYMENT:** Method of payment shall be in accordance with provisions stated in Section III on page 8 of this Agreement.
- II. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or delegated by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

GTC 610

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).)

Standard Contract Provisions
Regarding Political Reform Act
Compliance

1. POLITICAL REFORM ACT REQUIREMENTS:

a. Form 700 Disclosure: The Department of Water Resources (DWR) considers that the Contractor, subcontractor(s), and/or their key staff may be a consultant, i.e., a public official, within the meaning of the Political Reform Act, specifically Government Code section 82048 and California Code of Regulations, title 2, section 18701. Accordingly, as specified by DWR, such persons shall complete and submit to the DWR Personnel Officer a Form 700, Statement of Economic Interests, within 30 days of the earlier of the date work commences or the effective date of this agreement, updated both annually and when changes in key staff or duties occur. The financial interests disclosed shall be for Disclosure Category 1. Contractors may access the Form 700 on the Fair Political Practices Commission website at: www.fppc.ca.gov. Any questions regarding completion of the Form 700 should be addressed to the FPPC at its website or at (866) 275-3772 (866/ASK-FPPC). A leaving office statement must also be filed upon completion of all contract assignments.

b. Financial Conflict of Interest Prohibition: Contractor must review the Form 700s filed by its key staff and subcontractors and determine whether, in the light of the interests disclosed, performance under the contract could violate Government Code section 87100. Contractor shall notify DWR immediately of any potentially disqualifying conflict of interest. Government Code section 87100 provides:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

c. Consequences of Failure to Comply with Political Reform Act Requirements: Any one of the following shall constitute a breach of this Contract and shall be grounds for immediate termination of this Contract:

- (1) Failure to complete and submit all required Form 700s within the 30- day period as required in paragraph A above, or respond to any request from the DWR Personnel Officer for additional information regarding any such Form 700s;

- (2) Failure to notify DWR of a potentially disqualifying conflict of interest;
- (3) The determination by DWR or the Contractor that any individual, who is a contractor, subcontractor, and/or a key member of their staff, has a financial interest that could result in a violation of Government Code section 87100 provided, however, that DWR may opt to waive such breach if Contractor replaces any such individual within two working days after a determination of such financial interest.

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, 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.
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Richard M. Johnson
Executive Director
Sacramento Area Flood
Control Agency

DATE: _____

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

EDMUND G. BROWN JR., GOVERNOR

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682



April 14, 2016

Colonel Michael J. Farrell
District Engineer
Sacramento District
U.S. Army Corps of Engineers
1325 J Street, Room 902
Sacramento, California 95814

Subject: **State Support for the American River Watershed, California (Natomas Basin) Project**

Dear Colonel Farrell:

The Central Valley Flood Protection Board (Board) is writing this letter to show its support for the American River Watershed, California (Natomas Basin) Project. The Board has been working with the Sacramento District project delivery team (PDT) on completing the design of the Natomas Basin Project to be consistent with the 2012, Central Valley Flood Protection Plan and advance the vision for an integrated flood management system in the Central Valley to provide for safe, healthy, and thriving communities while protecting and restoring the environment.

The Board confirms its intent to continue to participate as a Non-Federal Sponsor for the construction of the Project. The Board's continued sponsorship for construction is subject to the development and execution of a Project Partnership Agreement (PPA). The Board's financial support is limited to flood control only and contingent on: State legislature authorization and appropriation for construction of the project, federal authorization and appropriation for construction of the Project, project benefits outweighing costs, and costs being allocated according to beneficial uses and paid by appropriate parties benefiting from those uses.

We understand this letter of support is not binding on the State and does not financially commit future expenditures without an executed PPA. But as good faith, we are enclosing four copies of a Self-Certification of Financial Capability which the U.S. Army Corps of Engineers requires to initiate a PPA. We look forward to completing this important project.

If you have any questions, please contact me at (916) 574-0291 or Leslie.Gallagher@water.ca.gov or your staff may contact Michael Sabbaghian, Chief, Flood Risk Reduction Projects Branch, at (916) 574-1404 or Mahyar.Sabbaghian@water.ca.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie M. Gallagher", written over a horizontal line.

Leslie M. Gallagher
Executive Officer

Colonel Michael J. Farrell
April 14, 2016
Page 2

cc: Dan Tibbitts (CESPK-PM)
Project Manager
Sacramento District
U.S. Army Corps of Engineers
1325 J. Street, 9th Floor
Sacramento, California 95814

Department of Water Resources
Division of Flood Management
Flood Projects Office
3464 El Camino Avenue, Suite 200
Sacramento, California 95821

Mr. Eric S. Koch, Chief
Flood Projects Office

Mr. Michael Sabbaghian, Chief
Flood Risk Reduction Projects Branch
Flood Projects Office

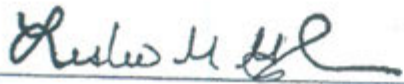
Ms. Kelly Fucciolo, Chief
Flood Risk Reduction Projects Section B.
Flood Projects Office

Ms. Reena Jawanda, Project Manager
Flood Risk Reduction Projects Section B
Flood Projects Office

**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 Central Valley Flood Protection Board acting on behalf of the State of California (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the American River Watershed Project, California (Natomas Basin); and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Partnership Agreement being prepared between the Department of the Army and the State of California for Construction of the American River Watershed Project, California (Natomas Basin).

IN WITNESS WHEREOF, I have made and executed this certification this 18th day of April, 2016.

BY: 

TITLE: Executive Officer

DATE: 4-18-2016