

**Meeting of the Central Valley Flood Protection Board  
October 25, 2013**

**Staff Report**

**Letter Requesting a Locally Preferred Plan Waiver for the American River  
Common Features General Re-evaluation Report**

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**1.0 ITEM**

Consider approval of Resolution No. 2013-25 to:

1. Approves a letter indicating the Non-federal Sponsors' request for a Locally Preferred Plan (LPP) Waiver for the American River Common Features General Re-evaluation Report.
2. Delegate to the Executive Officer authority to sign the Letter in substantially the form attached hereto.

**2.0 SPONSORS**

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

**3.0 LOCATION**

The American River Common Features General Re-evaluation Report will include the City of Sacramento, including the Natomas Basin, along the left bank of the Natomas East main Drainage Canal, Arcade Creek, Magpie Creek, left bank of the Sacramento River Between RM 45.5 and RM 60 and areas along the North and South Banks of the American River (see Attachment A, Location Map).

**4.0 PROJECT DESCRIPTION:**

The primary goal of the American River Common Features General Re-evaluation Report (ARCF – GRR) is to identify flood risk management problems within the city of Sacramento and surrounding areas, Natomas Basin, along the left bank of the Natomas East main Drainage Canal, Arcade Cree, Magpie Creek, left bank of the Sacramento River between RM 45.5 and RM 60, analyze potential solutions to those problems, and recommend a plan that satisfies the U.S army Corps of Engineers' (USACE) National Economic Development (NED) planning process and meets the intentions of the Central Valley Flood Protection Plan. The GRR will focus on reducing flood risk to urban areas, private and public property, and the State infrastructure within. The resulting federally

recommended project will be in accordance with State and Federal levee design criteria and environmental law. A joint Environmental Impact Report/Environmental Impact Statement under California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) will be prepared with the GRR.

## **5.0 PROJECT BACKGROUND**

The American River Common Features Project was initiated in 1996 by Congress, whereby common flood risk reduction elements considered within the 1996 Supplemental Feasibility Study were authorized through the Water Resources Development Act of 1996. After the 1997 flood event, the Sacramento District of the Army Corps of Engineers realized that under-seepage (as opposed to through-seepage) was a significant concern throughout the entire system of levees protecting the Sacramento area. A GRR was underway for the Natomas area, but due to deep under-seepage issues throughout the entire Sacramento area, the Natomas GRR was expanded to include the entire Sacramento area thereby becoming the ARCF – GRR.

### **5.1 ESTIMATED COSTS:**

The GRR was a project element of the ARCF Project Cost Share Agreement executed by the Board on July 10, 1998. The cost has been updated several times since the original cost share agreement was executed. USACE's Planning Modernization Effort (3x3x3 Rule) required rescoping of the GRR, by USACE Sacramento District (SPK), for a completion date of December 2014. The rescoping required SPK to estimate the cost to complete the GRR. SPK estimated the cost to complete the GRR to be \$1,800,000.

### **5.2 COST ALLOCATION:**

USACE estimates a remaining \$1,800,000 to complete the GRR. Details on the GRR cost will be determined via the negotiations process of entering into a federal agreement. The current cost share under the existing Project Cost Share Agreement (PCA) is 75/25 federal and Non-federal respectively. The new federal agreement will likely be in accordance with section 105 of the Water Resources Development Act of 1986, establishing a 50/50 federal and Non-federal cost share.

### **5.3 PROJECT BENEFITS**

The primary benefits of completing the GRR which includes an LPP are:

- Risk reduction delivered in a timely manner which considers potential funding and agency coordination constraints
- System Wide improvements which are in accordance with State policy and engineering guidance.

- Establishes a partnership with USACE which allows necessary coordination of State flood risk management goals outlined in the Central Valley Flood Protection Plan.

## **6.0 STAFF ANALYSIS**

USACE has three alternatives developed for consideration through their screening process:

USACE anticipates Alternative 1 – Fix Levees in Place, will be the NED plan. Alternative 1 involves the construction of fix-in-place levee remediation measures to address seepage, slope stability, erosion, and overtopping concerns identified for the American and Sacramento River Levee, NEMDC, Arcade, Dry/Robla, and Magpie Creeks. In addition, Alternative 1 would include levee raises for the Natomas Basin.

There are several Non-federal concerns and flood risk management strategies not addressed by USACE's Alternative 1: (1) Floodplain mapping; under recently adopted rules limiting the duration of levee certifications, USACE's 1998 certifications of the levees along Arcade Creek, Dry Creek and the NEMDC in North Sacramento have expired. In addition, USACE has withdrawn its 2004 and 2006 levee certifications of the American River and Packet area levees. SAFCA and the State are highly motivated to correct these deficiencies as quickly as possible to reduce flood risk to the community. Unless these levees are re-certified in a timely manner, mandatory flood insurance requirements will come into effect which will be deterrent for economic recovery for the community. (2) Federal funding constraints; Federal appropriations for the Sacramento Area are anticipated to represent a significant share of all USACE spending for flood risk reduction. Potentially this could cause limitations for delivering flood risk reduction in a timely manner considering the limited funding capabilities of the current economic setting. (3) Public and Agency Opposition; levee improvement strategies presented in the GRR reflect full USACE compliance which are anticipated to generate significant resistance from property owners, Federal and State resource Agencies significantly complicating the delivery of these critical flood risk reduction improvements. (4) GRR coordination; the non-federal sponsors agree that the region would benefit most from Sacramento Weir and Bypass improvements in lieu of raising the levees on both sides of the Lower Sacramento River corridor. However, additional coordination of Yolo bypass impacts along with benefits to the West Sacramento Area will need to be well vetted with local stakeholders to properly realize system-wide benefits for improving the Sacramento weir and bypass.

Alternative 2 is similar to Alternative 1 except Alternative 2 includes Sacramento Bypass and Weir widening. With the Bypass improvements potential levee raises recommended in Alternative 1 on Sacramento River east bank are greatly reduced. The LPP offers an approach for delivering USACE compliant flood risk reduction to the Sacramento Area while addressing non-federal constraints, concerns, and flood management strategies.

The LPP is a more comprehensive alternative which addresses local concerns while fulfilling State flood risk management guidance outlined in the Central Valley Flood Protection Plan (CVFPP) and State System Wide Investment approach

The LPP provides a concise worst case first approach to implementing flood risk reduction measures of the GRR; so that one measure of the alternative does not hinder the implementation of a more critical flood risk reduction measure. Under the worst case first approach, the project areas most urgent flood risk – levee seepage and stability along the Sacramento River, Arcade Creek, NEMDC, and critical vegetation removal – would be addressed within the next 5 to 6 years. USACE compliance for vegetation and access will be addressed separately through a System Wide Improvement Framework (SWIF) over time to allow for appropriate coordination between stakeholder agencies. Under the LPP a three tiered approach organizing flood risk reduction measures into three categories with corresponding priority will be used. Category 1 (priority one) will address removal of high risk vegetation and private encroachments, modification of utility encroachments and penetrations to meet engineering standards, bank protection improvements, along with seepage and stability improvements. This category addresses the most urgent flood risks in the American River North and South Areas. Category 2 (priority two) erosion protection along portions of the American River, widening of the Sacramento Weir and Bypass, and erosion protection along the Sacramento River east levee. This category addresses improvements which increase the resiliency and reliability of the system while allowing successful coordination between effected stakeholders, such as Yolo County and the West Sacramento Area Flood Control Agency (WSAFCA). Category 3 (last priority) will address low risk vegetation, encroachment and access issues over time. These improvements will be developed as part a System-wide Improvements Framework (SWIF), allowing successful coordination between effected stakeholders.

## **7.0 AUTHORIZATIONS**

Federal: WRDA 1999 (section 336); WRDA 1996 (Section 101); WRDA 1986 (section 902)

State: California Water Code Section 12670.10, 12670.11, 12670.12, 12670.14, and 12670.16

## **8.0 STAFF RECOMMENDATION**

Staff recommends approval of Resolution No. 2013-18 to:

1. Approve a Letter of Intent to participate as the Non-federal Sponsor with the U.S. Army Corps of Engineers in the American River Common Features General Re-evaluation Report.
2. Delegates to the Board's Executive Officer the authority to sign the Letter of Intent in substantially the form attached hereto.

## **9.0 LIST OF ATTACHMENTS**

- A. Location Map\*
- B. Resolution 2013-18
- C. Draft Letter of Intent
- D. Draft Common Features GRR PMP
- E. Current Project Cooperation Agreement (PCA)
- F. Amendments 1 – 4
- G. PowerPoint Presentation\*

\*Attachments in development, to be presented at October 25, 2013 Board Meeting.

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2013-25

LETTER TO REQUEST A LOCALLY PREFERRED PLAN WAIVER FOR  
THE AMERICAN RIVER COMMON FEATURES GENERAL RE-EVALUATION REPORT

WHEREAS, the American River Common Features Project was authorized by the Water Resources Development Act of 1996; and

WHEREAS, the U.S. Army Corps of Engineers' (USACE) Planning Modernization Effort required the rescoping of the American River Common Features General Re-evaluation Report (GRR); and

WHEREAS, due to the rescoping of the GRR, USACE was required to rely on existing information developed to perform their benefit cost analysis; and

WHEREAS, existing information used for USACE's benefit cost analysis determined that Alternative 1 will be the USACE's National Economic Development Plan (NED) selected for recommendation; and

WHEREAS, the Board and Sacramento Area Flood Control Agency (SAFCA) wish to submit a Locally Preferred Plan (LPP) waiver as part of the GRR which differs from Alternative 1; and

WHEREAS, USACE planning guidance requires an LPP letter stating the Boards intent to request an LPP waiver deviating from the USACE's National Economic Development Plan; and

WHEREAS, the Board's participation in the project is subject to the successful completion of the California Environmental Quality Act (CEQA) process.

NOW, THEREFORE, LET IT BE RESOLVED that the Central Valley Flood Protection Board:

- 1) Approves a letter indicating the Non-federal Sponsor's request for a Locally Preferred Plan Waiver for the American River Common Features General Re-evaluation Report.
  
- 2) Delegates to the Board's Executive Officer the authority to sign the Letter of Intent in substantially the form attached hereto.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
William H. Edgar  
President

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jane Dolan  
Secretary

Approved as to Legal Form and Sufficiency

\_\_\_\_\_  
Jeremy D. Goldberg  
Legal Counsel

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682



October 15, 2013

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

Subject: **Non-federal Sponsors' Request for a Locally Preferred Plan Waiver for the American River Common Features General Re-evaluation Report**

Dear Colonel Farrell:

The Central Valley Flood Protection Board (Board) is writing this letter to show its intent to formulate a Locally Preferred Plan (LPP) for review as part of the American River Common Features General Reevaluation Report (GRR) currently being prepared by the U. S. Army Corps of Engineers (USACE). The GRR will serve as the vehicle for identifying the levee and related improvements which in combination with the authorized Folsom Dam Joint Federal Project and Folsom Dam Raise Project would provide the Sacramento area with a 200-year or greater level of flood protection. Because the LPP may be at variance with adopted USACE policies on among other things levee vegetation and access, we understand that its inclusion in the GRR may require a waiver from USACE Headquarters. If that is the case, your assistance in facilitating such a waiver would be greatly appreciated.

The Board is working closely with the Sacramento Area Flood Control Agency (SAFCA) and USACE to arrive at a mutual understanding of the path forward for completing the GRR and seeking congressional authorization of the improvements needed to achieve the desired flood risk reduction. We recognize that time is of the essence in this regard and we thank you for considering our request of an LPP to be included in the GRR and for your assistance in carrying out this important work.

If you have any questions, please call me; Jay Punia, at (916) 574-0609 or Jay.Punia@water.ca.gov or contact Kent E. Zenobia, Chief, DWR's Federal Programs Branch, at (916) 574-0912 or Kent.Zenobia@water.ca.gov.

Sincerely,

Jay S. Punia  
Executive Officer

See attached cc: list



cc: Richard Johnson  
Executive Director  
Sacramento Area Flood Control Agency  
1007 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

Pete Ghelfi  
Director of Engineering  
Sacramento Area Flood Control Agency  
1007 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

Dan Tibbitts  
Project Manager  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814

David McDaniel  
Program Manager  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814

Department of Water Resources  
Division of Flood Management  
3310 El Camino Avenue  
Sacramento, California 95821

Mr. Keith S. Swanson, Chief  
Division of Flood Management

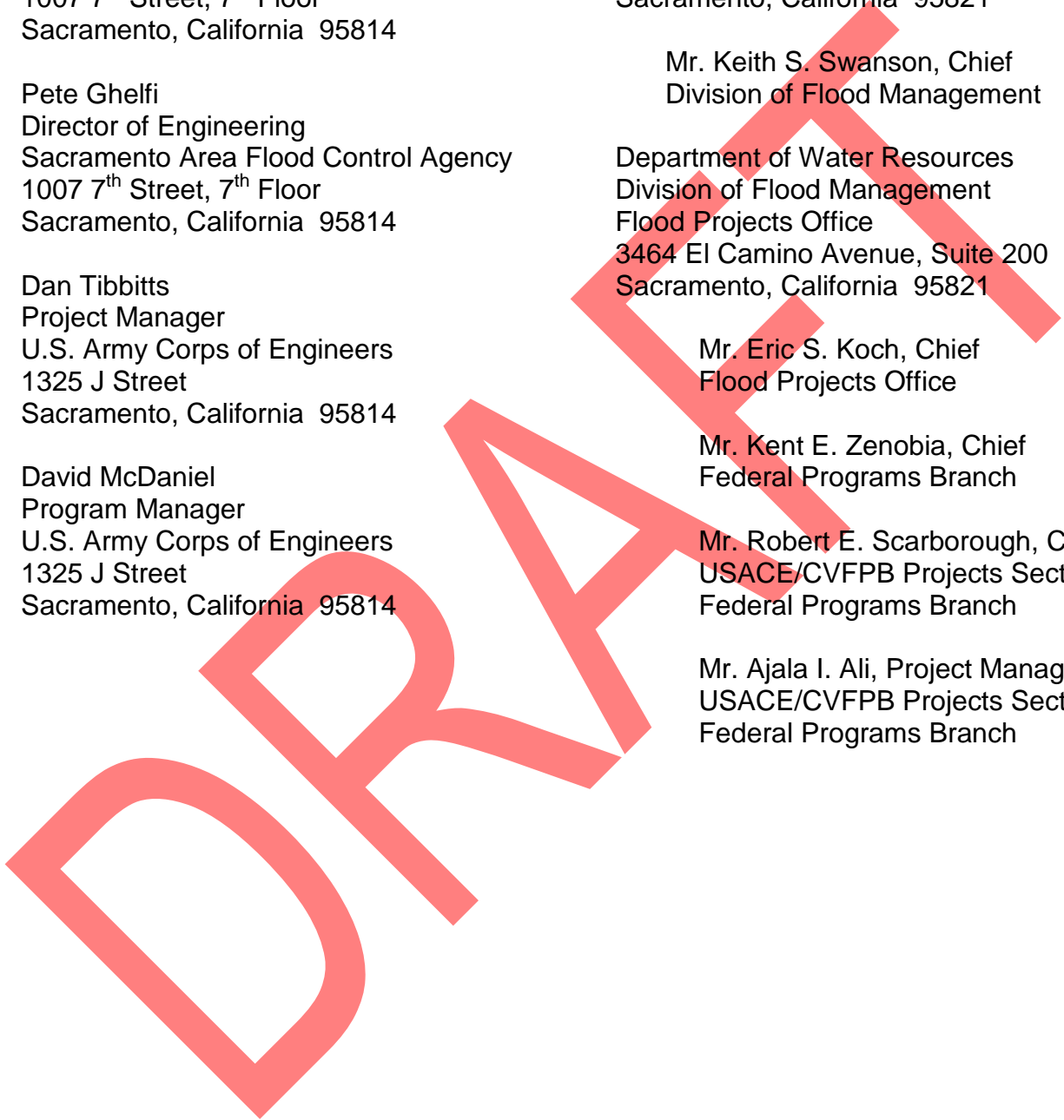
Department of Water Resources  
Division of Flood Management  
Flood Projects Office  
3464 El Camino Avenue, Suite 200  
Sacramento, California 95821

Mr. Eric S. Koch, Chief  
Flood Projects Office

Mr. Kent E. Zenobia, Chief  
Federal Programs Branch

Mr. Robert E. Scarborough, Chief  
USACE/CVFPB Projects Section  
Federal Programs Branch

Mr. Ajala I. Ali, Project Manager  
USACE/CVFPB Projects Section  
Federal Programs Branch



SAFCA LPP DESCRIPTION September 30, 2013. From Tim Washburn

## **2.4 Locally Preferred Plan (LPP):**

The LPP includes essentially the same improvements as the NED Plan. However, in order to avoid levee and floodwall raises and increase the resiliency of the levee systems along the Lower American and Sacramento Rivers, the LPP also includes widening of the Sacramento Weir and Bypass. Moreover, under the LPP these improvements would be implemented incrementally based on a "worst first" approach. Under this approach, the project area's most urgent flood risks – levee seepage and stability along the Sacramento River, Arcade Creek, and NEMDC - would be addressed during the next 5 or 6 years with available non-Federal funds or with a combination of non-Federal and Federal funds depending on the timing of project authorization. The improvements comprising this element of the LPP (referred to herein as "Category 1") are consistent with the kind of work that has been carried out over the past 15 years along the American River. These improvements are thus well suited for relatively rapid implementation.

Upon completion of these Category 1 improvements, the resilience of the levee system downstream of Folsom Dam would be improved through bank and levee erosion protection along the Lower American and Sacramento Rivers and through the widening of the Sacramento Weir and Bypass. These "Category 2" improvements are less well defined than the Category 1 improvements and they would extend the scope of the project beyond the limits of what has historically been undertaken in the project area. The weir and bypass widening component would be implemented outside the jurisdiction of the local sponsor and would require substantial coordination with local interests on the west side of the Sacramento River. The erosion protection components would be similar to the bank protection work previously completed along the Lower American and Sacramento Rivers but they are likely to be more extensive and environmentally disruptive than any previous projects. For these reasons, the Category 2 improvements would require significant refinement, review and coordination and would not likely be ready for implementation until about 2020 when the Category 1 improvements are completed.

Finally, the LPP includes a series of "Category 3" improvements aimed at addressing low risk levee vegetation, encroachment and access issues that have the potential to diminish the reliability of area levee systems over time. This is the least defined element of the LPP. The necessary improvements would be developed as part of a "systemwide improvement framework" (or SWIF) which would identify the range of activities that could address the relevant vegetation and access issues as well as a general timeline and budget for implementing the selected measures over many years based on the availability of local funds and coordination with affected landowners and permitting agencies.

The elements of the LPP are more specifically described below.

### **2.4.1 LPP Category 1 Improvements**

This category of improvements includes the measures that address the most urgent flood risks in the ARN and ARS areas. These measures include:

- Removal of high risk vegetation and private encroachments on all levees in the project area;
- Installation of approximately 12 miles of cutoff walls along portions of the Sacramento River east levee, the Arcade Creek north and south levees and the NEMDC east levee to address identified seepage and stability issues;
- Modification of utility encroachments and penetrations as necessary to meet applicable engineering standards;
- Construction of bank protection improvements along a limited portion (approximately 2,500 feet) of the Sacramento River east levee to address the risk of encroachment into the existing levee section; and
- Construction of floodwall and levee improvements and creation of a new flood detention basin along Magpie Creek to reduce the risk of flooding in the historic Magpie Creek floodplain.

### Vegetation and Encroachment Removal

As part of an effort to reaccredit the levee systems in the project area that are no longer accredited by USACE, the non-Federal sponsors have carried out an extensive analysis of existing vegetation and encroachments on all of the levees in the project area. Based on this analysis hundreds of trees and dozens of private encroachments have been determined to constitute an unacceptably high risk to ongoing levee operation and maintenance activities. The LPP calls for the identified high risk vegetation and encroachments to be removed over the next 3 to 9 years. Compensation for tree removals would be provided in the Woodlake area of the American River Parkway based on appropriate trunk width and/or canopy calculations.

### Cutoff Wall Installation

The non-Federal sponsors have identified through levee seepage and foundation stability issues affecting approximately 8.5 miles of the Sacramento River east levee, 3.5 miles of the Arcade Creek north and south levees and a small segment of the NEMDC east levee. These issues would be addressed by installing seepage cutoff walls of varying depths depending on soil conditions beneath the affected levees. Cutoff wall installation would largely occur within existing project rights of way with limited levee degradation and reconstruction so as to minimize soil excavation and transport activities and avoid unnecessary impacts on nearby residences and on non-hazardous levee vegetation.

### Modification of Utility Encroachments

Utility encroachments and penetrations along all levee reaches in the project area would be modified as necessary to meet current engineering standards. This work would consist of a combination of fix in place measures and more substantial modifications based on the specific challenges presented by the affected utilities.

### Bank Protection

The non-Federal sponsors have identified a need for bank protection along approximately 2,500 feet of the Sacramento River east levee where ongoing erosion largely linked to persistent boat wake action has either compromised or threatens to compromise the existing levee section. This work would replicate the toe rock/low bench designs that have characterized bank protection projects in this reach of the levee system over the last 10 years. The work would thus include the environmental features that have allowed these projects to be considered self-mitigating.

### **Magpie Creek Improvements**

The improvements needed to reduce the risk of flooding in the historic Magpie Creek floodplain include creation of a flood detention basin on approximately 43 acres of land along Magpie Creek east of Raley Boulevard to reduce peak flows in the creek and construction of a new floodwall at the head of the Magpie Creek Diversion Channel to ensure that flows entering the Diversion Channel do not overtop the channel and enter the historic Magpie Creek floodplain. These improvements have been planned for more than two decades and although they would not entirely eliminate flooding in the historic floodplain (interior drainage will remain a problem), they will be welcomed by property owners and by environmental interests who have long supported the detention basin concept.

### **Implementation**

These Category 1 improvements are sufficiently well defined to support project level environmental review and permitting. They could be implemented largely within existing public rights of way with known environmental effects for which there are well established mitigation measures. Cutoff wall and floodwall installation, bank protection construction, utility modification and most of the hazardous tree and private encroachment removals could be completed in 5 to 6 years with available non-Federal funding or with a combination of non-Federal and Federal funding depending on the timing of Congressional authorization of the project.

### **2.4.2 LPP Category 2 Improvements**

This category of improvements covers the measures that would make the levee systems in the ARN and ARS areas more resilient and reliable thus adding to the risk reduction accomplishments of the Category 1 improvements. These measures include:

- Erosion protection along the portions of the American River channel generally upstream of H Street to accommodate sustained high releases (up to 160,000 cfs) from Folsom Dam without substantial damage to the American River levee system or the landscape and facilities comprising the American River Parkway.
- Widening of the Sacramento Weir and Bypass to divert high flows in the American River channel to the Yolo Bypass and reduce flood stages in the Sacramento River channel downstream of the mouth of the American River.
- Erosion protection along the Sacramento River east levee between Miller Park and Freeport to ensure the long-term stability of this levee section.

## **American River Channel**

As discussed in connection with the NED Plan, recent studies indicate that extensive water side armoring may be required in the American River channel to prevent erosion of existing river banks, berms and waterside levee surfaces that could result in levee system failure. Although the levee system has been substantially improved over the past 15 years to address seepage and stability and the most urgent erosion issues, the system remains vulnerable to erosion in the event of sustained high flows in the channel. This vulnerability was evidenced during the flood of 1986 when releases from Folsom Dam reached 134,000 cfs and extensive losses of bank and berm occurred on the south side of the river just downstream from River Park and along the north side of the river opposite the City of Sacramento's Fairbairn Water Treatment Facility.

As described in the NED Plan, the measures proposed to address this vulnerability are (1) rock revetment placed along selected river banks and waterside levee surfaces, and (2) launchable rock trenches placed along the waterside toe of selected levee reaches. Both measures have been deployed as part of the ongoing American River levee improvement program. However the extent of the work envisioned in the NED Plan (up to seven miles of channel armoring) is substantially greater than the sum of these prior efforts. Because of the protections afforded to the American River channel under the American River Parkway Plan, the State and Federal Wild and Scenic Rivers Acts, and other applicable State and Federal laws, and because of the constraints associated with working in this protected environment, implementation of such an extensive erosion protection program would necessarily have to proceed incrementally with the active engagement of interested community and agency stakeholders.

## **Sacramento Weir and Bypass**

The Sacramento Weir was completed in 1916. It is the only weir that is manually operated- all others overflow by gravity on their own. It is located along the right bank of the Sacramento River approximately 4 miles upstream of the Tower Bridge, and about 2 miles upstream from the confluence with the American River. Its primary purpose is to protect the city of Sacramento from excessive flood stages in the Sacramento River channel downstream of the American River. The weir limits flood stages (water surface elevations) in the Sacramento River to project design levels through the Sacramento/West Sacramento area. Downstream of the Sacramento Weir, the design flood capacity of the American River is 5,000 cfs higher than that of the Sacramento River. Flows from the American River channel during a major flood event often exceed the capacity of the Sacramento River downstream of the confluence. When this occurs, floodwaters flow upstream from the mouth of the American River to the Sacramento Weir.

The project design capacity of the weir is 112,000 cfs. It is currently 1,920 feet long and consists of 48 gates to divert floodwaters to the west through the mile-long Sacramento Bypass to the Yolo Bypass. Each gate has 38 vertical wooden plank "needles" (4 inches thick by 1 foot wide by 6 feet long). It is cumbersome and expensive to operate, and questions have long been asked about whether this 1916 design is appropriate for today's water management needs (DWR, 2010).

Though the weir crest elevation is 24.75 feet, the weir gates are not opened until the river reaches 27.5 feet at the I Street gage with a forecast to continue rising. This gage is about 1,000 feet upstream from the I Street Bridge and about 3,500 feet downstream from the mouth of the American River. The number of gates to be opened is determined by the National Weather Service /Department of Water Resources (DWR) river forecasting team to meet either of two criteria: (1) to prevent the stage at the I Street gage from exceeding 29 feet, or (2) to hold the stage at the downstream end of the weir to 27.5 feet (DWR, 2010). The weir gates are then closed as rapidly as practicable once the stage at the weir drops below 25 feet. This provides "flushing" flows to re-suspend sediment deposited in the Sacramento River between the Sacramento Weir and the American River during the low flow periods when the weir is open during the peak of the flood event (DWR, 2010).

Under the LPP, the Sacramento Weir and Bypass would be expanded to roughly twice their current width to accommodate high flows in the American River channel. The existing north levee of the Sacramento Bypass would be degraded and a new levee would be constructed approximately 1,500 feet to the north. The existing Sacramento Weir would be expanded to match the wider bypass. At this time, it is not known whether the new segment of weir will be constructed consistent with the 1916 design described above, or whether it will be designed to be a gravity-type weir. The new north levee of the bypass would be designed to be consistent with the existing Sacramento Bypass north levee, however, the slopes will be flattened to 3:1 and it will also include a 300-foot-wide seepage berm on the landside with a system of relief wells. A hazardous, toxic, and radiological waste (HTRW) site near the existing north levee would be remediated by the non-Federal sponsor prior to construction.

This would constitute a very substantial construction program with significant landscape and operational changes affecting the flood system outside the jurisdiction of the local sponsor. As a result, the program could not be implemented without engaging the wide range of local landowner, environmental, and governmental stakeholders currently focused on the future of the Sacramento and Yolo Bypass systems.

### **Sacramento River Channel**

Despite the flow reductions in the Sacramento River channel that would be achieved by widening the Sacramento Weir and Bypass, a comprehensive erosion protection program along this channel may be warranted. This program would differ from the ongoing Sacramento River Bank Protection Program in that it would be designed to anticipate rather than respond to observed erosion. The standard approach to this work would consist of constructing a rock prism along the toe of the bank to support revetment on levee and bank surfaces as necessary to resist erosion due to persistent boat wake action and periodic high flows in the channel. Construction could occur either by barge based equipment from the water or by land based equipment accessing identified sites by means of temporary access ramps. As with past projects along this reach of the Sacramento River channel, the erosion protection improvements would include environmental features such as planting berms and installed woody materials that would compensate for clearing, grubbing, and other construction activities.

The concept of anticipatory erosion protection beyond the scope of the Sacramento River Bank Protection Program is new to this portion of the flood control system, particularly if such protection could include extensive revetment of waterside levee surfaces. As a result, this element of the LPP

would require significant additional review and refinement to ensure that candidate sites are appropriately selected and proposed protection measures are well tailored to address identified risks.

## **Implementation**

As discussed above, each of the Category 2 improvements raises significant implementation issues that can only be addressed through sustained stakeholder coordination, detailed site specific analysis, and careful design to minimize and fully compensate for potential environmental effects. Given these planning, engineering and design challenges and the time required to secure Congressional authorization and appropriations, the LPP anticipates that implementation of these improvements would commence sometime after 2020 and extend over about a 10 to 15 year period thereafter. Assuming the Category 1 improvements and the currently authorized improvements to Folsom Dam are completed at the outset of this period, the Category 2 improvements would add to these flood risk reduction accomplishments and significantly increase the resiliency of the levee systems along the Lower American and Sacramento Rivers.

### **2.4.3 LPP Category 3 Improvements**

This category of improvements would address low risk vegetation, encroachment and access issues that have the potential to diminish the reliability of area levee systems over time. These improvements would be developed as part of a SWIF which identifies the range of activities that could address the identified vegetation and access issues as well as a general timeline and budget for implementing the selected measures over many years based on the availability of local funds and coordination with affected landowners and permitting agencies. The following discussion outlines the activities likely to be covered by the SWIF.

#### **Vegetation and Encroachments**

The SWIF would incorporate guidelines developed by the non-Federal sponsors for identifying and modifying or removing potentially hazardous vegetation and encroachments not addressed as part of the Category 1 improvements. The guidelines on vegetation would focus on tree size, root structure, location in relation to the levee crown, vigor, susceptibility to seasonal wind throw (deciduous v. evergreen), attractiveness to burrowing mammals (fruit or nut bearing), environmental value (native v. non-native), and other relevant considerations. These guidelines would be applied on a site by site basis by an integrated team of engineers and biologists. Trees determined to present an unacceptable risk to levee operation and maintenance would be removed or modified to address the risk. Under the vegetation guidelines, levee surfaces along the landside, crown and upper 1/3 of the waterside slope would be mowed or otherwise managed to prevent new trees from becoming established in these areas which are the focus of levee inspection and flood fighting activities.

The guidelines on encroachments would mirror the approach taken in recently enacted State legislation that gives the Central Valley Flood Protection Board (Board) greater authority to order the removal of encroachments, including previously permitted encroachments that are deemed to interfere with or obstruct the performance, maintenance, or operation of levees under the Board's jurisdiction.

## Access

The SWIF would identify a range of measures that would improve levee monitoring capabilities along the landside of project area levees. These measures would include:

- Securing the real estate rights necessary to establish a maintenance road at least 10 feet in width along the landside levee toe;
- Constructing retaining walls in existing levee prisms to create a 10 foot maintenance road within the levee footprint;
- Establishing visibility corridors along the landside toe by acquiring easements from landowners adjacent to the levee footprint; and
- Deploying remote monitoring technologies such as fixed or mobile cameras, wetness and motion sensors, and other products likely to come on line in years to come.

## Implementation

The Category 3 improvements identified in the SWIF would be vetted and refined through outreach to affected property owners. Implementation of these measures would commence sometime around 2020 and be completed by about 2050. This would give property owners an opportunity for engagement and would give the non-Federal sponsors flexibility in establishing effective dates for property owner compliance (such as at the time of sale or transfer of affected properties).

Table xxx summarizes the LPP worst first approach to flood risk reduction.

Risk Classification	Category 1	Category 2	Category 3
Risk Reduction Objective	Address seepage, stability and other high risk levee safety	Increase the resilience of area levee systems	Increase the long term reliability of area levee systems
Implementation Time	2014- 2020	2020- 2035	2020- 2050
Flood Risk Reduction Measures and Affected Areas	Install seepage cutoff walls and modify utilities in SR, AC and NEMDC areas and construct 2,500 feet of bank protection Remove high risk vegetation and encroachments in all areas Construct floodwall and create flood detention basin in MC	Implement anticipatory erosion protection in AR and SR areas and widen Sacramento Weir and Bypass	Remove (low risk) vegetation and encroachments and provide landside access for levee operation and maintenance activities in all areas

AC- Arcade Creek, AR + American River, MC- Magpie Creek, NEMDC- Natomas East Main Drainage Canal,  
 SR = Sacramento River



# STANDARD AGREEMENT

APPROVED BY THE ATTORNEY GENERAL

ST. 2 (REV. 5-81)

Attachment E

CONTRACT NUMBER B81560	AM. NO.
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER 94-6027112	

THIS AGREEMENT, made and entered into this 9th day of July, 1998, State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE <u>Director</u>	AGENCY <u>Water Resources The Reclamation Board</u>	<u>Non-Federal Sponsor</u> hereafter called the <u>State</u> , and
CONTRACTOR'S NAME <u>Department of the Army</u>		<u>Government</u> hereafter called the <u>Contractor</u> .

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows: (Set forth service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)

See attached copy of the Project Cooperation Agreement Between The Department of the Army and the State of California for Construction of the American River Watershed (Common Features), California Project.

Signatures appear on page 22 of the Agreement.

CONTINUED ON 24 SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

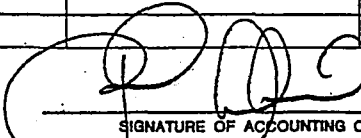
STATE OF CALIFORNIA	CONTRACTOR
AGENCY	CONTRACTOR (If other than an individual, state whether a corporation, partnership, etc.)
BY (AUTHORIZED SIGNATURE)	BY (AUTHORIZED SIGNATURE)
PRINTED NAME OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
TITLE	ADDRESS

Disbursement from WRRF SOC WC 135 Fund Item 902 Ch. \_\_\_\_\_ Department of General Services Use Only

Reimbursement from \_\_\_\_\_ Fund Item \_\_\_\_\_ Ch. \_\_\_\_\_ Code 1726

Y.	ACCOUNT NO.	ORGAN. NO.	EXP. CODE	BUDGET ITEM NO.	ENCUMBRANCE AMOUNT	UNENC. BAL.
8	1895 0002	1480	338		\$1,600,000	\$1,695,000
9	1895 1002	1480	338		Pending budget approval	
					B81560	


I Hereby Certify upon my own personal knowledge that the unencumbered balance of the departmental budget provision for the period stated above is correct.

 070998  
 SIGNATURE OF ACCOUNTING OFFICER DATE  
 STATE OF CALIFORNIA  
 THE RESOURCES AGENCY  
 DEPARTMENT OF WATER RESOURCES

STATE OF CALIFORNIA

**STANDARD AGREEMENT**

STD. 2 (REV. 5-91) (REVERSE)

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1. The 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, materialmen, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract.
  2. The Contractor, and the agents and employees of Contractor, in the performance of the agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.
  3. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained 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. The cost to the State shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon demand.
  4. Without the written consent of the State, this agreement is not assignable by Contractor either in whole or in part.
  5. Time is of the essence in this agreement.
  6. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
  7. 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 and per diem, unless otherwise expressly so provided.
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PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA  
FOR CONSTRUCTION OF THE  
AMERICAN RIVER WATERSHED (COMMON FEATURES), CALIFORNIA PROJECT

THIS AGREEMENT is entered into this 13<sup>th</sup> day of July, 1998, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer, U.S. Army Engineer District, Sacramento, and the State of California acting by and through The Reclamation Board (hereinafter the "Non-Federal Sponsor"), as represented by the General Manager of The Reclamation Board.

WITNESSETH, THAT:

WHEREAS, construction of the American River Watershed (Common Features), California Project at Sacramento, California was authorized by the Water Resources Development Act of 1996;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the American River Watershed (Common Features), California Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 101(a)(1)(B) of the Water Resources Development Act of 1996, Public Law 104-303 provides that the Non-Federal Sponsor shall receive credit toward its share of project costs for expenses that it incurs for design or construction of the Project which is performed before the date on which Federal funds are made available for construction of the Project, and provides further that the amount of the credit shall be determined by the Government:

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WHEREAS, the Non-Federal Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the American River Watershed (Common Features), California Project and sets forth procedures for adjusting such maximum amount; and

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

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

#### ARTICLE I -DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the construction of approximately 24 miles of slurry wall in the existing levees along the American River, modifying and raising approximately 12 miles of levee on the east side of the Sacramento River from Powerline Road to the Natomas Cross Canal, installation of three telemetered stream flow gages upstream of Folsom Dam, and modification of the existing flood warning system that exists at the Bureau of Reclamation's Nimbus Dam as generally described in the Supplemental Information Report, American River Watershed Project, California dated March 1996, and approved by the Chief of Engineers on June 27, 1996, and modified by the August 1997 SIR Addendum, approved on July 10, 1998. The Project includes the Section 101(a)(1)(B) work described in Article I.K of this Agreement.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor 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: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the credit amount for the Section 101 (a)(1)(B) work performed by the Non-Federal Sponsor afforded in accordance with Article II.D.5. of this Agreement; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged

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or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government or a financial obligation of the Non-Federal Sponsor for Section 101(a)(1)(B) work, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Articles II.D.1. and II.D.3. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Sacramento District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation; providing a functionally equivalent facility to the owner of an existing utility, or other public facility that is located in, on, under, or along the existing levee when the owner of such utility or facility is the State of California, or a political subdivision thereof; or as otherwise provided 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 removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the

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Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

K. The term "Section 101(a)(1)(B) work" shall mean construction of the three telemetered stream flow gages as described in Supplemental Information Report, American River Watershed Project, California dated March 1996. The Section 101(a)(1)(B) work includes construction of the authorized improvements as well as planning, engineering, design, supervision and administration, and other activities associated with construction, but does not include the construction of betterments or the provision of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the Section 101(a)(1)(B) work.

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

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 Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor 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. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, 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 Sponsor 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 Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

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2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$66,500,000, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor 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 Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute a minimum of 25 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material

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disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

3. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 25 percent of total project costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 25 percent of total project costs.

4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 45 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 45 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

5. The Section 101(a)(1)(B) work has been determined to be compatible with the Project and has an estimated cost in the amount of \$30,000 for construction of such work by the Non-Federal Sponsor. The Congress, in authorizing the Project, included authority for the Government to afford credit for Section 101(a)(1)(B) work. The Non-Federal Sponsor shall receive credit toward the non-Federal share of project costs for expenses that the Non-Federal Sponsor incurs for design or construction of these features before the date on which Federal funds are made available for construction of the Project. The affording of such credit shall be subject to an on-site inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Project. The actual amount of credit shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. To afford such credit, the Government shall apply the credit amount toward any additional cash contribution required under paragraph D.3. of this Article. If the credit amount exceeds the amount of such additional cash contribution, the Government, subject to the availability of funds, shall, on behalf of the Non-Federal Sponsor, provide Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas, or perform Project relocations, equal in value to such excess credit amount. As an alternative, and in its sole discretion, the Government may make a payment to the Non-Federal Sponsor in an amount equal to such excess credit amount, up to the value of contributions under paragraph D.2. of this Article and Articles V, X, and XV.A. of this Agreement. In no event shall the credit amount afforded exceed the lesser of 45 percent of total project costs or the value of the Non-Federal Sponsor's contributions required under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement.



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E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor 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 Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

G. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

H. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. The Non-Federal Sponsor shall prevent future encroachments on project lands, easements, and rights-of-way which might interfere with the proper functioning of the project.

J. The Non-Federal Sponsor shall not less than once each year inform affected interests of the limitations of the protection afforded by the Project.

K. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

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**ARTICLE III -LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE**

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the 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 Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper 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.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-

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Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor 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 contract.

D. The Non-Federal Sponsor 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 paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs.

E. The Non-Federal Sponsor 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 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV -CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which they it must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

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B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, 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 Sponsor 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 Sponsor provide the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement that are required for the construction of the Section 101(a)(1)(B) work, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the Section 101(a)(1)(B) work, or, if the Non-Federal Sponsor perform the construction with its own labor, the date that the Non-Federal Sponsor begins construction of the Section 101(a)(1)(B) work. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor 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 B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. 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 Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, 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 Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's 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 Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors

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relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.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 Sponsor, but no less than the amount determined pursuant to paragraph B.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 Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its 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 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 Sponsor 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 Sponsor 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 Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor 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 Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its 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 sub-paragraph B.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 the 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 Sponsor 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 X.C. of this Agreement to determine reasonableness, allocability, and

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allowability of 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, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, 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 incurred by the Non-Federal Sponsor 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 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, but 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 X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper 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 X.C. of this Agreement to determine reasonableness, allocability, and allowability of 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.

#### ARTICLE V-PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

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B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE VI -METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XIX of this Agreement, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$66,500,000, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be \$7,390,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Articles

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II.D.1. and II.D.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 construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government, after consideration of any credit afforded pursuant to Article II.D.5. of this Agreement, determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction on a quarterly basis, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Sacramento District" to the District Engineer.

2. For the second and subsequent quarters of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that quarter year, of the funds the Government, after consideration of any credit afforded pursuant to Article II.D.5. of this Agreement, determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction for that quarter. No later than 30 calendar days prior to the beginning of the quarter, the Non-Federal Sponsor shall make the full amount of the required funds for that quarter available to the Government through the funding mechanism specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government, after consideration of any credit afforded pursuant to Article II.D.5. of this Agreement, deems necessary 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 they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction for the current quarter, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work on a quarterly basis by delivering a check payable to "FAO, USAED, Sacramento District" to the District Engineer.

The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor



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must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds for that quarter.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete; however, the Non-Federal Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE VII -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. The parties shall each pay 50 percent 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 VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

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A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto. In the event OMRR&R of the Project pursuant to the manual would adversely affect any Federal endangered or threatened species or result in the destruction or adverse modification of critical habitat, at the request of the Non-Federal Sponsor, the District Engineer shall initiate Section 7 consultation and modify the Manual as necessary.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor 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 Sponsor own or control for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's 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 IX -INDEMNIFICATION

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

#### ARTICLE X -MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative

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Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of flood plain management plans".

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**ARTICLE XII -RELATIONSHIP OF PARTIES**

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor 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 such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

**ARTICLE XIII -OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

**ARTICLE XIV -TERMINATION OR SUSPENSION**

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he 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. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged

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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 XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor 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. Sections 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 the construction, operation, and maintenance of the Project. However, for lands 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 Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs and cost 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 costs.

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 the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on 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 the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination; Such costs shall not be

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considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, 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 Sponsor 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 clean up 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. Once the Government provides a written notification in accordance with Article II.C. and Article VIII of this Agreement, as between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XVI -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 either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

The Reclamation Board  
1416 Ninth Street, Room 1601  
Sacramento, California 95814-5594

If to the Government:

US Army Corps of Engineers  
Sacramento District  
1325 J Street  
Sacramento, California

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.

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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 XVII - 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 XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by the Non-Federal Sponsor, and 75 percent borne by the Government.

#### ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the American River Watershed (Common Features), California Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless

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otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$66,500,000, as calculated in accordance with ER 1105-2-100 using October 1, 1997 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

ARTICLE XX -OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the ~~Assistant Secretary of the Army (Civil Works)~~ District Engineer, U.S. Army Engineer District, Sacramento

7/17/98

THE DEPARTMENT OF THE ARMY

THE RECLAMATION BOARD

13 JUL 98

BY: Douglas R. Gault  
Douglas R. Gault  
Lieutenant Colonel,  
Corps of Engineers  
Acting District Engineer

BY: Peter D. Rabbon  
Peter D. Rabbon  
General Manager  
The Reclamation Board

DATE: 13 July 1998

DATE: July 9, 1998

FORM	POLICY	BUDGET
Department of General Services		
APPROVED		
JUL 10 1998		
BY	<u>[Signature]</u>	
	Ass't. Chief Counsel	

Approved as to Legal Form and sufficiency for The Reclamation Board

Claire P. LeFlore  
Counsel



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## CERTIFICATE OF AUTHORITY

I, Claire P. LeFlore, do hereby certify that I am the principal legal officer of The Reclamation Board, that The Reclamation 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 and The Reclamation Board in connection with the American River Watershed (Common Features), California, Project and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of The Reclamation Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 9th day of July 1998.

Claire P. LeFlore

Claire P. LeFlore  
Counsel to The Reclamation Board

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**CERTIFICATION REGARDING LOBBYING**

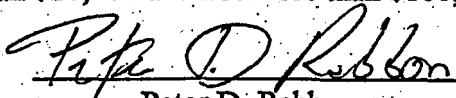
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 Section 1352, Title 31, U.S. Code. 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.



Peter D. Rabbon

General Manager

The Reclamation Board  
of the State of California

DATE: July 9, 1998

STATE OF CALIFORNIA  
**STANDARD AGREEMENT AMENDMENT**  
STD-249-A (Rev. 9/01)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 7 Pages

AGREEMENT NUMBER <b>4600000651</b>	AMENDMENT NUMBER <b>1</b>
---------------------------------------	------------------------------

- This Agreement is entered into between the State Agency and Contractor named below:  
STATE AGENCY'S NAME  
Department of Water Resources/The Reclamation Board  
CONTRACTOR'S NAME  
Department of the Army
- The term of this Agreement is July 10, 1998 through October 30, 2007 This Agreement shall not become effective until approved by the Department of General Services.
- The maximum amount of this Agreement after this amendment is: \$120, 600,000 thousand One hundred and twenty million six hundred dollars and no cents.
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
  - The amendment to Agreement No. 4600000651 for the American River Watershed (Common Features) California Project updating the current project cost to \$120.6 million is based on a Schedule and Cost Change Request, SACCR No. 077522-02-01, dated October 24, 2001, from the Department of the Army to The Reclamation Board. Cost increases are attributed to the Water Resources Development Act of 1999 authorization, and design and construction changes associated with deep foundation slurry cutoff walls that added additional features to roads, utilities, and bridge crossings using the jet grouting method.

Initial  
PPR  
Sum  
Here

This amendment to the Project Cooperation Agreement adjusts the projected total project costs by \$54,100,000 from \$66,500,000 to \$120,600,000, as reflected in the aforementioned SACCR. This amount is slightly below the federal cap under Section 902 project cost limit. (Nonfederal costs of the project are capped at 50 percent of the Section 902 limit). This adjustment increases the nonfederal project share by \$13,525,000 from \$16,625,000 to \$30,150,000 and increases the Local project share by \$4,057,500 from \$4,987,500 to \$9,045,000. The maximum nonfederal share under the current estimate may not exceed \$60,300,000.

- This Agreement is amended as follows:
  - Add Exhibit A to reflect changes in scope and costs due to redesign. The U.S. Army Corps of Engineers' Schedule and Cost Change Request, SACCR No. 077522-02-01, dated October 24, 2001, with the Table is attached as Exhibit A and made a part of this Agreement by this reference.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		CALIFORNIA Department of General Services Use Only  <div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>APPROVED</b>   <b>JUN 13 2003</b>   <b>DEPT OF GENERAL SERVICES</b> </div>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <u>Department of the Army</u>		
BY (Authorized Signature) <u>Michael W. Connelly LTC, EN</u>	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING <u>Colonel Michael J. Conrad, Jr.</u>		
ADDRESS <u>1325 J Street Sacramento, California 95814</u>		<div style="font-size: 2em; margin-bottom: 10px;">Jo</div> <div style="font-size: 3em; margin-bottom: 10px;">Jay H</div>
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <u>Department of Water Resources</u>	Approved as to legal form and sufficiency: <u>[Signature]</u> Asst. Chief Counsel, DWR	
BY (Authorized Signature) <u>Peter D. Rabbon</u>		
PRINTED NAME AND TITLE OF PERSON SIGNING <u>Peter D. Rabbon</u>		
ADDRESS <u>1416 9<sup>th</sup> Street Sacramento, California 95814</u>		

## AMERICAN RIVER (COMMON FEATURES) CALIFORNIA PROJECT

- II. This Agreement is amended as follows: (continued)
2. Extend the contract termination date from June 30, 2003 of the original contract to October 30, 2007 to coincide with current projected project completion date referenced in the aforementioned SACCR.
  3. Increase the cumulative financial obligation for construction from \$66,500,000 to \$120,600,000. Article II – Obligations of the Government and the Non-Federal Sponsor, Paragraph A. 3, the first sentence on page 5 of 24, of the original agreement is being replaced by the following language and amended to read: Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$120,600,000 the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years.
  4. As original stated in Article VI – Method of Payment, Page 14 of 24, Paragraph A is hereby amended to increase the estimated total project cost by \$54,100,000 from \$66,500,000 to \$120,600,000 and the Non-Federal Sponsor's cash contribution required under Article II.D of this Agreement is projected to be \$23,090,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.
  5. Increase the maximum projected total Project cost limit by \$54,100,000 as reflected in the aforementioned SACCR. Article XIX – Section 902 Project Cost Limits, Page 22 of 24, is hereby amended to increase the maximum Project cost limit from \$66,500,000 to \$120,600,000. This increases the projected non-Federal Project share by \$13,525,000 from \$16,625,000 to \$30,150,000 and increases the projected Local Project share by \$4,057,500 from \$4,987,500 to \$9,045,000. The maximum nonfederal share under the current estimate may not exceed \$60,300,000.
  6. Add Exhibit B – Special Terms and Conditions for Department of Water Resources (Department of the Army Corps of Engineers).
  7. All other terms and conditions of Contract No. 4600000651 shall remain the same.

# Schedule and Cost Change Request (SACCR)

Alternate Eng. Form 5040-1-R

From CESPK-PM-C		To CESPK-DD-P	Project Manager Name <u>Richard Nishio</u>	Phone <u>(916)-557 6645</u>
		Signature <u><i>Richard Nishio</i></u>		Date <u>Oct 24, 2001</u>
<b>Section I – Request</b>				
<p><b>Description of Change Request:</b>  Request approval to the increase the current project cost to \$120.6 million (fully funded, Oct 01 price level). The sponsor requests that this cost change be compared to the original authorized project cost estimate of \$65.5 million (fully funded, Oct 95 price level) as authorized by WRDA 1996 to justify the sponsor increasing the sponsor's cost ceiling clause in the PCA (Article II A.3.) to the current project cost estimate of \$120.6 million. Subsequent to WRDA 1996 authorization, the sponsor through SAFCA got the authorized project cost increased to \$91.9 million in WRDA 1999 authorization. The project cost estimate change comparison is shown on the attached continuation sheet.</p> <p><b>Justification for Change:</b> Cost increases are mainly attributed to construction and engineering &amp; design and are described below. Cost increases for other items are shown on the attached sheet and detailed in the footnotes.</p> <ol style="list-style-type: none"> <li>(1) Adopting a complete cutoff wall closure design requirement and additional geotechnical explorations resulted in construction of deeper slurry walls down to impermeable material and required the more expensive jet grout method of slurry wall construction around bridges and deep utility crossings.</li> <li>(2) Adding cement to soil-bentonite slurry wall mixture increased both material cost and construction operation costs.</li> <li>(3) Issuance of a number of high cost contract modifications. The more significant modifications resulted from unexpected slurry leaks during construction of the slurry wall that required emergency repair and restoration of the levee and at times extended work hours. Contract modifications to comply with EPA notice of violation and to accelerate Garden Highway slurry wall construction before the flood season were also very costly contract modifications.</li> </ol>				

**Justification for Change (continues):**

- (4) Construction of a short 1.5 mile slurry reach from Howe Avenue to Watt Avenue to meet project goal of initiation of slurry wall construction in 1998 resulted in a very costly slurry wall. Also the original project cost estimate assumed all the slurry walls would be constructed under one contract which is generally less costly to construct than multiple contracts. Due to design schedule constraints and the jet grouting requirement, 6 contracts are needed to complete slurry wall construction (4 construction contracts have been completed and 2 more are scheduled for award in 2001 and 2002).
- (5) Engineering and design cost increases are due to increased effort to prepare an additional 5 slurry wall and jet grout construction contracts and added effort required to conduct additional exploration and design work required to refine the plans for the Sacramento River East Levee and Natomas Cross Canal Levee modifications.
- (6) Price escalation from Oct 95 to Oct 2001 price levels has increased construction and engineering & design costs.
- The current project cost estimate of \$120.6 million is under the Federal cost ceiling as calculated in accordance to Section 902 of WRDA 1986 as based on the current authorized project cost of \$91.9 million as authorized by WRDA 1999.

**Section II - Impact Assessment**

Organization	Description
N/A	No impacts to District team since workload was budgeted for the current project cost estimate of \$120.6 million.

**Section III - Project Manager's Evaluation**

Category	Impact	Resources Required
Costs (\$000)	None	Current project cost of \$120.6 million is under Sec 902 limit
Schedule	None	Project completion date of Oct 2007 remains unchanged from SACCR #07522-01-01
Manpower	None	Workload was budgeted for the project current cost estimate of \$120.6 million.

Project: American River Watershed T-2 (Common Features) APCR 3377-010001  
Date: 01-14-01

**Section IV - Coordination with Partner**

Partner's Position and Acknowledgement

*concur*

Signature *Pat D. Rober* Date *12/12/01*

**Section V - PRB Action & Resolution**

CESPK-DE-P Recommendation and Signature

*concur*

*[Signature]* *15 Jan 02*

District-PRB Recommendation

- Approval
- Approval with Modifications
- Disapproval
- Returned to PM w/o Action
- Referred to Division

Reason

**AMERICAN RIVER WATERSHED, CA  
(COMMON FEATURES)**

10/24/01

**Project Cost Estimate Comparison**  
**(\$1000)**

	Past Project Cost Estimate Based WRDA 1996 Authorization (Fully Funded, Oct 95 Price Level) (1)	Estimated Increase	Current Project Cost Estimate Based on WRDA 1999 Authorization (Fully Funded, Oct 01 Price Level) (5)
Federal RE In-house Labor	40	900	940
F&W Mitigation (2)	0	1660	1660
Cultural Resources	430	170	600
Construction (3)	45150	37450	82600
Engineering & Design (4)	6830	14670	21500
Supervision & Admin	6850	-460	6390
LERRDs	6200	710	6910
<b>TOTAL</b>	<b>\$65,500</b>	<b>\$55,100</b>	<b>\$120,600</b>

- (1) – Cost estimates as reported in the (First) Addendum to the 1996 Supplemental Information Report (SIR), dated September 2, 1997.
- (2) – At the time the authorized cost estimate was prepared F&W mitigation costs were not considered since construction would be within the existing project right of way.
- (3) – \$82.6 million reflects actual slurry wall construction contract costs and funds required to complete two jet grout construction contracts along the lower American River as authorized by WRDA 1996. Construction contract expenditures to date amount to approximately \$45 million. Cost increases are due to deeper slurry wall requirement, need for jet grout method of slurry wall construction, adding cement to the slurry wall, significant contract modifications, high cost to construct the Howe to Watt Ave slurry wall contract and price escalation.
- (4) – Engineering and design cost increases are due to increased effort to prepare an additional 5 slurry wall and jet grout construction contracts and added effort required to conduct additional exploration and design work required to refine the plans for the Sacramento River East Levee and Natomas Cross Canal Levee modifications.
- (5) – The current project cost estimate of \$120.6 million is under the Federal cost ceiling as calculated in accordance to Section 902 of WRDA 1986 and based on the current authorized cost of \$91.9 million as authorized by WRDA 1999.



**EXHIBIT B—Special Terms and Conditions for  
Department Of Water Resources  
(Department of the Army Corps of Engineers)**

1. AVAILABILITY OF FUNDS: Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
2. AUDIT CLAUSE: For contracts in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract (Government Code Section 8546.7).
3. CONFLICT OF INTEREST:
  - a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
    - (1) Current State Employees: (PCC §10410)
      - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
      - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
    - (2) Former State Employees: (PCC §10411)
      - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
      - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

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

c. Members of Boards and Commissions:

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

d. Representational Conflicts of Interest:

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

e. Financial Interest in Contracts:

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

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

f. Prohibition on Contracts for End Product of Contract:

Pursuant to the provisions of Public Contract Code §10365.5, the Contractor and subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of this contract. This prohibition does not apply to contracts pursuant to Government Code Section 4525 et seq., to local assistance or subvention contracts with non-profit entities, or Federal, state and local public entities.

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 7 Pages

AGREEMENT NUMBER 4600000651	AMENDMENT NUMBER 2
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- This Agreement is entered into between the State Agency and Contractor named below: 38600806136192-2  
STATE AGENCY'S NAME  
Department of Water Resources/The Reclamation Board  
CONTRACTOR'S NAME  
Department of the Army
- The term of this Agreement is July 10, 1998 through Notice of completion. This Agreement shall not become effective until approved by the Department of General Services.
- The maximum amount of this Agreement after this amendment is: \$246,000,000.00  
Two hundred and forty six million dollars and no cents.
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

See the attached Amendment Number 2 to the Project Cooperation Agreement between the Department of the Army and the State of California for construction of the American River Watershed (Common Features), California Project.

All other terms and conditions of Contract No. B81560/4600000651, including Amendment 1 shall remain the same.

**Signatures appear on page 3 of 7 of the Agreement.**

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

CONTRACTOR	
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)	
BY (Authorized Signature)	DATE SIGNED (Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS	
STATE OF CALIFORNIA	
AGENCY NAME	
BY (Authorized Signature)	DATE SIGNED (Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS	

CALIFORNIA  
Department of General Services  
Use Only

**APPROVED**

**JUL 19 2006**

DEPT OF GENERAL SERVICES

AMENDMENT NUMBER 2  
TO  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA  
FOR CONSTRUCTION OF THE  
AMERICAN RIVER WATERSHED (COMMON FEATURES), CALIFORNIA PROJECT

This amendment is entered into on this 5<sup>th</sup> day of September, 2006, by and between the Department of the Army (hereinafter the "Government") and The State of California, acting by and through The Reclamation Board (hereinafter the "Non-Federal Sponsor") to amend the Contract B81560/4600000651, a Project Cooperation Agreement (PCA), between the Non-Federal Sponsor and the Government dated July 13, 1998.

RECITALS:

1. The Energy and Water Development Appropriations Act, 2004 increased the authorized project cost to a total of \$205,000,000 for the Project.
2. On May 26, 2004, the Government issued a Schedule and Cost Change Request (SACCR) for the Project and requested the Non-Federal Sponsor's approval to (a) increase the total Project cost to \$205,000,000, (b) delay the Project completion date by one year.
3. The Non-Federal Sponsor desires to approve the Government's request in accordance with the SACCR.

IT IS HEREBY AGREED to amend the PCA as follows:

1. Delete the contract termination date from October 30, 2007 shown in Amendment No. 1 Article II.2 and recognize the Project completion date of October 30, 2008 referenced in the SACCR, included as Exhibit A, Attachment 1.
2. Article II, A.3. shall read as follows:
  3. Notwithstanding paragraph A.1. of this Article, if, upon award of any contract for construction of the Project, cumulative financial obligations

for construction would exceed \$205,000,000, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm."

3. Article IV.A. shall read as follows:

"A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XIX of this agreement, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B, II.D., and II.E. of this Agreement, of the Non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$205,000,000, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be \$47,800,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor."

4. Article XIX should read as follows:

"The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the American River Watershed (Common Features), California Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project

financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On May 26, 2004, this maximum amount is estimated to be \$246,000,000, as calculated in accordance with ER 1105-2-100 using October 2001 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902."

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

THE RECLAMATION BOARD OF THE  
STATE OF CALIFORNIA

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By *Ben Carter*  
Benjamin Carter, President

By *Scott R. Morgan*  
Scott Morgan, Counsel

Date: 6/22/06

Date: 6/23/06

DEPARTMENT OF THE ARMY

By *Ronald N. Light*  
Colonel Ronald N. Light, District Engineer

Date: 9/5/06

# Schedule and Cost Change Request (SACCR)

Attachment  
Alternative Eng. Form 5040-1-R

Project: American River Watershed, CA (Common Features)	SACCR #077522-04-01
	Date: May 26, 2004

From CESPK-PM-C	To CESPK-DD	Project Manager <u>Mark Ellis</u>	Phone <u>(916) 557-6892</u>
		Signature <u>Mark A. Ellis</u>	Date <u>May 26, 2004</u>

## Section I – Request

### Description of Change Request:

Change project cost estimate to reflect the current total project cost of \$205 million. The sponsor requests that this cost change be compared to the original authorized project cost estimate of \$56.9 million as authorized by WRDA 1996 (PL 104-303) for partner's use in increasing the sponsor's cost ceiling clause in the PCA (Article II A.3.) to the current project cost estimate of \$205 million. The authorized project cost was increased to \$91.9 million in WRDA 1999 authorization (PL 106-53). The Energy and Water Development Appropriations Act, 2004 (PL108-37) increased the total project cost to \$205 million. The current estimated maximum amount of total project cost under Section 902 of PL99-662 is \$246,000,000 as calculated using October 2001 price levels. The Non-Federal Sponsor's estimated cash contribution under Article II.D. of the PCA is \$47,800,000.

### Justification for Change:

The following table summarizes the incremental cost changes to the project cost estimate. Cost increases are primarily attributed to unanticipated use of jet grout technology to meet the design criteria, increases in slurry wall depths, support from Architect Engineer firms, and increased in-house labor.

Common Features	WRDA 99 Cost	Incremental Change	Revised Project Cost
Slurry Wall	40,380	24,280	64,660
Jet Grout	0	55,040	55,040
Flood Warning System	400	60	460 <sup>2</sup>
Levee Modifications	7,940	910	8,850
Sac River East Levee	10,050	3,700	13,750
Cross Canal	9,860	1,140	11,000
Planning, Engineering, Design	9,450	25,920	35,370
Supervision and Admin.	7,750	-580	7,170
Fed Lands and Damages	40	810	850
Non Fed LERRDs	5,590	-220	5,370
Fish and Wildlife	0	1,730	1,730
Cultural Resources	440	310	750
Total	91,900	113,100	205,000

**Section II - Impact Assessment**

Organization	Description
N/A	No overall impact to any specific organizational structure. Engineering division will continue to provide the core technical resources for soils, hydraulics, and civil design. Additional district resources will continue to be provided on an as-needed basis at the request of the project manager.

**Section III - Project Manager's Evaluation**

Category	Impact	Resources Required
Costs (\$000)	\$113,100	The increased funds will allow full completion of all project tasks previously identified in WRDA 96 and WRDA 99.
Schedule	Minimal	Project completion date has been delayed one year to October 2008.
Manpower	None	The District is committed to provide labor resources to keep this project on schedule.

**Section IV - Coordination with Partner**

Partner's Position and Acknowledgement

Signature *F. D. Rahn* Date 6/21/04

**Section V - PRB Action & Resolution**

CESPK-DE-P Recommendation and Signature

Signature *M. W. Connelly, LLC, EN* Date 22 Jun 04

District PRB Recommendation	Reason
<input type="checkbox"/> Approval <input type="checkbox"/> Approval with Modifications <input type="checkbox"/> Disapproval <input type="checkbox"/> Returned to PM w/o Action <input type="checkbox"/> Referred to Division	



**EXHIBIT D—Special Terms and Conditions for  
Department Of Water Resources  
(Department of the Army Corps of Engineers)**

1. **AVAILABILITY OF FUNDS:** Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
2. **AUDIT CLAUSE:** For contracts in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract (Government Code Section 8546.7).
3. **CONFLICT OF INTEREST:**
  - a. **Current and Former State Employees:** Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
    - (1) **Current State Employees:** (PCC §10410)
      - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
      - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
    - (2) **Former State Employees:** (PCC §10411)
      - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
      - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
  - b. **Penalty for Violation:**
    - (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)
  - c. **Members of Boards and Commissions:**
    - (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Representational Conflicts of Interest:

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

e. Financial Interest in Contracts:

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

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

f. Prohibition for Consulting Services Contracts:

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

**STANDARD AGREEMENT AMENDMENT**

STD. 213 A (Rev 9/01)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 8 Pages

AGREEMENT NUMBER

4600000651

AMENDMENT NUMBER

3


- This Agreement is entered into between the State Agency and Contractor named below: 38600806136192.3  
 STATE AGENCY'S NAME  
Department of Water Resources/The Reclamation Board  
 CONTRACTOR'S NAME  
Department of the Army
- The term of this Agreement is July 10, 1998 through Notice of completion This Agreement shall not become effective until approved by the Department of the Army.
- The maximum amount of this Agreement after this amendment is: \$246,000,000.00  
Two hundred and forty six million dollars and no cents.
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

See the attached Amendment Number 3 to the Project Cooperation Agreement between the Department of the Army and the State of California for construction of the American River Watershed (Common Features), California Project.

All other terms and conditions of Contract No. B81560/4600000651, including Amendment 1 and Amendment 2 shall remain the same.

**Signatures appear on page 4 of 8 of the Agreement.**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		

AMENDMENT NUMBER 3  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA, THE RECLAMATION BOARD  
FOR CONSTRUCTION OF THE  
AMERICAN RIVER WATERSHED (COMMON FEATURES), CALIFORNIA PROJECT

**THIS AMENDMENT** is entered into this 20<sup>th</sup> day of JULY, 2006,  
by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"),  
represented by the U.S. Army Engineer, Sacramento District, and the STATE OF  
CALIFORNIA, represented by the President of THE RECLAMATION BOARD  
(hereinafter the "Non-Federal Sponsor").

**WITNESSETH, THAT:**

**WHEREAS**, construction of the American River Watershed (Common Features),  
California Project was authorized by the Water Resources Development Act of 1996,  
Public Law 104-303, as amended (hereinafter the "Project");

**WHEREAS**, Section 103 of the Water Resources Development Act of 1986, Public  
Law 99-662, as amended, specifies the cost-sharing requirements applicable to the  
Project;

**WHEREAS**, the Government and the Non-Federal Sponsor entered into a  
Project Cooperation Agreement on July 13, 1998 (hereinafter referred to as the  
"Agreement") for construction of the Project;

**WHEREAS**, the Government's engineering documentation for the Project  
describes work urgently needed to assure the flood control benefits of the Project up to  
a 100-year level of protection;

**WHEREAS**, the Non-Federal Sponsor proposes to accelerate its provision of  
funds to the Government in an amount not to exceed the current estimate of the Non-

Federal Sponsor's required cash contribution for the Project, less any funds previously contributed, for the immediate use by the Government for construction of the Project;

**WHEREAS**, the parties agree that such acceptance shall not represent or give rise to an obligation of the United States, including any obligation to provide reimbursement of the funds the Non-Federal Sponsor elects to provide or any obligation to request future funds to match the amount the Non-Federal Sponsor elects to provide, and that such funds will be credited against the Non-Federal Sponsor's future cost share only if additional Federal funds are appropriated.

**NOW, THEREFORE**, the Government and the Non-Federal Sponsor agree that the Agreement is hereby amended in the following particulars but in no others:

1. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

Article II is amended by adding the following paragraphs at the end thereof:

"L. The Non-Federal Sponsor may offer in writing to accelerate a portion or all of its required cash contribution pursuant to Article II. D. of this Agreement during the period of construction for immediate use by the Government. This offer shall be limited to an amount that does not exceed the most current estimate of the total of the Non-Federal Sponsor's required cash contribution pursuant to Article II. D. of this Agreement, as determined by the Government in coordination with the Non-Federal Sponsor, less any funds previously contributed by the Non-Federal Sponsor. Upon receipt of such offer or offers, the Government, subject to receiving such approvals and concurrences as customarily are required to accept such funds, may accept the funds, or such portion thereof as the Government determines to be necessary to meet the costs of construction of the Project. If the Government elects to accept such funds, it shall notify the Non-Federal Sponsor of such acceptance in a writing that sets forth any applicable terms and conditions. In the event of a conflict between this Agreement and any such writing, this Agreement shall control. Such funds shall be used by the Government for construction of the Project.

M. As Federal appropriations are made available to pay the Federal share of construction of the Project, the Government shall afford credit for funds provided during the period of construction in accordance with Article II L. of this Agreement. The Government shall credit this amount, provided during the period of construction, toward the Non-Federal Sponsor's cash contribution required by Article II. D. of this Agreement. If after the final accounting at the end of the period of construction, it is

determined that the Non-Federal Sponsor has provided funds in excess of its required cash contribution pursuant to Article II.D. of this Agreement, the Government shall proceed in accordance with Article VI.D.2. of this Agreement to determine whether a refund is applicable. However, if in the event of a final accounting due to termination pursuant to Article XIV.C. of this Agreement prior to the end of the period of construction, it is determined that the Non-Federal Sponsor has provided funds in excess of its required cash contribution pursuant to Article II.D. of this Agreement, the Government shall not reimburse the Non-Federal Sponsor for any such excess funds, except that any such excess funds which have not been obligated by the Government on the Project shall be refunded to the Non-Federal Sponsor, subject to the availability of funds."

## 2. ARTICLE VI – METHOD OF PAYMENT

a. The second sentence of Article VI.A. is amended by inserting the phrase: "of the credit to be afforded in accordance with Article II.M. of this Agreement," after "of the non-Federal proportionate share," and before "and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year."

b. The first sentence of Article VI.B.2. is amended by inserting the phrase: "after consideration of any credit afforded pursuant to Article II.M. of this Agreement," after "of construction," and before "the Government."

c. Article VI.B.3. is amended by adding at the end thereof: "; and (c) to the extent of funds accepted in accordance with Article II. L. of this Agreement, any other financial obligations for construction in excess of the non-Federal proportionate share as they are incurred during the period of construction."

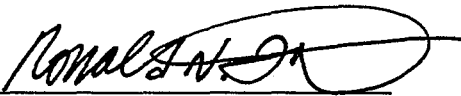
d. Article VI.B.4. is amended by adding a comma after "the Government" in the first line and inserting the phrase: "after consideration of any credit afforded pursuant to Article II. M. of this Agreement," before "determines that additional funds will be needed from the Non-Federal Sponsor."


e. The first sentence of Article VI.D.2. is amended by adding the following phrase at the end thereof: "; and, if the final accounting results from termination pursuant to Article XIV.C. of this Agreement, the amount of excess contribution that was provided in accordance with Article II. L. of this Agreement and for which credit was not afforded pursuant to Article II.M. of this Agreement shall not be reimbursed." The second sentence of Article VI.D.2. is amended by adding the parenthesis: "(not including the non-reimbursable amounts referenced in the preceding sentence)" after "refund the excess."

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

THE DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA  
Represented by The Reclamation Board

BY:   
Ronald N. Light  
Colonel, Corps of Engineers  
District Engineer

BY:   
Benjamin F. Carter  
President  
The Reclamation Board

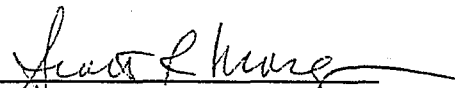
DATE: 7/20/06

DATE: 6/22/06

**CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of The Reclamation Board of the State of California, that The Reclamation Board is a legally constituted public body with full authority and legal capability to perform, on behalf of the State of California, the terms of the Agreement between the Department of the Army and the State of California, as amended by Amendment Number 3 to the Agreement, in connection with the American River Watershed (Common Features), California, Project, and to pay damages in accordance with the terms of the amended Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the State of California, acting by and through its Reclamation Board, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this 23 day of June 2006.

  
\_\_\_\_\_  
Scott Morgan, Counsel  
The Reclamation Board



**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 Section 1352, Title 31, U.S. Code. 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.

BY: Dan A. Fua  
Dan Fua  
Acting General Manager  
The Reclamation Board

DATE: 6/23/06

**EXHIBIT D—Special Terms and Conditions for  
Department Of Water Resources  
(Department of the Army Corps of Engineers)**

1. AVAILABILITY OF FUNDS: Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
2. AUDIT CLAUSE: For contracts in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract (Government Code Section 8546.7).
3. CONFLICT OF INTEREST:
  - a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
    - (1) Current State Employees: (PCC §10410)
      - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
      - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
    - (2) Former State Employees: (PCC §10411)
      - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
      - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
  - b. Penalty for Violation:
    - (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)
  - c. Members of Boards and Commissions:
    - (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Representational Conflicts of Interest:

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

e. Financial Interest in Contracts:

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

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

f. Prohibition for Consulting Services Contracts:

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

STATE OF CALIFORNIA

**STANDARD AGREEMENT AMENDMENT**

STD. 213 A (Rev 6/03)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 5 Pages



AGREEMENT NUMBER	AMENDMENT NUMBER
4600000651	4
REGISTRATION NUMBER	

- This Agreement is entered into between the State Agency and Contractor named below:
 

STATE AGENCY'S NAME	Department of Water Resources
CONTRACTOR'S NAME	Department of the Army
- The term of this Agreement is July 10, 1998 through Upon Completion of the Project. This Agreement shall not become effective until approved by the Department of the Army Corps of Engineers.
- The maximum amount of this Agreement after this amendment is: \$246,000,000.00 Two hundred and forty-six Million Dollars and No Cents.
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
  - Amending the Project Cooperation Agreement for the American River Watershed (Common Features) Project expands the Agreement's definition of "Project" and clarifies the scope of work to include certain improvements authorized in Section 366 of the Water Resources Development Act of 1999, Public Law 106-53. Article I.A under the Definitions and General Provisions is amended to add (1) Mayhew Drain, Raise Levee; (2) Mayhew Drain, Install Closure Structure; (3) Howe Avenue, Raise Levee; (4) Jacob Lane, Strengthen Levee; and (5) Lower American River near Natomas East Main Drainage Canal, Strengthen Levee.
  - All other terms and conditions of contract # 4600000651, including Amendments 1, 2, and 3 shall remain the same.

Signatures appear on pages 3 of 5 of the Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only	
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		 <div style="border: 1px solid black; padding: 5px; text-align: center;"> <b>APPROVED</b>             JUN 18 2007   <b>DEPT OF GENERAL SERVICES</b> </div> 	
BY (Authorized Signature)	DATE SIGNED (Do not type)		
PRINTED NAME AND TITLE OF PERSON SIGNING			
ADDRESS			
<b>STATE OF CALIFORNIA</b>			
AGENCY NAME			
BY (Authorized Signature)	DATE SIGNED (Do not type)		
PRINTED NAME AND TITLE OF PERSON SIGNING			

AMENDMENT NUMBER 4  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA, THE RECLAMATION BOARD  
FOR CONSTRUCTION OF THE  
AMERICAN RIVER WATERSHED (COMMON FEATURES), CALIFORNIA PROJECT

**THIS AMENDMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"),  
represented by the Assistant Secretary of the Army (Civil Works), and the STATE OF  
CALIFORNIA, represented by the President of THE RECLAMATION BOARD  
(hereinafter the "Non-Federal Sponsor").

**WITNESSETH, THAT:**

**WHEREAS**, construction of the American River Watershed (Common Features),  
California Project (hereinafter the "Project") was authorized by Section 101(a)(1) of the  
Water Resources Development Act of 1996, Public Law 104-303, at a total cost of  
\$56,900,000;

**WHEREAS**, Section 103 of the Water Resources Development Act of 1986, Public  
Law 99-662, as amended, specifies the cost-sharing requirements applicable to the  
Project;

**WHEREAS**, the Government and the Non-Federal Sponsor entered into a Project  
Cooperation Agreement on July 13, 1998 (hereinafter the "Agreement") for construction of  
the Project;

**WHEREAS**, the Project authorization was modified by Section 366 of the Water  
Resources Development Act of 1999, Public Law 106-53, to include certain  
improvements as part of the overall Project, and was amended by Section 366 to  
increase the total cost of the Project to \$91,900,000;

**WHEREAS**, the Government and the Non-Federal Sponsor entered into  
Amendment Number 1 to the Agreement on June 13, 2003, to update the project cost to

\$120.6 million to accommodate the design and construction changes associated with deep foundation slurry cutoff walls required for the Project;

**WHEREAS**, the Project authorization was further modified by Section 129 of Public Law 108-137, the Energy and Water Development Appropriations Act, 2004, to increase the total cost of the Project to \$205,000,000, and the Government and the Non-Federal Sponsor entered into Amendment Number 2 to the Agreement on September 5, 2006 to update the project cost to \$205,000,000;

**WHEREAS**, the Government and the Non-Federal Sponsor entered into Amendment Number 3 to the Agreement on July 20, 2006 to allow for the Non-Federal Sponsor to accelerate its provision of funds to the Government; and

**WHEREAS**, the Government and the Non-Federal Sponsor wish to amend the Agreement's definition of "Project" to include certain improvements authorized in Section 366 of the Water Resources Development Act of 1999, Public Law 106-53.

**NOW, THEREFORE**, the Government and the Non-Federal Sponsor agree that the Agreement is hereby amended in the following particulars but in no others:

#### 1. ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

Article I.A. is amended by adding the following paragraph at the end thereof.:

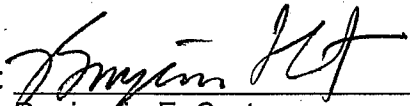
"The term Project shall also mean the following improvements: (1) Mayhew Drain, Raise Levee: raising the left bank of the non-federal levee upstream of the Mayhew Drain for a distance of 4,300 feet by an average of 2.5 feet; (2) Mayhew Drain, Install Closure Structure: constructing a closure structure with gates near mouth of Mayhew Drain; (3) Howe Avenue, Raise Levee: raising the right bank of the American River levee from 1,500 feet upstream to Howe Avenue to 12,000 feet downstream of Howe Avenue bridge (to Northrop Avenue) by an average of 1 foot; (4) Jacob Lane, Strengthen Levee: constructing a 4-foot-deep toe drain along the landside levee toe to control excessive exit gradient--repair work extending from 300 feet west of Jacob Lane to Harrington Way and from 800 feet upstream of River Walk Way to 700 feet downstream of Arden Way; (5) Lower American River near Natomas East Main Drainage Canal, Strengthen Levee: reshaping right bank landside levee side slope to provide a 2H to 1V slope from 500 feet upstream to 1,300 feet upstream of State Highway 160; as generally described in the American River Watershed Project (Common Features), California, Second Addendum to the Supplemental Information Report (SIR), dated March 2002 (revised July 2002), and approved by the Director of Civil Works on 21 October 2002.

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

THE DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA  
Represented by the Reclamation Board

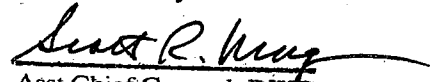
BY: \_\_\_\_\_  
Ronald N. Light  
Colonel, Corps of Engineers  
District Engineer

BY:  \_\_\_\_\_  
Benjamin F. Carter  
President  
The Reclamation Board

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

DATE: 5/30/07

Approved as to legal form  
and sufficiency:

  
Asst. Chief Counsel, DWR  
*Rec Bd.*

## CERTIFICATE OF AUTHORITY

I, Scott R. Morgan, do hereby certify that I am the principal legal officer of the Reclamation Board of the State of California, that the Reclamation Board is a legally constituted public body with full authority and legal capability to perform, on behalf of the State of California, the terms of the Agreement between the Department of the Army and the State of California, as amended by Amendment Number 4 to the Agreement, in connection with the American River Watershed (Common Features), California, Project, and to pay damages in accordance with the terms of the amended Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the State of California, acting by and through its Reclamation Board, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this 24 day of May 2007.

Scott R. Morgan  
Scott R. Morgan, Counsel  
The Reclamation Board



**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 Section 1352, Title 31, U.S. Code. 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.

BY: Jay S. Punia  
Jay S. Punia  
General Manager  
The Reclamation Board

DATE: 5/29/07