

**Meeting of the Central Valley Flood Protection Board
Friday, July 22, 2011**

Staff Report

**Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement
between the Central Valley Flood Protection Board and Reclamation District 784 and Three
Rivers Levee Improvement Authority for the
Feather River Levee Improvement Project
and Upper Yuba Levee Improvement Project**

1.0 – Board Action

Consider approval of an Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (OMRR&R) between the Central Valley Flood Protection Board (Board) and Reclamation District 784 of Yuba County (RD 784) (Local Maintaining Agency) and Three Rivers Levee Improvement Authority of Yuba County (TRLIA) (EIP Funding Recipient).

2.0 – Local Agencies

Reclamation District 784 (also referenced herein as the Local Maintaining Agency – LMA)
Three Rivers Levee Improvement Authority (also referenced herein as the Funding Recipient)

3.0 – Location

The Feather River Levee Improvement Project (FRLIP) is located south of the City of Marysville, Yuba County, California. See Attachment A for site location map. The levee improvement section is approximately 12.4 miles of the Feather River east levee from its confluence with the Bear River north levee (Project Levee Mile (PLM) 13.3; STA 48+00) to its confluence with the Yuba River south levee (PLM 25.8; STA 709+00). This section of the levee is maintained by the Reclamation District (RD) 784, Yuba County. There are many environmental mitigation/restoration and Cultural sites associated with the FRLIP, which are listed in the table below and shown Attachment B.

MITIGATION/RESTORATION/CULTURAL SITE	Responsible Party	PERMITS
Messick Lake/Drainage Swale Wetlands Mitigation	TRLIA	Encroachment Permit # 18430 BD & 404 Permit

MITIGATION/RESTORATION/CULTURAL SITE	Responsible Party	PERMITS
Feather River Elderberry Transplant Area (FRET)	TRLIA	CVFPB Approved Encroachment Permit Pending 18637 BD & 404 Permit
Feather GGS Offsite Mitigation (Gilsiser Slough)	TRLIA	NA TRLIA Offsite Agreement
Feather Setback Area (Expanded Floodway/Ag	Current TRLIA Future State	Encroachment Permit # 18430 BD
Vegetated Wave Buffer	Current TRLIA Future 784 (Levee Design Feature)	Encroachment Permit # 18556 BD
Native American Cultural site (Yuba-5)	TRLIA & Enterprise Rancheria (Most Likely Descendent (MLD))	Encroachment Permit # 18430 BD & 404 Permit
Native American Cultural site (Yuba-1677)	TRLIA & Enterprise Rancheria (MLD)	Encroachment Permit # 18227 BD & 404 Permit

The Upper Yuba Levee Improvement Project (UYLIP) is located southeast of the City of Marysville, Yuba County, California. The levee improvement concerns two sections of the Yuba River south levee. The first section is approximately 0.6 miles of the Yuba River south levee from approximately Highway 70 (Project Levee Mile (PLM) 0.3; STA 4+00) to the UPRR Crossing (PLM 0.9; STA 34+00). The second section is approximately 3.9 miles of the Yuba River south levee from approximately Simpson Lane (Project Levee Mile (PLM) 2.2; STA 102+00) to Yuba Goldfields (PLM 6.1; STA 303+59). All sections of the levee are also maintained by RD 784. See Attachment C for site location. There is one environmental mitigation site associated with the UYLIP, which is listed below. See Attachment D for site location.

MITIGATION/RESTORATION SITE	Responsible Party	PERMITS
USACE/State Anderson Elderberry Mitigation Site	USACE/State	Encroachment Permit # 18642 BD

4.0 – Project Description

The improvements for the Feather River levee, which have already been constructed, consisted of construction of a setback levee as well as cutoff walls, seepage berms, relief wells and levee geometry improvements. There are many environmental mitigation/restoration and Cultural sites associated with the setback levees, which are listed above in section 3.0. The short and long term maintenance and monitoring of these sites is shown in Attachment E.

The project on the Upper Yuba consists of waterside slope flattening, cutoff walls and seepage berms in the first reach of the UYLIP, which was completed in phases between 2005 and 2009. The construction of the second reach, which consists of cutoff walls, seepage berms, levee geometry corrections, and levee slope erosion protection, is scheduled for construction this year (2011). There is one environmental mitigation site associated with the UYLIP, which is listed in Section 3.0 above. The short and long term maintenance and monitoring of these sites is shown in Attachment E.

Both projects are being constructed by TRLIA under the provisions of the DWR Early Implementation Program (EIP).

The FRLIP was completed in 2010 and was accomplished under Board encroachment permits 18170 BD, 18227 BD, 18430 BD and 18479 BD. The Funding Agreement 4600008049 dated April 25, 2008 and amended on March 25, 2010 between TRLIA and the State of California Department of Water Resources (DWR) for the FRLIP requires an OMRR&R agreement with the Board which sets forth the obligation for a TRLIA to perform the OMRR&R work for the project unless a local maintaining agency accepts responsibility.

The costs for construction of the FRLIP are currently estimated to be \$191.4 million total with a State share of \$154.7 million.

All major work for the UYLIP is scheduled to be completed by October 2011 under Board encroachment permits 18095-R1 GM and 18577 BD. The Funding Agreement 4600008654 dated October 1, 2009 between TRLIA and the State of California Department of Water Resources (DWR) for the UYLIP requires an OMRR&R agreement with the Board which sets forth the obligation for RD 784 to perform the OMRR&R work for the project.

The projected costs for construction of the UYLIP are estimated to be \$36.4 million total with a State share of \$25.3 million.

5.0 – CEQA Determinations:

Board staff has prepared the following CEQA determination:

RD 784 (LMA) is responsible for procuring all future necessary environmental documentation and permits necessary for maintenance of the project. Board staff, DWR, and other responsible agencies have reviewed and approved all past submittals made by TRLIA (Funding Recipient) to date and the FRLIP and the UYLIP Waterside slope flattening were completed in compliance with these permits and documentation. The last portion of the UYLIP is expected to be completed in compliance with all permits and documentation.

Operation and maintenance of existing facilities, such as those covered by this OMRR&R Agreement, is also categorically exempt under CEQA. See Title 14 California Code of Regulations section 15301. To the extent that further actions might be taken under this OMRR&R agreement by RD 784, TRLIA, or this Board which are not categorically exempt, those activities are too speculative to identify at this time and CEQA coverage for those activities, if required, will be provided once the activities are identified.

6.0 – Staff Comments and Endorsements:

- The Funding Agreements provide that TRLIA must execute the OMRR&R Agreement or must provide an LMA willing to execute the Agreement.
- It is anticipated that the LMA and TRLIA will have reviewed and signed the OMRR&R Agreement in July of 2011 and are therefore requesting that the agreement be executed by the Board at the July meeting.
- In addition to satisfying the requirements of the Funding Agreement, TRLIA has agreed in this OMRR&R Agreement to two provisions not required by the Funding Agreement: First, TRLIA has agreed to indemnify the State for the construction of the two Projects. Second, TRLIA has requested that if RD 784 fails to perform under the OMRR&R Agreement that TRLIA receive notice from the State of the failure and be given an opportunity to perform. These two provisions are of a benefit to the State and are not required by the Funding Agreement. The OMRR&R Agreement also reflects the past commitments that TRLIA has made to OMRR&R the mitigation features of the various projects.
- Execution of the OMRR&R Agreement will allow proper closeout of the project and insure that DWR Early Implementation Program (EIP) funding is not interrupted.
- Board staff and legal counsel have prepared the OMRR&R Agreement with LMA counsel and Funding Recipient counsel and herein provided a copy, approved in form and sufficiency by Board legal counsel, Attachment F.
- Staff also notes that it understands the Board's historic and ongoing concerns regarding the longevity of local flood agencies. TRLIA has reviewed its Joint Exercise of Powers Agreement which states the following in relevant part:

This Agreement shall become effective, and the Authority shall come into existence, on the date of execution and delivery hereof, and this Agreement and the Authority shall thereafter continue in full force and effect for at least forty (40) years (unless earlier terminated by unanimous vote of the Members and any then Associate Members), but in any event so long as either (a) any Bonds remaining outstanding or any material contracts to which the Authority is a party remain in effect, or (b) the Authority shall own any interest in any Public Improvements or land.

Joint Exercise of Powers Agreement by and between the County of Yuba and Reclamation District No. 784 creating the TRLIA at page 10 of the September 14, 2004 JPA Agreement. TRLIA has disclosed that it has issued bonds and that it has executed numerous material contracts including Local Cooperation Agreements with this Board wherein it provides indemnity to the State. Thus, TRLIA has concluded that absent repayment of all bonds and an assignment of all such material contracts (which requires Board approval), TRLIA will remain in existence

7.0 – Section 8610.5 Considerations

1. Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

The Board will make its decision based on the evidence in the OMRR&R Agreement and attachments, this staff report, and any other evidence presented by any individual or group.

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

In considering this OMRR&R Agreement, the Board has used the best available science relating to the issues presented by all parties. On the important issue of hydraulic impacts, the project will result in a better engineered levee with no adverse upstream or downstream hydraulic impacts.

3. Effects of the decision on the entire State Plan of Flood Control:

This project has positive effects on the State Plan of Flood Control as it results in a better-constructed levee system for the Yuba River and will contribute to provide the Central Valley Flood Protection Plan's goal of 200-year protection for urban areas.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

Although the impacts of hydrology, climate, and development are not specifically addressed in the OMRR&R Application, previous and future project designs and environmental documentation have addressed and will continue to address these concerns through public

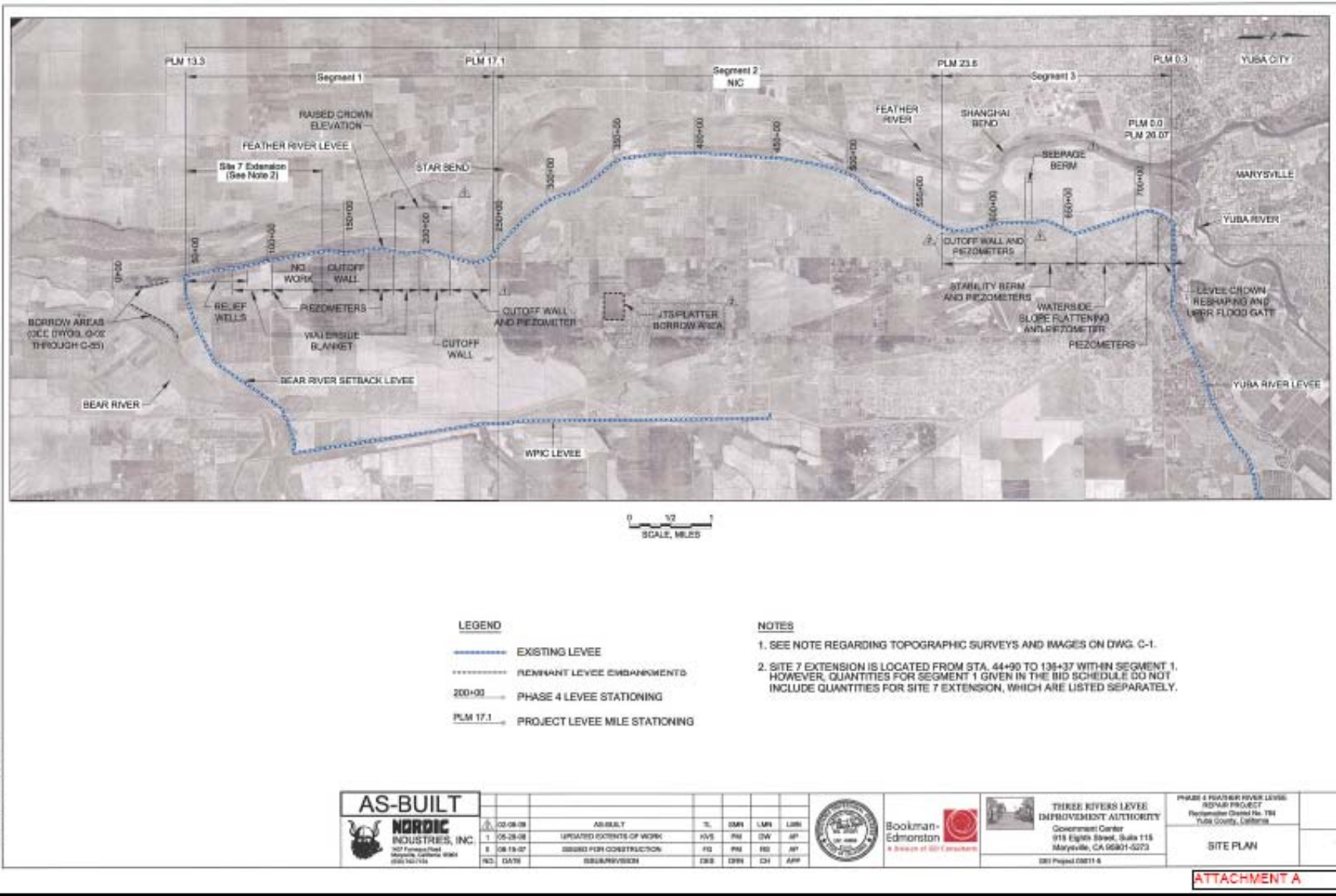
comment periods and agency reviews. Negative impacts have been mitigated as a result of this process.

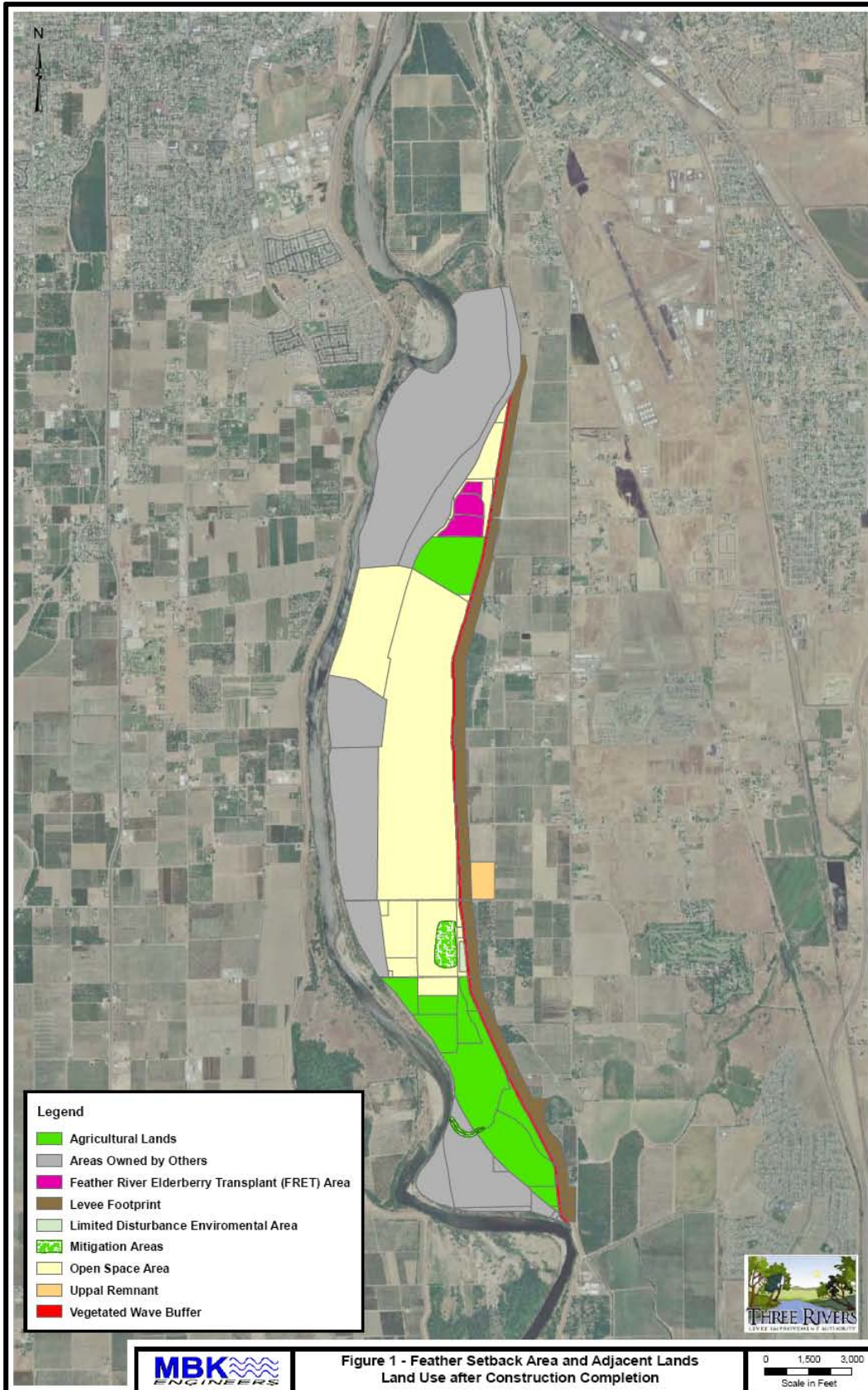
8.0 – Staff Recommendation

Staff recommends that the Board adopt Resolution 11-??, Attachment G, and authorize Board President Carter to take the necessary actions to execute the attached OMRR&R Agreement with RD 784 and TRLIA.

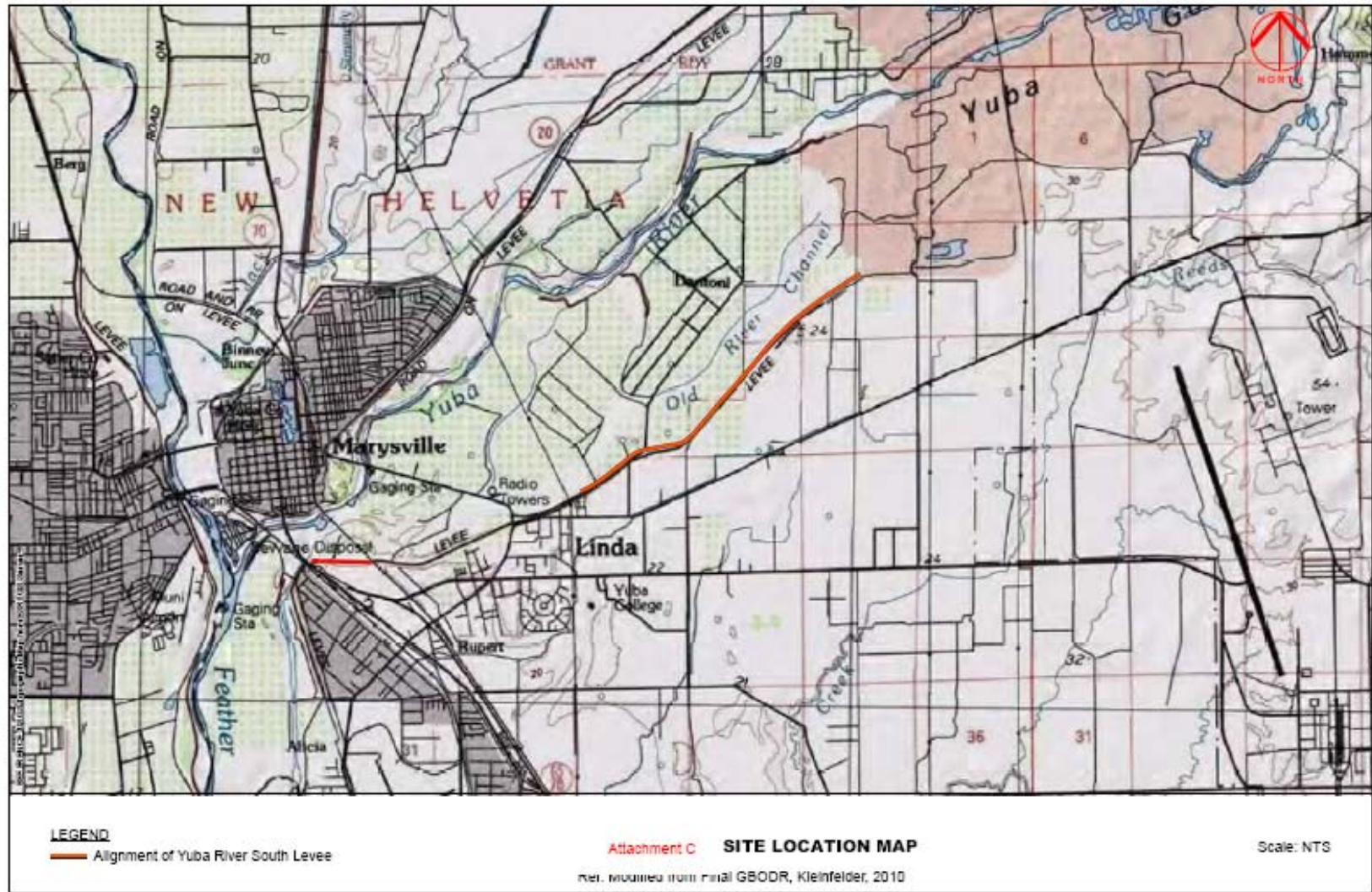
9.0 – List of Attachments

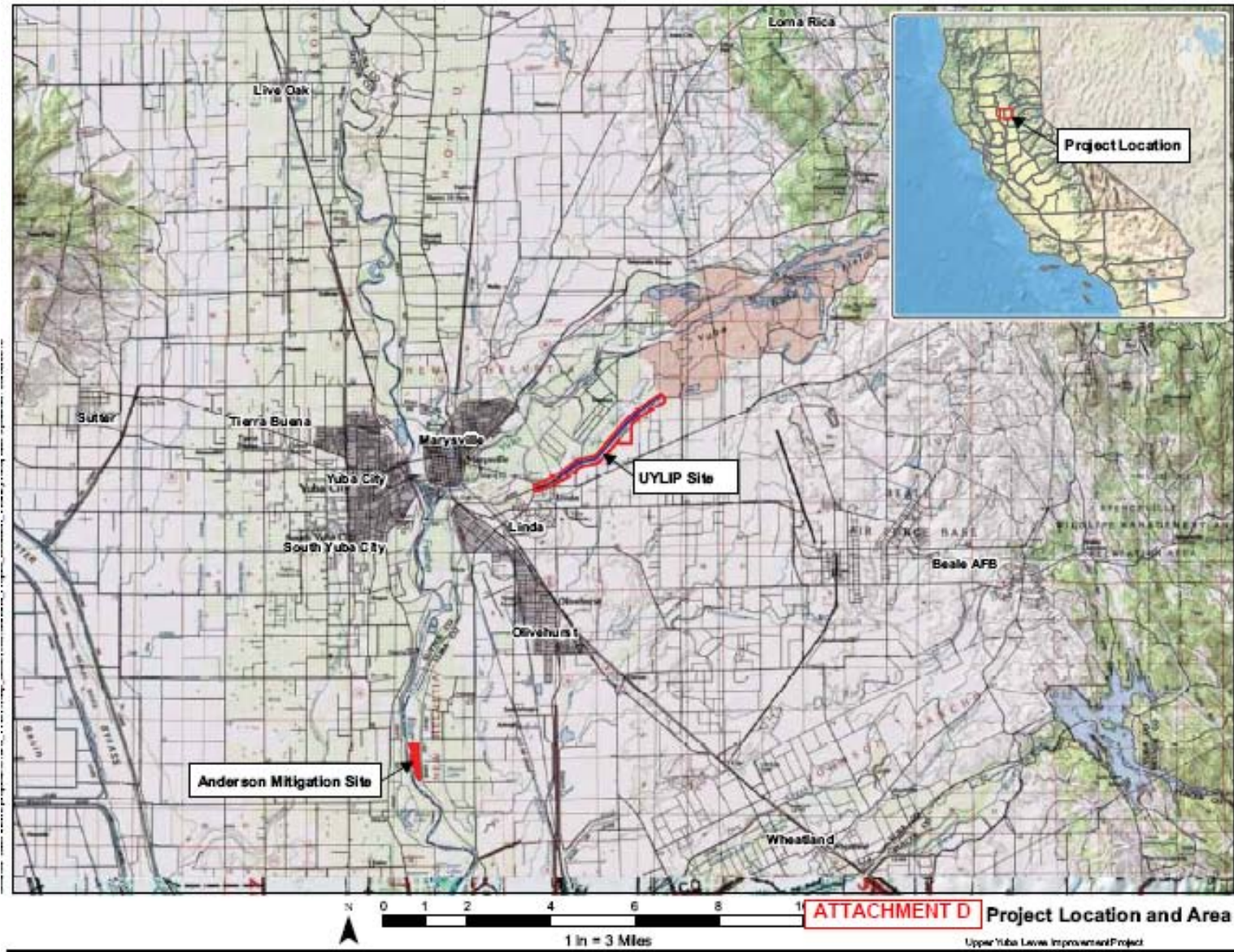
- A. Location Map, FRLIP
- B. Location Map, FRLIP Other Areas
- C. Location Map, UYLIP
- D. Location Map, UYLIP Mitigation Site
- E. Short and Long Term Maintenance and Monitoring Table
- F. OMRR&R Agreement
- G. Resolution 11-??





Attachment B





Attachment E

Feather River Levee Improvement Project							
MITIGATION/RESTORATION/CULTURAL SITE	Responsible Party	PERMITS	SHORT TERM Maintenance & Monitoring	\$ SOURCE	LONG TERM Maintenance & Monitoring	\$ SOURCE	Floodway Maintenance
Messick Lake/Drainage Swale Wetlands Mitigation	TRLIA	Encroachment Permit # 18430 BD & 404 Permit	River Partners under TRLIA Contract	EIP Project Funds	Third Party through Endowment	Local/TRLIA	DWR with Lower Feather River Corridor Program (LFRCP)
Feather River Elderberry Transplant Area (FRET)	TRLIA	CVFPB Approved Encroachment Permit Pending 18637 BD & 404 Permit	River Partners under TRLIA Contract per Biological (BO)	EIP Project Funds	RD 784 Maintenance TRLIA Contract Monitoring - Both per B.O.	TRLIA Maintenance Assessment Funds	DWR with LFRCP
Feather GGS Offsite Mitigation (Gilsiser Slough)	TRLIA	NA TRLIA Offsite Agreement	Included in Credit Purchase Agreement	EIP Project Funds	Included in Credit Purchase Agreement	Project Funds	NA
Feather Setback Area (Expanded Floodway/Ag)	Current TRLIA Future State	Encroachment Permit # 18430 BD	TRLIA Interim Maintenance Plan	EIP Project Funds	LFRCP	LFRCP	DWR with LFRCP
Vegetated Wave Buffer	Current TRLIA Future 784 (Levee Design Feature)	Encroachment Permit # 18556 BD	River Partners under TRLIA Contract	EIP Project Funds	RD 784	TRLIA Maintenance Assessment Funds	RD 784
Native American Cultural site (Yuba-5)	TRLIA & Enterprise Rancheria (Most Likely Descendent (MLD))	Encroachment Permit # 18430 BD & 404 Permit	River Partners under TRLIA Contract	EIP Project Funds	RD 784 (Security Only)	TRLIA Maintenance Assessment Funds	DWR with LFRCP
Native American Cultural site (Yuba-1677)	TRLIA & Enterprise Rancheria (MLD)	Encroachment Permit # 18227 BD & 404 Permit	NA - site is buried with levee embankment	NA	NA - site is buried with levee embankment	NA	NA
Upper Yuba Levee Improvement Project							
MITIGATION/RESTORATION/CULTURAL SITE	Responsible Party	PERMITS	SHORT TERM Maintenance & Monitoring	\$ SOURCE	LONG TERM Maintenance & Monitoring	\$ SOURCE	Floodway Maintenance
USACE/State Elderberry Anderson Mitigation Site	USACE/State	Encroachment Permit # 18642 BD	Restoration Resources under TRLIA Contract	EIP Project Funds	RD 784	TRLIA Maintenance Assessment Funds	DWR with LFRCP

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND
REHABILITATION AGREEMENT BETWEEN
The Central Valley Flood Protection Board
AND
Reclamation District No. 784
AND
Three Rivers Levee Improvement Authority
FOR
The Feather River Levee Improvement Project and
The Upper Yuba River Levee Improvement Project

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement ("OMRR&R Agreement") is entered into by and among the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board"), Reclamation District No. 784 ("Local Maintaining Agency"), and Three Rivers Levee Improvement Authority ("Funding Recipient") on this _____ day of _____, 2011 in view of the following circumstances:

1. The Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project are *modifications of the Sacramento River Flood Control Project which was authorized by Congress on March 1, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.*
2. State funding has been provided for the Early Implementation Program ("EIP") Project:
 - The voters of California approved Propositions IE and 84 on November 7, 2006, making available bond funds for flood control work and other purposes.
 - The State, acting by and through the Department of Water Resources ("Department"), has solicited applications for early implementation funding for its State-Federal Flood Control System Modifications Program.
 - As a result, two Funding Agreements have been signed between the State of California Department of Water Resources and the Three Rivers Levee Improvement Authority (referred to herein as Funding Recipient) for the Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project (collectively the "Funding Agreement").
 - The Funding Agreement provides that the Funding Recipient shall be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the Feather River Levee Improvement Project and the Upper Yuba River Improvement Project (collectively the "EIP Project"). Under this OMRR&R Agreement the Board will oversee OMRR&R for the EIP Project for the State, as part of the State Plan of Flood Control.
 - Under the Funding Agreement the Funding Recipient may agree to assume the responsibility of the Local Maintaining Agency as set out in this OMRR&R Agreement or may agree with a Local Maintaining Agency that it shall assume responsibility for OMRR&R of the EIP Project, provided that the Funding Recipient shall seek to assume responsibility for OMRR&R if for any reason the Local Maintaining Agency fails to perform under this OMRR&R Agreement.

- *The Funding Recipient has agreed with the Local Maintaining Agency that the Local Maintaining Agency shall assume responsibility for OMRR&R by entering into this OMRR&R Agreement.*
 - *The Department has agreed to enter into the Funding Agreement with the Funding Recipient on the condition that the Local Maintaining Agency enter into the OMRR&R Agreement and that the Funding Recipient shall seek to assume responsibility for OMRR&R if for any reason the Local Maintaining Agency fails to perform under this OMRR&R Agreement.*
3. It is not expected that the federal government will provide funding for the EIP Project at this time, but in anticipation that federal funds may become available eventually:
 - The Funding Agreement requires the Funding Recipient to seek credit for the expenditures made under the Funding Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("Corps"), and to enter into agreements necessary to obtain credit or reimbursement from the Corps.
 - The parties agree that this OMRR&R Agreement may be superseded by one or more agreements acceptable to the Corps and the Board that gives satisfactory assurances to the federal government and the Board that the required local cooperation will be furnished in connection with the EIP Project.
 4. The Local Maintaining Agency agrees that it already has responsibility for OMRR&R for existing portions of the Project (as hereinafter defined) which the State contends arises under California Water Code Section 12642 which provides that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
 5. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Local Maintaining Agency provides the Board with the assurances specified in this OMRR&R Agreement that Local Maintaining Agency will be responsible for OMRR&R of the EIP Project upon its completion; and will, as described below, hold and save the federal government, State, their representatives, officers, directors, and employees, as well as but not limited to their successors and assigns, free and harmless from any and all claims and damages arising from OMRR&R of the EIP Project.
 6. The Board and the Local Maintaining Agency have agreed that this OMRR&R Agreement will set forth not only their agreement with respect to OMRR&R for the EIP Project, but also for all of the federally and State authorized flood facilities related to the EIP Project that are within the Local Maintaining Agency's boundaries.
 7. The Board, Funding Recipient, and the Local Maintaining Agency understand that certain mitigation features associated with the EIP Project have been constructed by Funding Recipient and, as described in Section I.D.(4) below, Funding Recipient, not Local Maintaining Agency, has the responsibility for OMRR&R of these features.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

"Board:" The State of California Central Valley Flood Protection Board or any successor thereto.

"Corps:" The United States Army Corps of Engineers.

Agreement No. _____

“Department:” The State of California Department of Water Resources.

“EIP Project:” The project described in the Overall Work Plans described in the Funding Agreement.

“Functional Portion of the EIP Project:” A completed portion of the EIP Project to be constructed under the Overall Work Plan which is determined by the Board to be suitable to operate and maintain in advance of completion of construction of the entire EIP Project.

“Funding Agreement:” Collectively the two agreements between the State of California Department of Water Resources and the Three Rivers Levee Improvement Authority for (1) the Feather River Levee Improvement Project dated April 25, 2008 as amended March 25, 2010 and (2) the Upper Yuba River Levee Improvement Project dated October 20, 2009.

“Funding Recipient:” The Three Rivers Levee Improvement Authority, which is the signatory to the Funding Agreement.

“Local Maintaining Agency:” RD 784, which is agency that will assume responsibility for OMRR&R for any Functional Portion of the EIP Project, the EIP Project, and the Project.

“OMRR&R:” Operation, maintenance, repair, replacement, and rehabilitation of the Project.

“OMRR&R Agreement:” This agreement between the State of California Central Valley Flood Protection Board and Reclamation District No. 784 (“Local Maintaining Agency”) for OMRR&R of the Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project.

“Overall Work Plan:” The plan described in the Funding Agreement in Paragraph 22(a), as amended, and Exhibit A-1, as amended.

“Post Construction Performance Reports:” The reports required by Funding Agreement Paragraph 22(e), as amended.

“Project:” All of the federally and State authorized flood facilities to the extent to which they are within the area bounded by the Yuba River, the Feather River, the Bear River, and the Western Pacific Interceptor Canal; provided, that it shall not include any Federally-constructed facilities for which the State and/or Local Maintaining Agency have not previously provided assurances or accepted for OMRR&R.

“Project Site:” The location of the Project.

“Standard Operation and Maintenance Manual:” A document prepared by the Local Maintaining Agency and submitted to the State for review, comment and approval that will govern the operation, maintenance, repair, replacement and rehabilitation of the Project. This manual will include all manuals related to the Project and facilities covered by this OMRR&R agreement, including those prepared by the Corps and/or Board for flood, ecosystem, habitat, mitigation or other purposes and any other such manuals.

“State:” The State of California, acting by and through the Board.

“State Plan of Flood Control:” The state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Cal. Pub. Res. Code § 5096.805(j).

SECTION I: Obligations of the Local Maintaining Agency and Funding Recipient.

A. General Obligations. The Local Maintaining Agency agrees to the following:

1. To perform OMRR&R for the Project, including all mitigation features of the Project, without limitation, in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duty of the Local Maintaining Agency to perform OMRR&R for all Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Local Maintaining Agency pursuant to this paragraph are described further in Section I-B below.
 2. To defend, indemnify, hold and save the federal government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, as well as but not limited to their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this OMRR&R Agreement, including but not limited to any claims or damages arising from the performance of OMRR&R (including construction associated with such performance) under this Agreement.
- B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate of the Local Maintaining Agency
1. The Local Maintaining Agency hereby accepts responsibility for OMRR&R of the Project. The Local Maintaining Agency agrees that it will be responsible for OMRR&R of the Project as further explained in: (1) the Standard Operation and Maintenance Manual for the Project and (2) any applicable Supplement to the Standard Operation and Maintenance Manual for the Project.
 2. The Local Maintaining Agency agrees to cooperate in the Funding Recipient's development of a Standard Operation and Maintenance Manual for the Project as required by Board permits issued to the Funding Recipient for the Project. The Standard Operation and Maintenance Manual for the EIP Project or Functional Portion of the EIP Project may be a stand-alone document or an amendment to the Standard Operation and Maintenance Manual for the Project as directed by the Board. The Local Maintaining Agency acknowledges that changes to the Standard Operation and Maintenance Manual may be made by the State and the Corps before the document becomes final. The State may make reasonable changes but shall consult with Local Maintaining Agency prior to making such changes. The Local Maintaining Agency shall be required to update the Standard Operation and Maintenance Manual as may be necessary or as required by the Central Valley flood Protection Board (CVFPB) and shall make a copy available to the State within three (3) days after the State so requests. The Local Maintaining Agency shall be responsible for OMRR&R in accordance with any revised version of the Standard Operation and Maintenance Manual for the Project or any Supplement to the Standard Operation and Maintenance Manual.
 3. The Local Maintaining Agency hereby gives State the right to enter, at reasonable times and in a reasonable manner, upon the Project Site and land which it owns or controls for access to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Local Maintaining Agency is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Local Maintaining Agency needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Local Maintaining Agency to enter the land to fulfill its obligations under this OMRR&R Agreement.

4. If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code Section 12878 *et seq.*

If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of Water Code Section 12878 *et seq.*, then the State may take appropriate actions under this OMRR&R Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the Project or functional portion thereof to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may in its sole discretion develop a work plan and present it to the Local Maintaining Agency with instructions that if the Local Maintaining Agency does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Local Maintaining Agency will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this OMRR&R Agreement. No completion, operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Local Maintaining Agency of responsibility to meet the Local Maintaining Agency's obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

5. The State agrees to use its best efforts to provide notice to the Funding Recipient of any determination by the State that the Local Maintaining Agency has failed or refused to perform under this Agreement, as described in Subsection I.B.4, so as to allow the Funding Recipient an opportunity to perform the activity claimed necessary by the State prior to the State taking the remedial actions specified in Subsection I.B.4.

C. Additional Obligations of the Local Maintaining Agency:

1. The Local Maintaining Agency shall annually review and, if appropriate or requested by the State, update the safety plan for the EIP Project prepared pursuant to the Funding Agreement or required by Cal. Water Code § 9650. The Local Maintaining Agency agrees to use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan.
2. No later than June 30 of each calendar year the Local Maintaining Agency shall provide an annual Post Construction Performance Report to the Department, which may be included as part of the report provided pursuant to Water Code Section 9140.
 - (a) The Post Construction Performance Report shall generally use the following format:
 - Summary of the operations of the EIP Project;
 - Brief discussion of the EIP Project benefits;
 - Brief comparison and explanations for any differences between the expected versus actual EIP Project success in meeting the goals identified in the original State-Federal Flood Control System Modification Program (Early Implementation Projects) Grant Application;

Agreement No. _____

- Summary of costs and any additional costs and/or benefits deriving from the EIP Project; and
 - Any additional information relevant to or generated by the continued operation of the EIP Project, including any maintenance issues.
- (b) If the Local Maintaining Agency is not the same as the Funding Recipient, the Local Maintaining Agency represents that it has made arrangements with the Funding Recipient to obtain any information needed from the Funding Recipient in order to prepare this report.
- (c) The Department in its sole determination may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.
3. Local Maintaining Agency shall provide information to the Board as follows:
- (a) No later than June 30 of each calendar year the Local Maintaining Agency shall certify that it has reviewed the Standard Operations and Maintenance Manual and that either: (1) no updates are needed to the Standard Operation and Maintenance Manual; or (2) the Standard Operation and Maintenance Manual has been updated.
- (b) If requested to do so by the Board, the Local Maintaining Agency shall provide copies to the Board of the operation and maintenance reports required pursuant to AB 5 (Wolk), 2007 Cal. Stat. 366 (codified at Cal. Water Code § 9140(a)) that pertain to the Project.
- (c) The Board in its sole determination may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.

D. Obligations of the Funding Recipient: Funding Recipient shall have no obligations other than those provided in this Section I.D.

1. The Funding Recipient agrees to defend, indemnify, hold and save the federal government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, as well as but not limited to their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of the construction of the EIP Project by the Funding Recipient.
2. Funding Recipient shall have no obligation to remedy any failures or refusals by the Local Maintaining Agency identified by the State pursuant to Section I.B.4. of this Agreement. However, if the Funding Recipient takes action to remedy such failures or refusals, it agrees to (i) act in a manner consistent with applicable rules, regulations, and guidance adopted by the State and the Government, and (ii) defend, indemnify, hold and save the federal government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, as well as but not limited to their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of Funding Recipient's performance to remedy the failure or refusal.
3. Funding Recipient acknowledges that in addition to the actions it may take pursuant to this Section I.D., it has independent obligations to operate and maintain certain portions

of the Project pursuant to encroachment permits that have been and will be issued by the Board to the Funding Recipient. This Agreement shall not abrogate those obligations.

4. In connection with the permitting and construction of the EIP Project, Funding Recipient has constructed various mitigation features to comply with the resources statutes in place under Federal and California law. Obligations for the OMRR&R of these various features was accepted by Funding Recipient as a result of various permissions granted by Federal and California agencies. While Funding Recipient may contract with the Local Maintaining Agency to perform the required OMRR&R for these features, the parties agree that the legal obligation to ensure OMRR&R for these features rests with the Funding Recipient and nothing in this Agreement is intended to amend or abrogate those obligations. A list of the mitigation features approved as of the date of this Agreement is as follows:

- Messick Lake/Drainage Swale Wetlands Mitigation – Pursuant to a 404 Permit issued by the U.S. Army Corps of Engineers and Encroachment Permit # 18430 BD.
- Feather River Elderberry Transplant – Pursuant to Fish and Wildlife Service permission, a 404 Permit issued by the U.S. Army Corps of Engineers, and Encroachment Permit 18637 BD.
- Feather River GGS Offsite Mitigation (Gilsiser Slough) – Pursuant to Fish and Wildlife Service permission.
- Feather Setback Area – Pursuant to Encroachment Permit # 18430 BD.
- Native American Cultural site (Yuba-5) – Pursuant to agreement with the State Historic Preservation Office, a 404 permit issued by the U.S. Army Corps of Engineers, and Encroachment Permit # 18430 BD.
- Native American Cultural site (Yuba-1677) – Pursuant to agreement with the State Historic Preservation Office, a 404 permit issued by the U.S. Army Corps of Engineers, and Encroachment Permit # 18227 BD.
- Anderson Mitigation Site – Pursuant to Fish and Wildlife Service permission and Encroachment Permit # 18642 BD.

SECTION II: Hazardous Substances

The Local Maintaining Agency acknowledges State may incur obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675; California Hazardous Substances Account Act, Calif. Health & Safety Code §§ 25310 *et seq.* or other statutes or regulations (collectively referred to as “state and federal Hazardous Substances Laws”) on lands necessary for Project construction and OMRR&R to the extent the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. The Local Maintaining Agency agrees:

- A. That in the event that the Local Maintaining Agency discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Local Maintaining Agency shall promptly notify the State of that discovery if it can be reasonably anticipated that the discovery of reportable quantities of hazardous substances will require Local Maintaining Agency to incur response costs in excess of \$10,000.

- B. That in the event reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Local Maintaining Agency shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, 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 and/or other state and federal Hazardous Substances Laws shall be made by the Local Maintaining Agency. In the event that the Local Maintaining Agency fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Local Maintaining Agency's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Local Maintaining Agency shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Local Maintaining Agency concerning the selection of the person(s) 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.
- C. That the Local Maintaining Agency shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Local Maintaining Agency shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.
- E. That in the event that the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, the Local Maintaining Agency shall indemnify and hold the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.
- F. No decision made or action taken pursuant to any provision of this Section of the Project OMRR&R Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Local Maintaining Agency of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Local Maintaining Agency for response or cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

SECTION III: Authorization for Delegation or Subcontracting

The Local Maintaining Agency may delegate or subcontract its responsibilities under this OMRR&R Agreement. In performing the obligations called for in this OMRR&R Agreement, the Local Maintaining Agency shall notify the State when it initially retains, employs, or uses any agencies or firms to perform work that is material to successful execution of the duties of the Local Maintaining Agency under this OMRR&R agreement. The Local Maintaining Agency shall be responsible for all work to be

Agreement No. _____

performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by the Local Maintaining Agency; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

SECTION IV: Procedures for Reimbursing the State

To the extent Local Maintaining Agency fails to fulfill its obligations under this Agreement, the State may perform such obligations and bill the Local Maintaining Agency accordingly. In such circumstances, the State shall provide an invoice to the Local Maintaining Agency for the costs of performing the work. The Local Maintaining Agency agrees, subject to compliance with applicable state law, to reimburse the State by promptly paying any such invoices within thirty days.

SECTION V: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R 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 all parties.

SECTION VI: Obligation of Future Appropriations

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

SECTION VII: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the date it is signed by all parties. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

The parties acknowledge that in order to obtain federal credits or reimbursement for this Project, it may be necessary to amend this OMRR&R Agreement as required by the U.S. Army Corps of Engineers. The parties agree that they will not unreasonably withhold consent for any amendments necessary to obtain federal credits or reimbursement.

SECTION VIII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R 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 Local Maintaining Agency:
Reclamation District No. 784
ATTN: General Manager
1594 Broadway St.
Arboga, CA 95961

If to the Board:
Central Valley Flood Protection Board
ATTN: Executive Officer
3310 El Camino Avenue, Suite LL40
Sacramento, CA 95821

Agreement No. _____

If to the Funding Recipient:
Three Rivers Levee Improvement Authority
ATTN: Executive Director
1114 Yuba Street, Suite 218
Marysville, California 95901-5273

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 IX: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Attachment A to this OMRR&R Agreement.

SECTION X: Authority

The Local Maintaining Agency has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Attachment B to this OMRR&R Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.

The Central Valley Flood Protection Board

Reclamation District No. 784

By _____
Benjamin F. Carter
President

By _____
Rick Brown
RD 784 President

Date: _____

Date: _____

Approved as to Legal Form
and Sufficiency:

Approved as to Legal Form
and Sufficiency:

Ward Tabor
Assistant Chief Counsel

Carl Lindmark
RD 784 Legal Counsel

The Three Rivers Levee Improvement Authority

By _____
Paul Brunner
Executive Director

Date: _____

Approved as to Legal Form
and Sufficiency:

Scott Shapiro, General Counsel

Attachment A

STANDARD CONDITIONS

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Local Maintaining Agency for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Local Maintaining Agency shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Local Maintaining Agency to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF EIP PROJECT WITHOUT STATE PERMISSION:** The Local Maintaining Agency shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the EIP Project, without prior permission of State. The Local Maintaining Agency shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Local Maintaining Agency to meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property acquired, reimbursed or credited with State funds be remitted to State.
7. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

11. SEVERABILITY: Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. WAIVER OF RIGHTS: None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties hereto that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. TERMINATION FOR CAUSE: The State may terminate this OMRR&R Agreement should Local Maintaining Agency fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided or in the event of a default by the Funding Recipient under paragraph 20 of the Funding Agreement.
14. INDEPENDENT CAPACITY: The Local Maintaining Agency, and the agents and employees of the Local Maintaining Agency, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. CONFLICT OF INTEREST
 - a) Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b) Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
 - c) Employees of the Local Maintaining Agency: Employees of the Local Maintaining Agency shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*
16. WORKERS' COMPENSATION: The Local Maintaining Agency affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Local Maintaining Agency affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.
17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, the Local Maintaining Agency assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

18. **NONDISCRIMINATION CLAUSE:** During the performance of this OMRR&R Agreement, the Local Maintaining Agency and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Local Maintaining Agency and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Local Maintaining Agency 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. The Local Maintaining Agency 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.

The Local Maintaining Agency shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

19. **DRUG-FREE WORKPLACE CERTIFICATION**

Certification of Compliance: By signing this OMRR&R Agreement, the Local Maintaining Agency, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and, if such Act applies to the Local Maintaining Agency, has or will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).

b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

1. The dangers of drug abuse in the workplace,
2. Local Maintaining Agency's policy of maintaining a drug-free workplace,
3. Any available counseling, rehabilitation, and employee assistance programs, and
4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this OMRR&R Agreement:

1. Will receive a copy of Local Maintaining Agency's drug-free policy statement, and
2. Will agree to abide by terms of Local Maintaining Agency's condition of employment, contract or subcontract.

Suspension of Payments: This OMRR&R Agreement may be subject to suspension of payments or termination, or both, and Local Maintaining Agency may be subject to debarment if the State determines that:

a) The Local Maintaining Agency, its contractors, or subcontractors has made a false certification, or

Agreement No. _____

- b) The Local Maintaining Agency, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.
20. UNION ORGANIZING: The Local Maintaining Agency, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, the Local Maintaining Agency, by signing this OMRR&R Agreement, hereby certifies that:
- a) No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
 - b) The Local Maintaining Agency shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
 - c) The Local Maintaining Agency shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - d) If the Local Maintaining Agency make expenditures to assist, promote, or deter union organizing, the Local Maintaining Agency will maintain records sufficient to show that no State funds were used for those expenditures and that the Local Maintaining Agency shall provide those records to the Attorney General upon request.
21. COMPUTER SOFTWARE: The Local Maintaining Agency certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. DELIVERY OF INFORMATION, REPORTS, AND DATA: The Local Maintaining Agency agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.
23. RIGHTS IN DATA: The Local Maintaining Agency agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this OMRR&R Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act, Cal. Gov't Code §§ 6250 *et seq.* The Local Maintaining Agency may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this OMRR&R Agreement, subject to appropriate acknowledgement of credit to State for financial support. The Local Maintaining Agency shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
27. LOCAL MAINTAINING AGENCY NAME CHANGE: Approval of the State's Project Manager is required to change the Local Maintaining Agency's name as listed on this OMRR&R Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
28. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Local Maintaining Agency shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Agreement No. _____

Attachment B: Draft Resolution

Resolution No. _____

Resolved by the _____
(Governing body, city council, or other)

of the _____
(Name of Local Maintaining Agency)

that pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that funds awarded to

(Name of Funding Recipient)

by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: _____

(Project title)

have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing [modify if Funding Recipient and Local Maintaining Agency are not the same to add: "or having a Local Maintaining Agency sign"] an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires

(Name of Local Maintaining Agency)

to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of

(Project title)

Therefore, the _____
(Presiding officer, president, city manager, or other official)

of the _____ is hereby authorized and directed to
(Name of Local Maintaining Agency)

sign an operation, maintenance, repair, replacement and rehabilitation agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted at a regular meeting of the _____
(Board of Directors, Supervisors, etc.)

of the _____
(Name of Local Maintaining Agency)

on _____
(Date)



Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary _____